

SOUTH CAROLINA STATE REGISTER DISCLAIMER

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SOUTH CAROLINA STATE REGISTER

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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.

2020 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	1/10	2/14	3/13	4/10	5/8	6/12	7/10	8/14	9/11	10/9	11/13	12/11
Publishing Date	1/24	2/28	3/27	4/24	5/22	6/26	7/24	8/28	9/25	10/23	11/27	12/25

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) 212-4500.

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: <http://www.scstatehouse.gov/regnsrch.php>

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4848	SR44-2		Contractor's Licensing Board	1/19/20	LLR-Contractor's Licensing Board
4852	SR44-2		Board of Long Term Health Care Administrators	2/03/20	LLR-Board of Long Term Health Care Administrators
4873	SR44-4		Air Pollution Control Regulations and Standards	3/17/20	Department of Health and Envir Control
4861	SR44-4		Consolidated Procurement Code	3/23/20	State Fiscal Accountability Authority
4876	SR44-5		Electronic Transmissions	4/26/20	Secretary of State
4880	SR44-6		Control of Anthrax	5/13/20	Department of Health and Envir Control
4879	SR44-6		E-Filing and E-Service	5/13/20	Public Service Commission
4883	SR44-6		Hazardous Waste Management Regulations	5/13/20	Department of Health and Envir Control
4887	SR44-6		Water Classifications and Standards	5/13/20	Department of Health and Envir Control
4885	SR44-6		Classified Waters	5/13/20	Department of Health and Envir Control
4916	SR44-6		Contractor Performance Evaluation	5/13/20	Department of Transportation
4917	SR44-6		Disqualification and Suspension from Participation in Contracts with the South Carolina Department of Transportation	5/13/20	Department of Transportation
4929	SR44-6		Corporate Governance Annual Disclosure Regulation	5/13/20	Department of Insurance
4931	SR44-6		Minimum Standards for the Readability of Commonly Purchased Insurance Policies	5/13/20	Department of Insurance
4912	SR44-6		Securities	5/13/20	Office of the Attorney General
4918	SR44-6		Assisting, Developing, and Evaluating Professional Teaching (ADEPT)	5/13/20	State Board of Education
4902	SR44-6		Imitation Milk, Imitation Milk Products, and Products Made in Semblance of Milk and Milk Products; and Frozen Desserts	5/13/20	Department of Health and Envir Control
4903	SR44-6		Soft Drink and Water Bottling Plants; and Wholesale Commercial Ice Manufacturing	5/13/20	Department of Health and Envir Control
4897	SR44-6		Statement of Policy; and Administrative Procedures	5/13/20	Department of Health and Envir Control
4898	SR44-6		Medical and Dental Scholarship Fund	5/13/20	Department of Health and Envir Control
4920	SR44-6		Renewal of Credentials	5/13/20	State Board of Education
4923	SR44-6		Board of Accountancy	5/13/20	LLR- Board of Accountancy
4921	SR44-6		Continuing Education and Continuing Education Programs	5/13/20	LLR-Board of Cosmetology
4924	SR44-6		Examinations; Requirements for Renewal/Reactivation of Expired or Lapsed Registrations; and Continuing Professional Competency	5/13/20	LLR-Board of Registration for Geologists
4891	SR44-6		Continuing Education	5/13/20	LLR-Board of Landscape Architectural Examiners
4926	SR44-6		Compounding of Veterinary Drug Preparations	5/13/20	LLR-Board of Pharmacy
4927	SR44-6		Facility Permit Classifications	5/13/20	LLR-Board of Pharmacy
4890	SR44-6		Laboratory Work Authorization Form; Sanitary Standards; and Ethics	5/13/20	LLR-Board of Dentistry
4893	SR44-6		Recording and Reporting Occupational Injuries and Illnesses	5/13/20	LLR-OSHA
4934	SR44-6		Check Cashing	5/13/20	State Board of Financial Institutions – Consumer Finance Division
4937	SR44-6		International Building Code	5/13/20	LLR-Building Codes Council
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4878	SR44-6		Named Storm or Wind/Hail Deductible	5/13/20	Department of Insurance
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4941	SR44-6		International Residential Code	5/13/20	LLR-Building Codes Council
4905	SR44-6		Inspection Guidelines	5/13/20	LLR-Board of Funeral Service
4953	SR44-6		Standards for Licensing Renal Dialysis Facilities	5/13/20	Department of Health and Envir Control
4904	SR44-6		Procedures for Administrative Hearings before the Securities Commissioner	5/13/20	Office of the Attorney General
4914	SR44-6		General Regulation; and Additional Regulations Applicable to Specific Properties	5/13/20	Department of Natural Resources

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4932	SR44-6	Pharmacy Benefits Managers	5/13/20	Department of Insurance
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4952		Procedure to Employ, through Contract or Otherwise, Qualified, Independent Third-Party Consultants or Experts	Withdrawn	Public Service Commission
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4919		Credential Classification		State Board of Education
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In order by General Assembly review expiration date
The history, status, and full text of these regulations are available on the
South Carolina General Assembly Home Page: <http://www.scstatehouse.gov/regnsrch.php>

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4848	Contractor's Licensing Board	Regulations and Admin. Procedures	Labor, Commerce and Industry
4852	Board of Long Term Health Care Administrators	Regulations and Admin. Procedures	Medical Affairs
4873	Air Pollution Control Regulations and Standards	Regulations and Admin. Procedures	Medical Affairs
4861	Consolidated Procurement Code	Regulations and Admin. Procedures	Finance
4876	Electronic Transmissions	Regulations and Admin. Procedures	Judiciary
4880	Control of Anthrax	Regulations and Admin. Procedures	Medical Affairs
4879	E-Filing and E-Service	Regulations and Admin. Procedures	Judiciary
4883	Hazardous Waste Management Regulations	Regulations and Admin. Procedures	Medical Affairs
4887	Water Classifications and Standards	Regulations and Admin. Procedures	Agriculture and Natural Resources
4885	Classified Waters	Regulations and Admin. Procedures	Agriculture and Natural Resources
4916	Contractor Performance Evaluation	Regulations and Admin. Procedures	Transportation
4917	Disqualification and Suspension from Participation in Contracts with the South Carolina Department of Transportation	Regulations and Admin. Procedures	Transportation
4929	Corporate Governance Annual Disclosure Regulation	Regulations and Admin. Procedures	Banking and Insurance
4931	Minimum Standards for the Readability of Commonly Purchased Insurance Policies	Regulations and Admin. Procedures	Banking and Insurance
4912	Securities	Regulations and Admin. Procedures	Judiciary
4918	Assisting, Developing, and Evaluating Professional Teaching (ADEPT)	Regulations and Admin. Procedures	Education
4902	Imitation Milk, Imitation Milk Products, and Products Made in Semblance of Milk and Milk Products; and Frozen Desserts	Regulations and Admin. Procedures	Agriculture and Natural Resources
4903	Soft Drink and Water Bottling Plants; and Wholesale Commercial Ice Manufacturing	Regulations and Admin. Procedures	Agriculture and Natural Resources
4897	Statement of Policy; and Administrative Procedures	Regulations and Admin. Procedures	Medical Affairs
4898	Medical and Dental Scholarship Fund	Regulations and Admin. Procedures	Medical Affairs
4920	Renewal of Credentials	Regulations and Admin. Procedures	Education
4923	Board of Accountancy	Regulations and Admin. Procedures	Labor, Commerce and Industry
4921	Continuing Education and Continuing Education Programs	Regulations and Admin. Procedures	Labor, Commerce and Industry
4924	Examinations; Requirements for Renewal/Reactivation of Expired or Lapsed Registrations; and Continuing Professional Competency	Regulations and Admin. Procedures	Labor, Commerce and Industry
4891	Continuing Education	Regulations and Admin. Procedures	Labor, Commerce and Industry
4926	Compounding of Veterinary Drug Preparations	Regulations and Admin. Procedures	Medical Affairs
4927	Facility Permit Classifications	Regulations and Admin. Procedures	Medical Affairs
4890	Laboratory Work Authorization Form; Sanitary Standards; and Ethics	Regulations and Admin. Procedures	Medical Affairs
4893	Recording and Reporting Occupational Injuries and Illnesses	Regulations and Admin. Procedures	Labor, Commerce and Industry
4934	Check Cashing	Regulations and Admin. Procedures	Banking and Insurance
4937	International Building Code	Regulations and Admin. Procedures	Labor, Commerce and Industry
4938	International Fire Code	Regulations and Admin. Procedures	Labor, Commerce and Industry
4939	International Fuel Gas Code	Regulations and Admin. Procedures	Labor, Commerce and Industry
4940	International Mechanical Code	Regulations and Admin. Procedures	Labor, Commerce and Industry
4942	National Electrical Code	Regulations and Admin. Procedures	Labor, Commerce and Industry
4954	Standards for Licensing Facilities that Treat Individuals for Psychoactive Substance Abuse or Dependence	Regulations and Admin. Procedures	Medical Affairs
4913	Determination of Rates of Tuition and Fees	Regulations and Admin. Procedures	Education
4936	South Carolina National Guard College Assistance Program	Regulations and Admin. Procedures	Education
4878	Named Storm or Wind/Hail Deductible	Regulations and Admin. Procedures	Banking and Insurance
4889	Board of Chiropractic Examiners	Regulations and Admin. Procedures	Medical Affairs
4892	Health Services Executive	Regulations and Admin. Procedures	Medical Affairs
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4941	International Residential Code	Regulations and Admin. Procedures	Labor, Commerce and Industry
4905	Inspection Guidelines	Regulations and Admin. Procedures	Labor, Commerce and Industry
4953	Standards for Licensing Renal Dialysis Facilities	Regulations and Admin. Procedures	Medical Affairs
4904	Procedures for Administrative Hearings before the Securities Commissioner	Regulations and Admin. Procedures	Judiciary
4914	General Regulation; and Additional Regulations Applicable to Specific Properties	Regulations and Admin. Procedures	Fish, Game and Forestry
4915	Wildlife Management Area Regulations; Turkey Hunting Rules and Seasons; and Date Specific Antlerless Deer Tags, Individual Antlerless Deer Tags, and Antlerless Deer Limits for Private Lands in Game Zones 1-4, and Youth Deer Hunting Day	Regulations and Admin. Procedures	Fish, Game and Forestry
4932	Pharmacy Benefits Managers	Regulations and Admin. Procedures	Banking and Insurance
4894	Consolidated Procurement Code	Regulations and Admin. Procedures	Finance
4901	Licensure for Foster Care	Regulations and Admin. Procedures	Family and Veterans' Services
4935	Licensing Criteria	Regulations and Admin. Procedures	Education
4933	Parking and Traffic Regulations	Regulations and Admin. Procedures	Education

4 COMMITTEE LIST OF REGULATIONS SUBMITTED TO GENERAL ASSEMBLY

4952	Procedure to Employ, through Contract or Otherwise, Qualified, Independent Third-Party Consultants or Experts	Regulations and Admin. Procedures	Judiciary
4957	South Carolina Teachers Loan Program	Regulations and Admin. Procedures	Education

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4843	Board of Physical Therapy Examiners	Regulations and Admin. Procedures	Medical Affairs
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Permanently Withdrawn

4922	Fee Schedules	Regulations and Admin. Procedures	Labor, Commerce and Industry
4919	Credential Classification	Regulations and Admin. Procedures	Education
4884	Indigent Screening Process	Regulations and Admin. Procedures	Judiciary
4900	Licensure for Foster Care	Regulations and Admin. Procedures	Family and Veterans' Services
4886	Standards for the Permitting of Agricultural Animal Facilities	Regulations and Admin. Procedures	Agriculture and Natural Resources

Executive Order No. 2020-35

WHEREAS, the State of South Carolina has taken, and must continue to take, all necessary and appropriate actions in confronting the evolving public health threat presented by the 2019 Novel Coronavirus (“COVID-19”), while also simultaneously addressing and mitigating the significant economic and other impacts and burdens on individuals, families, and businesses and further facilitating economic recovery and revitalization in a safe, strategic, and incremental manner; and

WHEREAS, in furtherance of the foregoing, the undersigned has, *inter alia*, convened the Public Health Emergency Plan Committee (“PHEPC”); activated the South Carolina Emergency Operations Plan (“Plan”); regularly conferred with state and federal agencies, officials, and experts, to include the South Carolina Department of Health and Environmental Control (“DHEC”), and the South Carolina Emergency Management Division (“EMD”); and requested that the General Assembly take action to make \$45 million from the 2019–2020 Contingency Reserve Fund immediately available to DHEC in coordinating the State’s public health response to COVID-19; and

WHEREAS, in addition to the aforementioned actions, on March 11, 2020, the undersigned issued Executive Order No. 2020-07, suspending certain transportation-related rules and regulations, pursuant to 49 C.F.R. § 390.23 and section 56-5-70 of the South Carolina Code of Laws, as amended, for commercial vehicles and operators of commercial vehicles providing direct assistance to supplement state and local efforts and capabilities to protect public health and safety in connection with COVID-19; and

WHEREAS, on March 13, 2020, the undersigned issued Executive Order No. 2020-08, declaring a State of Emergency based on a determination that COVID-19 posed an imminent public health emergency for the State of South Carolina; and

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-19 outbreak a pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia, pursuant to Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5207 (“Stafford Act”); and

WHEREAS, on March 13, 2020, the President of the United States also declared that the COVID-19 pandemic in the United States constitutes a national emergency, pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. §§ 1601 *et seq.*, and consistent with Section 1135 of the Social Security Act, 42 U.S.C. § 1320b-5, as amended, retroactive to March 1, 2020; and

WHEREAS, in proactively preparing for and promptly responding to the aforementioned emergency, the undersigned initiated and implemented various measures to address the significant public health, economic, and other impacts associated with COVID-19 and to mitigate the resulting burdens on healthcare providers, individuals, and businesses in the State of South Carolina; and

WHEREAS, on March 15, 2020, the undersigned issued Executive Order No. 2020-09, directing, *inter alia*, the closure of all public schools in the State of South Carolina for students and non-essential employees beginning Monday, March 16, 2020, and through Tuesday, March 31, 2020, and the postponement or rescheduling of any election scheduled to be held in this State on or before May 1, 2020, as well as urging that indoor and outdoor public gatherings be cancelled, postponed, or rescheduled, to the extent possible, or limited so as not to exceed one hundred (100) people; and

WHEREAS, on March 16, 2020, based on updated information and recommendations from the Centers for Disease Control and Prevention (“CDC”), the President of the United States and the White House Coronavirus Task Force issued new guidance—titled, “The President’s Coronavirus Guidelines for America: 15 Days to Slow the Spread of Coronavirus (COVID-19)” —to help protect Americans during the global COVID-19 outbreak; and

6 EXECUTIVE ORDERS

WHEREAS, the President’s Coronavirus Guidelines for America recommend, *inter alia*, that the American people “[w]ork or engage in schooling from home whenever possible”; “[a]void social gatherings in groups of more than 10 people”; “[a]void eating or drinking at bars, restaurants, and food courts—use drive-thru, pickup, or delivery options”; and “[a]void discretionary travel, shopping trips, and social visits”; and

WHEREAS, on March 17, 2020, based on updated information and recommendations from the CDC, the President of the United States, and the White House Coronavirus Task Force, the undersigned issued Executive Order No. 2020-10, directing additional emergency measures in response to the threat posed by COVID-19, to include temporarily prohibiting restaurants from providing certain food services for on-premises consumption and prohibiting events at government facilities that would convene fifty (50) or more people in a single room, area, or other confined indoor or outdoor space; and

WHEREAS, in addition to the foregoing directives, Executive Order No. 2020-10 also “authorize[d] and direct[ed] any agency within the undersigned’s Cabinet or any other department within the Executive Branch, as defined by section 1-30-10 of the South Carolina Code of Laws, as amended, through its respective director or secretary, to waive or ‘suspend provisions of existing regulations prescribing procedures for conduct of state business if strict compliance with the provisions thereof would in any way prevent, hinder, or delay necessary action in coping with the emergency,’ in accordance with section 25-1-440 of the South Carolina Code of Laws and other applicable law”; and

WHEREAS, on March 19, 2020, the undersigned issued Executive Order No. 2020-11, initiating further emergency measures and suspending certain regulations to ensure the proper function and continuity of state government operations and the uninterrupted performance and provision of emergency, essential, or otherwise mission-critical state government services, while simultaneously undertaking additional measures to safeguard the health and safety of state employees, mitigate significant economic impacts and burdens on affected individuals and employers, and provide regulatory relief to expedite emergency response initiatives and enhance the availability of critical healthcare services; and

WHEREAS, on March 21, 2020, the undersigned issued Executive Order No. 2020-12, initiating additional actions to provide regulatory relief to facilitate “social distancing” practices and to mitigate the significant economic impacts of COVID-19 on individuals and businesses throughout the State, particularly restaurants and other food-service establishments; and

WHEREAS, on March 23, 2020, the undersigned issued Executive Order No. 2020-13, authorizing and directing law enforcement officers of the State, or any political subdivision thereof, to, *inter alia*, prohibit or disperse any congregation or gathering of people, unless authorized or in their homes, in groups of three (3) or more people, if any such law enforcement official determines, in their discretion, that any such congregation or gathering of people poses, or could pose, a threat to public health; and

WHEREAS, on March 24, 2020, the undersigned requested that the President of the United States declare that a major disaster exists in the State of South Carolina pursuant to Section 401 of the Stafford Act, and on March 27, 2020, the President of the United States granted the undersigned’s request and declared that such a major disaster exists and ordered federal assistance to supplement state, tribal, and local recovery efforts in the areas affected by the COVID-19 pandemic, with an effective date retroactive to January 20, 2020, and continuing; and

WHEREAS, on March 27, 2020, the undersigned issued Executive Order No. 2020-14, directing that individuals who enter the State of South Carolina from an area with substantial community spread of COVID-19 shall be required to isolate or self-quarantine for a period of fourteen (14) days from the time of entry into the State of South Carolina or the duration of the individual’s presence in South Carolina, whichever period is shorter; and

WHEREAS, on March 28, 2020, the undersigned issued Executive Order No. 2020-15, declaring a new, separate, and distinct State of Emergency based on a determination that COVID-19 posed an actual, ongoing, and evolving public health threat to the State of South Carolina and extending certain provisions of the aforementioned Orders for the duration of the State of Emergency, unless otherwise modified, amended, or rescinded; and

WHEREAS, on March 29, 2020, the President of the United States extended and expanded the provisions of his Coronavirus Guidelines for America until April 30, 2020, based on the ongoing nature and evolving scope of the global COVID-19 pandemic; and

WHEREAS, on March 30, 2020, the undersigned issued Executive Order No. 2020-16, directing that any and all public beach access points and public piers, docks, wharfs, boat ramps, and boat landings that provide public access to the public waters of this State shall be closed to public access for recreational purposes for the duration of the State of Emergency; and

WHEREAS, on March 31, 2020, the undersigned issued Executive Order No. 2020-17, directing that certain “non-essential” businesses, venues, facilities, services, and activities in the following categories be closed to non-employees and the public, effective Wednesday, April 1, 2020, at 5:00 p.m.: entertainment venues and facilities, recreational and athletic facilities and activities, and close-contact service providers; and

WHEREAS, on April 3, 2020, the undersigned issued Executive Order No. 2020-18, superseding the provisions of Executive Order No. 2020-17 and directing that certain additional “non-essential” businesses, venues, facilities, services, and activities in the general category of retail stores also be closed to non-employees and the public, effective Monday, April 6, 2020, at 5:00 p.m.; and

WHEREAS, on April 3, 2020, the undersigned issued Executive Order No. 2020-19, directing that effective Friday, April 3, 2020, at 5:00 p.m., any and all individuals, entities, or establishments engaged in the provision of short-term rentals, vacation rentals, or other lodging accommodations or operations in exchange for consideration in the State of South Carolina are prohibited from making or accepting new reservations or bookings from or for individuals residing in or travelling from any country, state, municipality, or other geographic area subject to or identified in a CDC travel advisory or other CDC notice as a location with extensive community transmission of COVID-19, to include the Tri-State Area (consisting of the States of New York, New Jersey, and Connecticut); and

WHEREAS, on April 6, 2020, the undersigned issued Executive Order No. 2020-21, directing, *inter alia*, that effective Tuesday, April 7, 2020, at 5:00 p.m., any and all residents and visitors of the State of South Carolina are required to limit social interaction, practice “social distancing” in accordance with CDC guidance, and take every possible precaution to avoid potential exposure to, and to slow the spread of, COVID-19, and shall limit their movements outside of their Residence, except for purposes of engaging in Essential Business, Essential Activities, or Critical Infrastructure Operations, as such terms are further defined therein; and

WHEREAS, on April 7, 2020, the undersigned issued Executive Order No. 2020-22, authorizing and directing the South Carolina Department of Employment and Workforce to take certain actions to allow employers to provide COVID-19 Support Payments to furloughed employees, while still allowing such individuals to qualify for unemployment benefits if they are otherwise eligible for the same; and

WHEREAS, on April 12, 2020, the undersigned issued Executive Order No. 2020-23, declaring an additional State of Emergency based on new facts and circumstances and a determination that the accelerated spread of COVID-19 throughout the State posed a different and distinct public health threat to the State of South Carolina and extending provisions of certain of the aforementioned Orders for the duration of the State of Emergency, unless otherwise modified, amended, or rescinded; and

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WHEREAS, on April 16, 2020, the undersigned issued Executive Order No. 2020-25, modifying certain emergency restrictions related to the public waters of the State to facilitate authorized outdoor exercise and recreational activities in accordance with Section 1 of Executive Order No. 2020-21 (Home or Work Order), as well as modifying and extending previous emergency measures pertaining to unemployment claims and benefits; and

WHEREAS, on April 16, 2020, the President of the United States issued new Guidelines on Opening Up America Again, which contemplate individual States reopening in phases using a deliberate, data-driven approach tailored to address the situation in each State; and

WHEREAS, on April 20, 2020, the undersigned issued Executive Order No. 2020-28, amending certain emergency restrictions related to public beaches and waters and initiating incremental modifications to prior “non-essential” business closures; and

WHEREAS, on April 27, 2020, the undersigned issued Executive Order No. 2020-29, declaring an additional, distinct State of Emergency—based on, *inter alia*, the continued spread of COVID-19 and the significant economic consequences for individuals and businesses in this State—and implementing additional extraordinary measures to address the same, while also extending provisions of certain prior Orders for the duration of the State of Emergency, unless otherwise modified, amended, or rescinded; and

WHEREAS, on May 1, 2020, the undersigned issued Executive Order No. 2020-30, rescinding Executive Order Nos. 2020-14 and 2020-19, as amended, which imposed the aforementioned mandatory self-quarantine and lodging and travel restrictions for individuals entering South Carolina from high-risk areas; and

WHEREAS, on May 3, 2020, the undersigned issued Executive Order No. 2020-31, modifying Section 1 of Executive Order No. 2020-21 (Home or Work Order), as well as amending the provisions of Section 4 of Executive Order No. 2020-10, as extended by Executive Order No. 2020-29, so as to authorize restaurants to provide outdoor customer dining services, effective Monday, May 4, 2020, at 12:01 a.m., in addition to previously authorized services for off-premises consumption; and

WHEREAS, on May 8, 2020, the undersigned issued Executive Order No. 2020-33, ordering that any election postponed pursuant to the provisions of Executive Order Nos. 2020-09 and 2020-29 shall be held on Tuesday, July 14, 2020; and

WHEREAS, on May 8, 2020, the undersigned issued Executive Order No. 2020-34, modifying and amending certain prior Orders so as to authorize restaurants to provide services for limited indoor, on-premises customer dining, effective Monday, May 11, 2020, at 12:01 a.m., in addition to previously authorized services for off-premises consumption and outdoor customer dining, as well as rescinding those restrictions previously imposed on boating activities; and

WHEREAS, the COVID-19 pandemic represents an ongoing and evolving public health threat, which requires that the State of South Carolina continue to take all necessary and appropriate actions in proactively preparing for and promptly responding to the current public health emergency and the significant economic impacts and other consequences associated with the same; and

WHEREAS, based on recent developments, new facts, changing conditions, and the previously unforeseen occurrence of a combination of extraordinary circumstances—to include the continued spread of COVID-19, the disproportionate impact of COVID-19 on the State’s elderly population, and the need for the rapid deployment and widespread implementation of enhanced tracing and testing to identify, isolate, and address cases of COVID-19—the undersigned has determined, after consulting with numerous state and federal agencies, officials, and experts, that it is necessary and prudent to declare that a separate and distinct emergency exists in the State of South Carolina; and

WHEREAS, section 1-3-420 of the South Carolina Code of Laws, as amended, provides that “[t]he Governor, when in his opinion the facts warrant, shall, by proclamation, declare that, because of . . . a public health emergency . . . a danger exists to the person or property of any citizen and that the peace and tranquility of the State, or any political subdivision thereof, or any particular area of the State designated by him, is threatened, and because thereof an emergency, with reference to such threats and danger, exists”; and

WHEREAS, as the elected Chief Executive of the State, the undersigned is authorized pursuant to section 25-1-440 of the South Carolina Code of Laws, as amended, to “declare a state of emergency for all or part of the State if he finds a disaster or a public health emergency . . . has occurred, or that the threat thereof is imminent and extraordinary measures are considered necessary to cope with the existing or anticipated situation”; and

WHEREAS, in accordance with section 44-4-130 of the South Carolina Code of Laws, as amended, a “public health emergency” exists when there is an “occurrence or imminent risk of a qualifying health condition,” which includes “an illness or health condition that may be caused by . . . epidemic or pandemic disease, or a novel infectious agent . . . that poses a substantial risk of a significant number of human fatalities [or] widespread illness”; and

WHEREAS, section 1-3-430 of the South Carolina Code of Laws, as amended, provides that when a state of emergency has been declared, the undersigned “may further, cope with such threats and danger, order and direct any person or group of persons to do any act which would in his opinion prevent or minimize danger to life, limb or property, or prevent a breach of the peace; and he may order any person or group of persons to refrain from doing any act or thing which would, in his opinion, endanger life, limb or property, or cause, or tend to cause, a breach of the peace, or endanger the peace and good order of the State or any section or community thereof, and he shall have full power by use of all appropriate available means to enforce such order or proclamation”; and

WHEREAS, pursuant to section 1-3-460 of the South Carolina Code of Laws, as amended, the foregoing and other emergency authority is “supplemental to and in aid of powers now vested in the Governor under the Constitution, statutory laws[,] and police powers of the State”; and

WHEREAS, in accordance with section 25-1-440 of the South Carolina Code of Laws, as amended, when an emergency has been declared, the undersigned is “responsible for the safety, security, and welfare of the State and is empowered with [certain] additional authority to adequately discharge this responsibility,” to include issuing, amending, and rescinding “emergency proclamations and regulations,” which shall “have the force and effect of law as long as the emergency exists”; and

WHEREAS, pursuant to section 25-1-440 of the South Carolina Code of Laws, when an emergency has been declared, the undersigned is further authorized to “suspend provisions of existing regulations prescribing procedures for conduct of state business if strict compliance with the provisions thereof would in any way prevent, hinder, or delay necessary action in coping with the emergency”; and

WHEREAS, in addition to the foregoing, section 25-1-440 of the South Carolina Code of Laws authorizes the undersigned, during a declared emergency, to “transfer the direction, personnel, or functions of state departments, agencies, and commissions, or units thereof, for purposes of facilitating or performing emergency services as necessary or desirable,” and to “compel performance by elected and appointed state, county, and municipal officials and employees of the emergency duties and functions assigned them in the State Emergency Plan or by Executive Order”; and

WHEREAS, the undersigned is further authorized, pursuant to section 25-1-440 of the South Carolina Code of Laws, to “direct and compel evacuation of all or part of the populace from any stricken or threatened area if this action is considered necessary for the preservation of life or other emergency mitigation, response, or recovery; to prescribe routes, modes of transportation, and destination in connection with evacuation; and to

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control ingress and egress at an emergency area, the movement of persons within the area, and the occupancy of premises therein”; and

WHEREAS, in the context of a public health emergency, section 25-1-440 of the South Carolina Code of Laws also “authorizes the deployment and use of any resources and personnel including, but not limited to, local officers and employees qualified as first responders, to which the plans apply and the use or distribution of any supplies, equipment, materials, and facilities assembled, stockpiled, or arranged to be made available pursuant to this act”; and

WHEREAS, in accordance with section 16-7-10(A) of the South Carolina Code of Laws, as amended, “[i]n any area designated by the Governor in his proclamation that a state of emergency exists, and during the duration of the proclamation, it is unlawful for a person to: violate a provision in the proclamation including, but not limited to, any curfew set forth by the proclamation; congregate, unless authorized or in their homes, in groups of three or more and to refuse to disperse upon order of a law enforcement officer; or wilfully fail or refuse to comply with any lawful order or direction of any law enforcement officer”; and

WHEREAS, it is axiomatic that “[t]he health, welfare, and safety of the lives and property of the people are beyond question matters of public concern, and reasonable regulations and laws designed to preserve and protect the same are clearly contained in the police power inherent in the sovereign,” 1980 S.C. Op. Att’y Gen. 142 (Sept. 5, 1980); and

WHEREAS, in issuing Executive Order No. 2020-08 and declaring an initial State of Emergency in connection with COVID-19, the undersigned’s determination was made in accordance with section 44-4-130 of the South Carolina Code of Laws, as amended, and based on the “imminent risk of a qualifying health condition,” which includes “an illness or health condition that may be caused by . . . epidemic or pandemic disease, or a novel infectious agent . . . that poses a substantial risk of a significant number of human fatalities [or] widespread illness”; and

WHEREAS, the public health threat posed by COVID-19 subsequently evolved from one that presented the “imminent risk of a qualifying health condition” to one that involved an actual and widespread “occurrence” of a “qualifying health condition,” pursuant to section 44-4-130 of the South Carolina Code of Laws; and

WHEREAS, due to the aforementioned evolution of COVID-19 from an “imminent risk of a qualifying health condition,” to an actual “occurrence” of a “qualifying health condition” or “pandemic,” and with confirmed cases of COVID-19 in over eighty-five percent (85%) of South Carolina’s forty-six (46) counties, the undersigned issued Executive Order No. 2020-15 on March 28, 2020, finding, concluding, and declaring that COVID-19 presented a unique and distinct public health emergency for the State of South Carolina, which must be dealt with on its own accord; and

WHEREAS, the State of South Carolina subsequently transitioned from the investigation, recognition, and initiation phases of the COVID-19 pandemic to the acceleration phase, with DHEC reporting cases of COVID-19 in each of the State’s forty-six (46) counties; and

WHEREAS, based on the aforementioned transition and the accelerated, statewide spread of COVID-19, which presented different and additional risks and dangers, the undersigned issued Executive Order No. 2020-23 on April 12, 2020, declaring a new and distinct State of Emergency and initiating additional proactive action and directing the implementation and enforcement of further extraordinary measures; and

WHEREAS, the undersigned thereafter issued Executive Order No. 2020-29 on April 27, 2020, declaring a separate and distinct State of Emergency in response to, *inter alia*, the continued spread of COVID-19 and the significant economic consequences for individuals and businesses in this State, as well as the State’s ongoing recovery operations and relief efforts associated with the severe storm system that moved across the southeastern region of the United States beginning on April 12, 2020; and

WHEREAS, the State of South Carolina has made meaningful progress to date in controlling the outbreak and continued spread of COVID-19, but the extraordinary circumstances and conditions that necessitated the undersigned’s prior emergency declarations have since evolved to present different and additional threats, which warrant and necessitate additional proactive action; and

WHEREAS, as of May 12, 2020, DHEC has identified at least 7,927 confirmed cases of COVID-19 in the State of South Carolina, including 355 deaths due to COVID-19; and

WHEREAS, the State of South Carolina must take additional proactive action to control the spread of COVID-19 and mitigate the impacts associated with the same, particularly on the State’s elderly population, to include the rapid deployment and widespread implementation of enhanced tracing and testing to identify, isolate, and address cases of COVID-19; and

WHEREAS, consistent with the findings set forth in section 44-4-110 of the South Carolina Code of Laws, as amended, the different and additional public health threats posed by COVID-19 and the need to deploy widespread testing and tracing to confront the same, “require the exercise of extraordinary government functions . . . to respond, rapidly and effectively” to the evolving emergency currently facing the entire State; and

WHEREAS, in addition to the foregoing, in further proactively preparing for and promptly responding to the continued spread of COVID-19, the State of South Carolina must simultaneously confront the significant economic impacts and other consequences associated with COVID-19, to include stabilizing and reinvigorating the State’s economy by addressing issues related to unemployment, facilitating the reopening of businesses and industries, and accessing and utilizing federal funds and resources to assist with the same; and

WHEREAS, it is imperative that the State of South Carolina continue to utilize extraordinary measures and deploy substantial resources to meet the unprecedented threat posed by COVID-19 and the evolving nature and scope of this public health emergency, and in order to promptly and effectively do so, the State must take any and all necessary and appropriate steps to facilitate a coordinated intergovernmental, interagency response to the current and anticipated circumstances; and

WHEREAS, for the aforementioned and other reasons, and in recognition and furtherance of the undersigned’s responsibility to provide for and ensure the health, safety, security, and welfare of the people of the State of South Carolina, the undersigned has determined—based on recent developments, new facts, changing conditions, and the previously unforeseen occurrence of a combination of extraordinary circumstances—that an effective response to the ongoing COVID-19 pandemic, including the different, additional, and intensifying threats cited herein, represents and requires a new and distinct emergency, which warrants further proactive action by the State of South Carolina and the implementation and enforcement of additional extraordinary measures to address the same.

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, I hereby declare that a State of Emergency exists in South Carolina. Accordingly, for the foregoing reasons and in accordance with the cited authorities and other applicable law, I further order and direct as follows:

Section 1. Emergency Measures

To prepare for and respond to the ongoing and evolving public health threat posed by the COVID-19 pandemic and to facilitate the State’s coordinated response to the same, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. The State of South Carolina must take additional proactive action and implement further extraordinary measures to respond to the evolving public health threat posed by the COVID-19 pandemic, to

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include the rapid deployment and widespread implementation of enhanced tracing and testing to identify, isolate, and address cases of COVID-19.

B. I hereby memorialize and confirm my prior activation of the Plan and direct that the Plan be further placed into effect and that all prudent preparations be taken at the individual, local, and state levels to proactively prepare for and promptly respond to the COVID-19 pandemic and the significant economic impacts and other consequences associated with the same. I further direct the continued utilization of all available resources of state government as reasonably necessary to address the current State of Emergency.

C. I hereby direct DHEC to utilize and exercise any and all emergency powers, as set forth in the Emergency Health Powers Act, codified as amended in Title 44, Chapter 4 of the South Carolina Code of Laws, deemed necessary to promptly and effectively address the current public health emergency. In accordance with section 44-4-500 of the South Carolina Code of Laws, as amended, DHEC shall continue to “use every available means to prevent the transmission of infectious disease and to ensure that all cases of infectious disease are subject to proper control and treatment.” I further direct DHEC to restrict visitation to nursing homes and assisted living facilities, with the exception of end-of-life situations, as DHEC deems necessary and appropriate.

D. I hereby authorize and direct state correctional institutions and local detention facilities to suspend visitation processes and procedures, as necessary, during this State of Emergency.

E. I hereby place specified units and/or personnel of the South Carolina National Guard on State Active Duty, pursuant to section 25-1-1840 of the South Carolina Code of Laws, as amended, and direct the Adjutant General to issue the requisite supplemental orders as he deems necessary and appropriate. I further order the activation of South Carolina National Guard personnel and the utilization of appropriate equipment at the discretion of the Adjutant General, and in coordination with the Director of EMD, to take necessary and prudent actions to assist the people of this State. I authorize Dual Status Command, as necessary, to allow the Adjutant General or his designee to serve as commander over both federal (Title 10) and state forces (National Guard in Title 32 and/or State Active Duty status).

F. I hereby order that all licensing and registration requirements regarding private security personnel or companies who are contracted with South Carolina security companies in protecting property and restoring essential services in South Carolina shall be suspended, and I direct the South Carolina Law Enforcement Division (“SLED”) to initiate an emergency registration process for those personnel or companies for a period specified, and in a manner deemed appropriate, by the Chief of SLED.

G. I hereby declare that the prohibitions against price gouging pursuant to section 39-5-145 of the South Carolina Code of Laws, as amended, are in effect and shall remain in effect for the duration of this State of Emergency.

H. I hereby declare that the provisions of the following Orders shall remain in full force and effect for the duration of the State of Emergency declared herein, unless otherwise modified, amended, or rescinded below or by prior or future Order: Executive Order Nos. 2020-09, 2020-10, 2020-11, 2020-12, 2020-13, 2020-16, 2020-18, 2020-21, 2020-22, 2020-25, 2020-28, 2020-30, 2020-31, 2020-33, and 2020-34.

Section 2. School Closures

To provide for and protect the health, safety, and welfare of the people of this State and to minimize and control the spread of COVID-19, while also facilitating continued educational activities, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. Upon consultation with the Superintendent of Education, who has recommended and advised that, at this time, teachers, students, parents, and families should plan for South Carolina’s schools to remain closed to classroom instruction for the remainder of the 2019–2020 school year, I have determined that extending

the closure of public schools to students and non-essential employees is a necessary and appropriate action to protect the health, safety, and welfare of the people of this State and to minimize and control the spread of COVID-19.

B. I hereby direct the continued closure of all public schools in the State of South Carolina for students and non-essential employees for the duration of the State of Emergency. This Section applies to all students and employees of public schools in the State of South Carolina, to include charter schools and residential programs at the Governor’s School for the Arts and Humanities, the Governor’s School for Science and Mathematics, and the South Carolina School for the Deaf and the Blind, with the exception of those emergency or other critical personnel designated as essential, or whose presence is otherwise deemed necessary, by the appropriate school district officials. I further authorize the requisite school district officials to make any necessary and appropriate decisions or arrangements to account for local needs and other unique circumstances. As applicable and to the maximum extent possible, and to promote and facilitate effective “social distancing” practices in accordance with CDC guidance, school districts are authorized and encouraged to provide the following services, resources, and support to students and families for the remainder of the 2019–2020 school year: (1) preparation and implementation of distance learning activities; (2) preparation, distribution, and delivery of meals to children; (3) planning and implementation of alternative and innovative high school graduation ceremonies or celebrations; (4) delivery of services to students with disabilities, including those with Individualized Education Programs (“IEP”), consistent with guidance from the South Carolina Department of Education (“Department”); (5) provision of individualized support to students who are struggling academically or who need additional mental health counseling; and (6) collection of instructional materials and textbooks during the last two weeks of the district’s regular calendar year, while also allowing students, parents, and families the opportunity to retrieve personal belongings.

C. I hereby authorize and direct the Department, to the extent allowed by state and federal law, to include any or all days of distance learning during which instruction was provided in good faith pursuant to a school district’s distance learning plan as an instructional day required to meet the one hundred eighty (180) instructional day requirement contained in section 59-1-425 of the South Carolina Code of Laws, as amended. I urge school districts to work with the Department, in collaboration with the South Carolina Education Oversight Committee and school districts participating in the eLearning pilot program, to assess their instructional technology strengths and weaknesses, including devices, connectivity, online content, and professional learning, to improve access to and the effectiveness of digital learning. School districts are encouraged to consider utilizing federal funds allocated through the Elementary and Secondary School Relief Fund to improve their digital learning capabilities as identified by aforementioned thorough assessment. As applicable and to the maximum extent possible, and to promote and facilitate effective “social distancing” practices in accordance with CDC guidance, I also urge school districts to work with the Department to provide voluntary, in-person summer learning opportunities for students who were enrolled in kindergarten through the eighth grade during the 2019–2020 school year but who are at risk of falling behind in their learning. The Department will work with districts to identify any available state and federal funds to facilitate such voluntary summer learning opportunities.

D. I further authorize all state-supported colleges, universities, and technical colleges in the State of South Carolina, as necessary and appropriate and in accordance with and to the extent allowed by state and federal law, to complete the spring 2020 academic semester by delivering virtual and remote learning, by housing only out-of-state or displaced students, and by restricting on-campus services and activities to emergency or other critical personnel designated as essential, or whose presence is otherwise deemed necessary, by the appropriate college or university officials. I further authorize the requisite college, university, and technical college officials to continue to make any necessary and appropriate decisions or arrangements to account for specific needs and other unique circumstances or to deal with students, employees, or other critical personnel designated as essential, or whose presence is otherwise deemed necessary, by the appropriate college, university, or technical college officials.

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E. This Section shall not be interpreted, applied, implemented, or construed in a manner so as to suspend, restrict, or otherwise limit the existing authority of, *inter alia*, the Department and the South Carolina Commission on Higher Education (“CHE”). I further expressly authorize the Department and the CHE, as applicable, to provide or issue any necessary and appropriate additional or supplemental guidance, rules, regulations, or restrictions regarding the application of this Section or to otherwise provide clarification regarding the same, through appropriate means, without the need for further Orders.

Section 3. Protection of First Responders

To ensure the uninterrupted performance and provision of emergency services and to maintain peace and good order during the State of Emergency, while simultaneously undertaking additional proactive measures to safeguard the health and safety of law enforcement authorities and other first responders, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. The State of South Carolina must promptly undertake and implement additional proactive measures to safeguard the health and safety of law enforcement authorities and other first responders who risk potential exposure to COVID-19 while providing emergency and other essential services during the State of Emergency.

B. I hereby authorize and direct any and all 911 operators or other emergency dispatchers to ask any individual placing a call for service whether such individual or any member of their household has tested positive for COVID-19 or is exhibiting symptoms consistent with the same.

C. I hereby authorize and instruct DHEC, upon consultation with SLED, to provide any necessary and appropriate additional or supplemental guidance regarding the interpretation, application, or enforcement of this Section.

Section 4. Transportation Waivers

To expedite the State of South Carolina’s continued preparation for and response to the ongoing and evolving emergency conditions related to COVID-19 and to facilitate the prompt transportation and delivery of any critical resources, supplies, and personnel identified and deemed necessary in connection with the same, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. I hereby suspend certain rules and regulations, as set forth below, for commercial vehicles and operators of commercial vehicles in accordance with 49 C.F.R. § 390.23 and section 56-5-70 of the South Carolina Code of Laws, as amended.

B. I hereby authorize and direct the South Carolina Department of Transportation (“DOT”) and the South Carolina Department of Public Safety (“DPS”), including the State Transport Police, as needed, to waive or suspend application and enforcement of the requisite state and federal rules and regulations pertaining to registration, permitting, length, width, weight, load, and hours of service for commercial vehicles and operators of commercial vehicles operating in accordance with the provisions of the Federal Motor Carrier Safety Administration’s April 8, 2020 Extension and Expansion of Emergency Declaration No. 2020-002 Under 49 C.F.R. § 390.25, or any future amendments or supplements thereto; responding to the declared emergency in the State of South Carolina or providing direct assistance to supplement state and local efforts and capabilities to protect public health and safety in connection with COVID-19; or otherwise assisting with the public health threat posed by COVID-19, to include commercial vehicles and operators of commercial vehicles transporting essential goods and products, such as food, water, medicine, medical supplies and equipment, fuels and petroleum products (to include fuel oil, diesel oil, gasoline, kerosene, propane, and liquid petroleum), livestock, poultry, feed for livestock and poultry, and crops and other agricultural products ready to be harvested (to include timber and wood chips). I further authorize and direct DOT and DPS to issue, provide, or promulgate any

necessary and appropriate clarification, guidance, rules, regulations, or restrictions regarding the application of this Section.

C. This Section shall not be construed to require or allow an ill or fatigued driver to operate a commercial motor vehicle. In accordance with 49 C.F.R. § 390.23, “a driver who informs the motor carrier that he or she needs immediate rest must be permitted at least ten (10) consecutive hours off duty before the driver is required to return to such terminal or location.” Likewise, this Section shall not be construed as an exemption from the applicable controlled substances and alcohol use and testing requirements in 49 C.F.R. § 382, the commercial driver’s license requirements in 49 C.F.R. § 383, or the financial responsibility requirements in 49 C.F.R. § 387, and it shall not be interpreted to relieve compliance with any other state or federal statute, rule, order, regulation, restriction, or other legal requirement not specifically waived, suspended, or addressed herein.

D. This Section is subject to any clarification, guidance, rules, regulations, or restrictions issued, provided, or promulgated, or which may be issued, provided, or promulgated, by DOT or DPS, as authorized herein or as otherwise provided by law. Notwithstanding the waiver or suspension of certain rules and regulations as set forth above, drivers in South Carolina are still subject to the following state requirements to ensure public safety:

(a) Weight, height, length, and width for any such vehicle on highways or roadways maintained by the State of South Carolina shall not exceed, for continuous travel on all non-interstates, United States, and South Carolina designated routes, maximum dimensions of twelve (12) feet in width, thirteen (13) feet six (6) inches in height, and ninety thousand (90,000) pounds in gross weight.

(b) Posted bridges may not be crossed.

(c) All vehicles shall be operated in a safe manner, shall not damage the highways nor unduly interfere with highway traffic, shall maintain the required limits of insurance, and shall be clearly identified as a utility vehicle or shall provide appropriate documentation indicating they are responding to the emergency.

(d) Any vehicles that exceed the above dimensions, weights, or both, must obtain a permit with defined routes from the South Carolina Department of Transportation Oversized/Overweight Permit Office. To order a permit, please call (803) 737-6769 during normal business hours, 8:30 a.m. – 5:00 p.m., or (803) 206-9566 after normal business hours.

(e) Transporters are responsible for ensuring they have oversize signs, markings, flags, and escorts as required by the South Carolina Code of Laws relating to oversized/overweight loads operating on South Carolina roadways.

E. This Section is effective immediately and shall remain in effect for thirty (30) days or the duration of the State of Emergency, whichever is less, in accordance with 49 C.F.R. § 390.23 and section 56-5-70(D) of the South Carolina Code of Laws, except that requirements relating to registration, permitting, length, width, weight, and load are suspended for commercial and utility vehicles travelling on non-interstate routes for up to one hundred twenty (120) days, pursuant to the provisions of section 56-5-70(A) of the South Carolina Code of Laws, unless otherwise modified, amended, or rescinded by subsequent Order.

Section 5. Enforcement

A. I hereby authorize any and all law enforcement officers of the State, or any political subdivision thereof, to do whatever may be deemed necessary to maintain peace and good order during the State of Emergency and to enforce the provisions of this Order and any prior or future Orders issued by the undersigned in connection with the present State of Emergency.

B. Pursuant to section 16-7-10(A) of the South Carolina Code of Laws, any individual who “refuse[s] to disperse upon order of a law enforcement officer,” “wilfully fail[s] or refuse[s] to comply with any lawful order or direction of any law enforcement officer,” or otherwise violates any provision of any Order

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issued by the undersigned in connection with the State of Emergency “is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned for not more than thirty days.”

C. In accordance with section 1-3-440(4) of the South Carolina Code of Laws, I further authorize, order, and direct any State, county, or city official to enforce the provisions of this Order and any prior or future Orders issued in connection with the present State of Emergency, as necessary and appropriate, in the courts of the State by injunction, mandamus, or other appropriate legal action.

D. In addition to the foregoing, I further authorize, order, and direct DHEC to exercise and utilize any and all necessary and appropriate emergency powers, as set forth in the Emergency Health Powers Act, codified as amended in Title 44, Chapter 4 of the South Carolina Code of Laws, to implement and enforce the provisions of this Order. In accordance with section 44-4-500 of the South Carolina Code of Laws, as amended, DHEC shall continue to “use every available means to prevent the transmission of infectious disease and to ensure that all cases of infectious disease are subject to proper control and treatment.”

Section 6. General Provisions

A. This Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of South Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any other person.

B. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this Order is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this Order, as the undersigned would have issued this Order, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

C. If or to the extent that any political subdivision of this State seeks to adopt or enforce a local ordinance, rule, regulation, or other restriction that conflicts with this Order, this Order shall supersede and preempt any such local ordinance, rule, regulation, or other restriction.

D. This Order is effective immediately and shall remain in effect for a period of fifteen (15) days unless otherwise expressly stated herein or modified, amended, or rescinded by subsequent Order. Further proclamations, orders, and directives deemed necessary to ensure the fullest possible protection of life and property during this State of Emergency shall be issued orally by the undersigned and thereafter reduced to writing and published for dissemination within the succeeding 24-hour period.

**GIVEN UNDER MY HAND AND THE GREAT
SEAL OF THE STATE OF SOUTH CAROLINA,
THIS 12th DAY OF MAY, 2020.**

**HENRY MCMASTER
Governor**

Executive Order No. 2020-36

WHEREAS, the State of South Carolina has taken, and must continue to take, all necessary and appropriate actions in confronting the evolving public health threat presented by the 2019 Novel Coronavirus (“COVID-19”), while also simultaneously addressing and mitigating the significant economic and other impacts and burdens on individuals, families, and businesses and further facilitating economic recovery and revitalization in a safe, strategic, and incremental manner; and

WHEREAS, in addition to declaring an initial State of Emergency on March 13, 2020, the undersigned has issued various Executive Orders initiating and directing further extraordinary measures to address the significant public health, economic, and other impacts associated with COVID-19, certain provisions of which have been extended by subsequent and distinct emergency declarations set forth in Executive Order Nos. 2020-15, 2020-23, 2020-29, and 2020-35; and

WHEREAS, on March 16, 2020, based on updated information and recommendations from the Centers for Disease Control and Prevention (“CDC”), the President of the United States and the White House Coronavirus Task Force issued new guidance—titled, “The President’s Coronavirus Guidelines for America: 15 Days to Slow the Spread of Coronavirus (COVID-19)”—to help protect Americans during the global COVID-19 outbreak; and

WHEREAS, the President’s Coronavirus Guidelines for America recommend, *inter alia*, that the American people “[w]ork or engage in schooling from home whenever possible”; “[a]void social gatherings in groups of more than 10 people”; “[a]void eating or drinking at bars, restaurants, and food courts—use drive-thru, pickup, or delivery options”; and “[a]void discretionary travel, shopping trips, and social visits”; and

WHEREAS, on March 29, 2020, the President of the United States extended and expanded the provisions of his Coronavirus Guidelines for America until April 30, 2020, based on the ongoing nature and evolving scope of the global COVID-19 pandemic; and

WHEREAS, on March 31, 2020, the undersigned issued Executive Order No. 2020-17, directing that certain “non-essential” businesses, venues, facilities, services, and activities in the following categories be closed to non-employees and the public, effective Wednesday, April 1, 2020, at 5:00 p.m.: entertainment venues and facilities, recreational and athletic facilities and activities, and close-contact service providers; and

WHEREAS, on April 3, 2020, the undersigned issued Executive Order No. 2020-18, superseding the provisions of Executive Order No. 2020-17 and directing that certain additional “non-essential” businesses, venues, facilities, services, and activities in the general category of retail stores also be closed to non-employees and the public, effective Monday, April 6, 2020, at 5:00 p.m.; and

WHEREAS, on April 6, 2020, the undersigned issued Executive Order No. 2020-21, directing, *inter alia*, that effective Tuesday, April 7, 2020, at 5:00 p.m., any and all residents and visitors of the State of South Carolina are required to limit social interaction, practice “social distancing” in accordance with CDC guidance, and take every possible precaution to avoid potential exposure to, and to slow the spread of, COVID-19, and shall limit their movements outside of their Residence, except for purposes of engaging in Essential Business, Essential Activities, or Critical Infrastructure Operations, as such terms are further defined therein; and

WHEREAS, on April 16, 2020, the President of the United States issued new Guidelines on Opening Up America Again, which contemplate individual States reopening in phases using a deliberate, data-driven approach tailored to address the situation in each State; and

WHEREAS, on April 20, 2020, based on the latest data from the South Carolina Department of Health and Environmental Control (“DHEC”), the undersigned issued Executive Order No. 2020-28, amending, *inter alia*, certain provisions of Executive Order Nos. 2020-18 and 2020-21, as extended by Executive Order No.

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2020-23, to initiate certain modifications to prior “non-essential” business closures—specifically, “retail stores,” as identified therein by general description—so as to begin the process of safely, strategically, and incrementally reopening businesses and facilitating economic recovery and revitalization; and

WHEREAS, on May 3, 2020, the undersigned issued Executive Order No. 2020-31, modifying Section 1 of Executive Order No. 2020-21 (Home or Work Order), as well as amending the provisions of Section 4 of Executive Order No. 2020-10, as extended by Executive Order No. 2020-29, so as to authorize restaurants to provide outdoor customer dining services, effective Monday, May 4, 2020, at 12:01 a.m., in addition to previously authorized services for off-premises consumption; and

WHEREAS, on May 8, 2020, the undersigned issued Executive Order No. 2020-34, modifying and amending certain prior Orders so as to authorize restaurants to provide services for limited indoor, on-premises customer dining, effective Monday, May 11, 2020, at 12:01 a.m., in addition to previously authorized services for off-premises consumption and outdoor customer dining, as well as rescinding those restrictions previously imposed on boating activities; and

WHEREAS, on May 12, 2020, the undersigned issued Executive Order No. 2020-35, declaring an additional, distinct State of Emergency—based on, *inter alia*, the continued spread of COVID-19, the disproportionate impact of COVID-19 on the State’s elderly population, and the need for the rapid deployment and widespread implementation of enhanced tracing and testing to identify, isolate, and address cases of COVID-19—and implementing additional extraordinary measures to address the same, while also extending provisions of certain prior Orders for the duration of the State of Emergency, unless otherwise modified, amended, or rescinded; and

WHEREAS, the COVID-19 pandemic represents an evolving public health threat, which requires that the State of South Carolina continue to take all necessary and appropriate actions in proactively preparing for and promptly responding to the ongoing emergency, while also simultaneously attempting to mitigate the significant economic and other impacts and burdens on individuals, families, and businesses and providing appropriate flexibility and relief to facilitate the same; and

WHEREAS, section 1-3-430 of the South Carolina Code of Laws, as amended, provides that when a state of emergency has been declared, the undersigned “may further, cope with such threats and danger, order and direct any person or group of persons to do any act which would in his opinion prevent or minimize danger to life, limb or property, or prevent a breach of the peace; and he may order any person or group of persons to refrain from doing any act or thing which would, in his opinion, endanger life, limb or property, or cause, or tend to cause, a breach of the peace, or endanger the peace and good order of the State or any section or community thereof, and he shall have full power by use of all appropriate available means to enforce such order or proclamation”; and

WHEREAS, in accordance with section 25-1-440 of the South Carolina Code of Laws, as amended, when an emergency has been declared, the undersigned is “responsible for the safety, security, and welfare of the State and is empowered with [certain] additional authority to adequately discharge this responsibility,” to include issuing, amending, and rescinding “emergency proclamations and regulations,” which shall “have the force and effect of law as long as the emergency exists”; and

WHEREAS, the undersigned is further authorized, pursuant to section 25-1-440 of the South Carolina Code of Laws, to “direct and compel evacuation of all or part of the populace from any stricken or threatened area if this action is considered necessary for the preservation of life or other emergency mitigation, response, or recovery; to prescribe routes, modes of transportation, and destination in connection with evacuation; and to control ingress and egress at an emergency area, the movement of persons within the area, and the occupancy of premises therein”; and

WHEREAS, in accordance with section 16-7-10(A) of the South Carolina Code of Laws, as amended, “[i]n any area designated by the Governor in his proclamation that a state of emergency exists, and during the duration of the proclamation, it is unlawful for a person to: violate a provision in the proclamation including, but not limited to, any curfew set forth by the proclamation; congregate, unless authorized or in their homes, in groups of three or more and to refuse to disperse upon order of a law enforcement officer; or wilfully fail or refuse to comply with any lawful order or direction of any law enforcement officer”; and

WHEREAS, it is axiomatic that “[t]he health, welfare, and safety of the lives and property of the people are beyond question matters of public concern, and reasonable regulations and laws designed to preserve and protect the same are clearly contained in the police power inherent in the sovereign,” 1980 S.C. Op. Att’y Gen. 142 (Sept. 5, 1980); and

WHEREAS, the State of South Carolina must remain flexible to account for the evolving nature and scope of the unprecedented public health emergency posed by COVID-19, while also simultaneously continuing the process of safely, strategically, and incrementally reopening businesses and facilitating economic recovery and revitalization; and

WHEREAS, for the aforementioned and other reasons, and based on the latest data from DHEC and the CDC, the undersigned has determined that it is necessary and appropriate to revisit and modify certain terms and provisions of prior Orders as part of the ongoing process of facilitating economic recovery and revitalization in a safe, strategic, and incremental manner, while also further encouraging effective “social distancing” practices and implementing additional proactive measures to provide for and ensure the health, safety, security, and welfare of the people of this State.

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, I hereby order and direct as follows:

Section 1. Incremental Modification of Non-Essential Business Closures

A. I hereby modify and amend the provisions of Executive Order Nos. 2020-18 and 2020-21, as amended by Executive Order Nos. 2020-28 and 2020-31, and as extended by Executive Order No. 2020-35, to authorize the following businesses, venues, facilities, services, and activities—which were previously deemed “non-essential” and directed to close to non-employees and not to open for access or use by the public, or not to take place, as applicable, in accordance with Executive Order No. 2020-18—to re-open to non-employees and for access or use by the public, effective Monday, May 18, 2020, at 12:01 a.m.:

1. Recreational and athletic facilities and activities as follows:
 - (a) Fitness and exercise centers and commercial gyms
 - (b) Spas and public or commercial swimming pools
 - (c) Group exercise facilities, to include yoga, barre, and spin studios or facilities
2. Close-contact service providers as follows:
 - (a) Barber shops
 - (b) Hair salons
 - (c) Waxing salons
 - (d) Threading salons
 - (e) Nail salons and spas
 - (f) Body-art facilities and tattoo services
 - (g) Tanning salons
 - (h) Massage-therapy establishments and massage services

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B. Any businesses, venues, facilities, services, and activities that elect to re-open to non-employees and for access or use by the public, as authorized herein, should consider and incorporate any corresponding industry guidelines regarding the same, in addition to undertaking and implementing all reasonable steps to comply with any applicable sanitation guidance promulgated by the CDC, DHEC, or any other state or federal public health officials.

C. I hereby authorize DHEC to provide or issue any necessary and appropriate additional or supplemental guidance, rules, regulations, or restrictions regarding the application of this Section or to otherwise provide clarification regarding the same, through appropriate means, without the need for further Orders.

D. Except as expressly provided herein, this Section shall not be construed to modify, amend, or otherwise alter the provisions of any prior or future Orders issued by the undersigned in connection with the State of Emergency and does not repeal, by implication or otherwise, the remaining terms and provisions of, *inter alia*, Executive Order Nos. 2020-18 and 2020-21, as previously amended and extended. The aforementioned Orders shall remain in effect for the duration of the State of Emergency unless and until otherwise modified, amended, or rescinded by subsequent Order.

E. This Section shall not be interpreted, applied, implemented, or construed in a manner so as to suspend, restrict, or otherwise limit the authority of the undersigned or the South Carolina Department of Commerce to issue, provide, or promulgate any necessary and appropriate additional or supplemental clarification, guidance, rules, regulations, or restrictions regarding the provisions of this Order or of Executive Order Nos. 2020-18 or 2020-21, as previously amended and extended. I further expressly authorize the Office of the Governor (“Office”) to provide or issue any necessary and appropriate additional or supplemental guidance, rules, regulations, or restrictions regarding the application of this Section or to otherwise to provide clarification regarding the same, through appropriate means, without the need for further Orders.

Section 2. General Provisions

A. This Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of South Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any other person.

B. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this Order is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this Order, as the undersigned would have issued this Order, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

C. If or to the extent that any political subdivision of this State seeks to adopt or enforce a local ordinance, rule, regulation, or other restriction that conflicts with this Order, this Order shall supersede and preempt any such local ordinance, rule, regulation, or other restriction.

D. This Order is effective immediately and shall remain in effect for the duration of the State of Emergency unless otherwise modified, amended, or rescinded by subsequent Order. Further proclamations, orders, and directives deemed necessary to ensure the fullest possible protection of life and property during this State of Emergency shall be issued orally by the undersigned and thereafter reduced to writing and published for dissemination within the succeeding 24-hour period.

**GIVEN UNDER MY HAND AND THE GREAT
SEAL OF THE STATE OF SOUTH CAROLINA,
THIS 15th DAY OF MAY, 2020.**

**HENRY MCMASTER
Governor**

Executive Order No. 2020-37

WHEREAS, the State of South Carolina must continue to take all necessary and appropriate actions in coping with the evolving public health threat and other impacts associated with the 2019 Novel Coronavirus (“COVID-19”), and in doing so, the State must remain focused on facilitating and encouraging economic recovery and revitalization in a safe, strategic, and incremental manner; and

WHEREAS, in addition to declaring an initial State of Emergency on March 13, 2020, the undersigned has issued various Executive Orders initiating and directing further extraordinary measures to address the significant public health, economic, and other impacts associated with COVID-19, certain provisions of which have been extended by subsequent and distinct emergency declarations set forth in Executive Order Nos. 2020-15, 2020-23, 2020-29, and 2020-35; and

WHEREAS, on March 16, 2020, based on updated information and recommendations from the Centers for Disease Control and Prevention (“CDC”), the President of the United States and the White House Coronavirus Task Force issued new guidance—titled, “The President’s Coronavirus Guidelines for America: 15 Days to Slow the Spread of Coronavirus (COVID-19)”—to help protect Americans during the global COVID-19 outbreak; and

WHEREAS, the President’s Coronavirus Guidelines for America recommend, *inter alia*, that the American people “[w]ork or engage in schooling from home whenever possible”; “[a]void social gatherings in groups of more than 10 people”; “[a]void eating or drinking at bars, restaurants, and food courts—use drive-thru, pickup, or delivery options”; and “[a]void discretionary travel, shopping trips, and social visits”; and

WHEREAS, on March 29, 2020, the President of the United States extended and expanded the provisions of his Coronavirus Guidelines for America until April 30, 2020, based on the ongoing nature and evolving scope of the global COVID-19 pandemic; and

WHEREAS, on March 31, 2020, the undersigned issued Executive Order No. 2020-17, directing that certain “non-essential” businesses, venues, facilities, services, and activities in the following categories be closed to non-employees and the public, effective Wednesday, April 1, 2020, at 5:00 p.m.: entertainment venues and facilities, recreational and athletic facilities and activities, and close-contact service providers; and

WHEREAS, on April 3, 2020, the undersigned issued Executive Order No. 2020-18, superseding the provisions of Executive Order No. 2020-17 and directing that certain additional “non-essential” businesses, venues, facilities, services, and activities in the general category of retail stores also be closed to non-employees and the public, effective Monday, April 6, 2020, at 5:00 p.m.; and

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WHEREAS, on April 6, 2020, the undersigned issued Executive Order No. 2020-21, directing, *inter alia*, that effective Tuesday, April 7, 2020, at 5:00 p.m., any and all residents and visitors of the State of South Carolina are required to limit social interaction, practice “social distancing” in accordance with CDC guidance, and take every possible precaution to avoid potential exposure to, and to slow the spread of, COVID-19, and shall limit their movements outside of their Residence, except for purposes of engaging in Essential Business, Essential Activities, or Critical Infrastructure Operations, as such terms are further defined therein; and

WHEREAS, on April 16, 2020, the President of the United States issued new Guidelines on Opening Up America Again, which contemplate individual States reopening in phases using a deliberate, data-driven approach tailored to address the situation in each State; and

WHEREAS, on April 20, 2020, based on the latest data from the South Carolina Department of Health and Environmental Control (“DHEC”), the undersigned issued Executive Order No. 2020-28, amending, *inter alia*, certain provisions of Executive Order Nos. 2020-18 and 2020-21, as extended by Executive Order No. 2020-23, to initiate certain modifications to prior “non-essential” business closures—specifically, “retail stores,” as identified therein by general description—so as to begin the process of safely, strategically, and incrementally reopening businesses and facilitating economic recovery and revitalization; and

WHEREAS, on May 3, 2020, the undersigned issued Executive Order No. 2020-31, modifying Section 1 of Executive Order No. 2020-21 (Home or Work Order), as well as amending the provisions of Section 4 of Executive Order No. 2020-10, as extended by Executive Order No. 2020-29, so as to authorize restaurants to provide outdoor customer dining services, effective Monday, May 4, 2020, at 12:01 a.m., in addition to previously authorized services for off-premises consumption; and

WHEREAS, on May 8, 2020, the undersigned issued Executive Order No. 2020-34, modifying and amending certain prior Orders so as to authorize restaurants to provide services for limited indoor, on-premises customer dining, effective Monday, May 11, 2020, at 12:01 a.m., in addition to previously authorized services for off-premises consumption and outdoor customer dining, as well as rescinding those restrictions previously imposed on boating activities; and

WHEREAS, on May 12, 2020, the undersigned issued Executive Order No. 2020-35, declaring an additional, distinct State of Emergency—based on, *inter alia*, the continued spread of COVID-19, the disproportionate impact of COVID-19 on the State’s elderly population, and the need for the rapid deployment and widespread implementation of enhanced tracing and testing to identify, isolate, and address cases of COVID-19—and implementing additional extraordinary measures to address the same, while also extending provisions of certain prior Orders for the duration of the State of Emergency, unless otherwise modified, amended, or rescinded; and

WHEREAS, on May 15, 2020, upon consultation with, *inter alia*, various state and federal agencies, officials, and experts, the undersigned issued Executive Order No. 2020-36, amending certain prior Orders so as to initiate additional modifications to prior “non-essential” business closures—namely, “close-contact service providers” and specific “recreational and athletic facilities and activities,” as identified by general description and further defined therein—and continue the process of safely, strategically, and incrementally reopening businesses and facilitating economic recovery and revitalization; and

WHEREAS, while COVID-19 continues to represent an evolving public health threat, the State of South Carolina must also remain focused on addressing and attempting to mitigate the significant economic and other impacts associated with the pandemic, as well as the resulting burdens on individuals, families, and businesses; and

WHEREAS, section 1-3-430 of the South Carolina Code of Laws, as amended, provides that when a state of emergency has been declared, the undersigned “may further, cope with such threats and danger, order and direct any person or group of persons to do any act which would in his opinion prevent or minimize danger

to life, limb or property, or prevent a breach of the peace; and he may order any person or group of persons to refrain from doing any act or thing which would, in his opinion, endanger life, limb or property, or cause, or tend to cause, a breach of the peace, or endanger the peace and good order of the State or any section or community thereof, and he shall have full power by use of all appropriate available means to enforce such order or proclamation”; and

WHEREAS, in accordance with section 25-1-440 of the South Carolina Code of Laws, as amended, when an emergency has been declared, the undersigned is “responsible for the safety, security, and welfare of the State and is empowered with [certain] additional authority to adequately discharge this responsibility,” to include issuing, amending, and rescinding “emergency proclamations and regulations,” which shall “have the force and effect of law as long as the emergency exists”; and

WHEREAS, the undersigned is further authorized, pursuant to section 25-1-440 of the South Carolina Code of Laws, to “direct and compel evacuation of all or part of the populace from any stricken or threatened area if this action is considered necessary for the preservation of life or other emergency mitigation, response, or recovery; to prescribe routes, modes of transportation, and destination in connection with evacuation; and to control ingress and egress at an emergency area, the movement of persons within the area, and the occupancy of premises therein”; and

WHEREAS, in accordance with section 16-7-10(A) of the South Carolina Code of Laws, as amended, “[i]n any area designated by the Governor in his proclamation that a state of emergency exists, and during the duration of the proclamation, it is unlawful for a person to: violate a provision in the proclamation including, but not limited to, any curfew set forth by the proclamation; congregate, unless authorized or in their homes, in groups of three or more and to refuse to disperse upon order of a law enforcement officer; or wilfully fail or refuse to comply with any lawful order or direction of any law enforcement officer”; and

WHEREAS, it is axiomatic that “[t]he health, welfare, and safety of the lives and property of the people are beyond question matters of public concern, and reasonable regulations and laws designed to preserve and protect the same are clearly contained in the police power inherent in the sovereign,” 1980 S.C. Op. Att’y Gen. 142 (Sept. 5, 1980); and

WHEREAS, the State of South Carolina must remain flexible to account for the evolving nature and scope of the unprecedented public health emergency posed by COVID-19, while also simultaneously continuing the process of safely, strategically, and incrementally reopening businesses and facilitating economic recovery and revitalization; and

WHEREAS, as part of ongoing efforts to reinvigorate the State’s economy and expedite a safe return to pre-pandemic prosperity, it is important to revisit and review previous Orders on a regular basis to ensure that remaining emergency measures are narrowly tailored to combat COVID-19 via the least restrictive means deemed necessary in view of the latest data from DHEC and the CDC; and

WHEREAS, for the aforementioned and other reasons, and upon consultation with, *inter alia*, various state and federal agencies, officials, and experts, the undersigned has determined that it is necessary and appropriate to modify and amend certain terms and provisions of prior Orders as part of the ongoing process of facilitating economic recovery and revitalization in a safe, strategic, and incremental manner, while also continuing to encourage effective “social distancing” practices and implement additional measures to provide for and ensure the health, safety, security, and welfare of the people of this State.

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, I hereby order and direct as follows:

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Section 1. Additional Incremental Modification of Non-Essential Business Closures

A. I hereby modify and amend the provisions of Executive Order Nos. 2020-18 and 2020-21, as amended by Executive Order Nos. 2020-28, 2020-31, and 2020-36, and as extended by Executive Order No. 2020-35, to authorize the following businesses, venues, facilities, services, and activities—which were previously deemed “non-essential” and directed to close to non-employees and not to open for access or use by the public, or not to take place, as applicable, in accordance with Executive Order No. 2020-18—to re-open to non-employees and for access or use by the public, effective Friday, May 22, 2020, at 12:01 a.m.:

1. Entertainment venues and facilities as follows:
 - (a) Arcades
 - (b) Tourist attractions (including museums, aquariums, and planetariums)
 - (c) Indoor children’s play areas, with the exception of licensed childcare facilities, which were previously excluded from the “non-essential” definition and determination
 - (d) Bingo halls
 - (e) Venues operated by social clubs
2. Recreational and athletic facilities and activities as follows:
 - (a) Sports that involve interaction in close proximity to and within less than six (6) feet of another person
 - (b) Activities that require the use of shared sporting apparatus and equipment
 - (c) Activities on commercial or public playground equipment

B. Any businesses, venues, facilities, services, and activities that elect to re-open to non-employees and for access or use by the public, as authorized herein, should consider and incorporate any corresponding industry guidelines regarding the same, in addition to undertaking and implementing all reasonable steps to comply with any applicable sanitation guidance promulgated by the CDC, DHEC, or any other state or federal public health officials.

C. I hereby authorize DHEC to provide or issue any necessary and appropriate additional or supplemental guidance, rules, regulations, or restrictions regarding the application of this Section or to otherwise provide clarification regarding the same, through appropriate means, without the need for further Orders.

D. Except as expressly provided herein, this Section shall not be construed to modify, amend, or otherwise alter the provisions of any prior or future Orders issued by the undersigned in connection with the State of Emergency and does not repeal, by implication or otherwise, the remaining terms and provisions of, *inter alia*, Executive Order Nos. 2020-18 and 2020-21, as previously amended and extended. The aforementioned Orders shall remain in effect for the duration of the State of Emergency unless and until otherwise modified, amended, or rescinded by subsequent Order.

E. This Section shall not be interpreted, applied, implemented, or construed in a manner so as to suspend, restrict, or otherwise limit the authority of the undersigned or the South Carolina Department of Commerce to issue, provide, or promulgate any necessary and appropriate additional or supplemental clarification, guidance, rules, regulations, or restrictions regarding the provisions of this Order or of Executive Order Nos. 2020-18 or 2020-21, as previously amended and extended. I further expressly authorize the Office of the Governor (“Office”) to provide or issue any necessary and appropriate additional or supplemental guidance, rules, regulations, or restrictions regarding the application of this Section or to otherwise to provide clarification regarding the same, through appropriate means, without the need for further Orders.

Section 2. General Provisions

A. This Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of South Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any other person.

B. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this Order is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this Order, as the undersigned would have issued this Order, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

C. If or to the extent that any political subdivision of this State seeks to adopt or enforce a local ordinance, rule, regulation, or other restriction that conflicts with this Order, this Order shall supersede and preempt any such local ordinance, rule, regulation, or other restriction.

D. This Order is effective immediately and shall remain in effect for the duration of the State of Emergency unless otherwise modified, amended, or rescinded by subsequent Order. Further proclamations, orders, and directives deemed necessary to ensure the fullest possible protection of life and property during this State of Emergency shall be issued orally by the undersigned and thereafter reduced to writing and published for dissemination within the succeeding 24-hour period.

**GIVEN UNDER MY HAND AND THE GREAT
SEAL OF THE STATE OF SOUTH CAROLINA,
THIS 21st DAY OF MAY, 2020.**

**HENRY MCMASTER
Governor**

Executive Order No. 2020-38

WHEREAS, the State of South Carolina has taken, and must continue to take, all necessary and appropriate actions in coping with and mitigating the evolving public health threat and other impacts associated with the 2019 Novel Coronavirus (“COVID-19”), and in doing so, the State must remain focused on facilitating and encouraging economic recovery and revitalization in a safe, strategic, and incremental manner; and

WHEREAS, in furtherance of the foregoing, the undersigned has, *inter alia*, convened the Public Health Emergency Plan Committee (“PHEPC”), activated the South Carolina Emergency Operations Plan (“Plan”), and regularly conferred with state and federal agencies, officials, and experts, to include the South Carolina Department of Health and Environmental Control (“DHEC”), and the South Carolina Emergency Management Division (“EMD”); and

WHEREAS, in addition to the aforementioned actions, on March 11, 2020, the undersigned issued Executive Order No. 2020-07, suspending certain transportation-related rules and regulations, pursuant to 49 C.F.R. § 390.23 and section 56-5-70 of the South Carolina Code of Laws, as amended, for commercial vehicles and operators of commercial vehicles providing direct assistance to supplement state and local efforts and capabilities to protect public health and safety in connection with COVID-19; and

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WHEREAS, on March 13, 2020, the undersigned issued Executive Order No. 2020-08, declaring a State of Emergency based on a determination that COVID-19 posed an imminent public health emergency for the State of South Carolina; and

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-19 outbreak a pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia, pursuant to Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5207 (“Stafford Act”); and

WHEREAS, on March 13, 2020, the President of the United States also declared that the COVID-19 pandemic in the United States constitutes a national emergency, pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. §§ 1601 *et seq.*, and consistent with Section 1135 of the Social Security Act, 42 U.S.C. § 1320b-5, as amended, retroactive to March 1, 2020; and

WHEREAS, in proactively preparing for and promptly responding to the aforementioned emergency, the undersigned initiated and implemented various measures to address the significant public health, economic, and other impacts associated with COVID-19 and to mitigate the resulting burdens on healthcare providers, individuals, and businesses in the State of South Carolina; and

WHEREAS, on March 15, 2020, the undersigned issued Executive Order No. 2020-09, directing, *inter alia*, the closure of all public schools in the State of South Carolina for students and non-essential employees beginning Monday, March 16, 2020, and through Tuesday, March 31, 2020, and the postponement or rescheduling of any election scheduled to be held in this State on or before May 1, 2020, as well as urging that indoor and outdoor public gatherings be cancelled, postponed, or rescheduled, to the extent possible, or limited so as not to exceed one hundred (100) people; and

WHEREAS, on March 16, 2020, based on updated information and recommendations from the Centers for Disease Control and Prevention (“CDC”), the President of the United States and the White House Coronavirus Task Force issued new guidance—titled, “The President’s Coronavirus Guidelines for America: 15 Days to Slow the Spread of Coronavirus (COVID-19)” —to help protect Americans during the global COVID-19 outbreak; and

WHEREAS, the President’s Coronavirus Guidelines for America recommend, *inter alia*, that the American people “[w]ork or engage in schooling from home whenever possible”; “[a]void social gatherings in groups of more than 10 people”; “[a]void eating or drinking at bars, restaurants, and food courts—use drive-thru, pickup, or delivery options”; and “[a]void discretionary travel, shopping trips, and social visits”; and

WHEREAS, on March 17, 2020, based on updated information and recommendations from the CDC, the President of the United States, and the White House Coronavirus Task Force, the undersigned issued Executive Order No. 2020-10, directing additional emergency measures in response to the threat posed by COVID-19, to include temporarily prohibiting restaurants from providing certain food services for on-premises consumption and prohibiting events at government facilities that would convene fifty (50) or more people in a single room, area, or other confined indoor or outdoor space; and

WHEREAS, in addition to the foregoing directives, Executive Order No. 2020-10 also “authorize[d] and direct[ed] any agency within the undersigned’s Cabinet or any other department within the Executive Branch, as defined by section 1-30-10 of the South Carolina Code of Laws, as amended, through its respective director or secretary, to waive or ‘suspend provisions of existing regulations prescribing procedures for conduct of state business if strict compliance with the provisions thereof would in any way prevent, hinder, or delay necessary action in coping with the emergency,’ in accordance with section 25-1-440 of the South Carolina Code of Laws and other applicable law”; and

WHEREAS, on March 19, 2020, the undersigned issued Executive Order No. 2020-11, initiating further emergency measures and suspending certain regulations to ensure the proper function and continuity of state government operations and the uninterrupted performance and provision of emergency, essential, or otherwise mission-critical state government services, while simultaneously undertaking additional measures to safeguard the health and safety of state employees, mitigate significant economic impacts and burdens on affected individuals and employers, and provide regulatory relief to expedite emergency response initiatives and enhance the availability of critical healthcare services; and

WHEREAS, on March 21, 2020, the undersigned issued Executive Order No. 2020-12, initiating additional actions to provide regulatory relief to facilitate “social distancing” practices and to mitigate the significant economic impacts of COVID-19 on individuals and businesses throughout the State, particularly restaurants and other food-service establishments; and

WHEREAS, on March 23, 2020, the undersigned issued Executive Order No. 2020-13, authorizing and directing law enforcement officers of the State, or any political subdivision thereof, to, *inter alia*, prohibit or disperse any congregation or gathering of people, unless authorized or in their homes, in groups of three (3) or more people, if any such law enforcement official determines, in their discretion, that any such congregation or gathering of people poses, or could pose, a threat to public health; and

WHEREAS, on March 24, 2020, the undersigned requested that the President of the United States declare that a major disaster exists in the State of South Carolina pursuant to Section 401 of the Stafford Act, and on March 27, 2020, the President of the United States granted the undersigned’s request and declared that such a major disaster exists and ordered federal assistance to supplement state, tribal, and local recovery efforts in the areas affected by the COVID-19 pandemic, with an effective date retroactive to January 20, 2020, and continuing; and

WHEREAS, on March 27, 2020, the undersigned issued Executive Order No. 2020-14, directing that individuals who enter the State of South Carolina from an area with substantial community spread of COVID-19 shall be required to isolate or self-quarantine for a period of fourteen (14) days from the time of entry into the State of South Carolina or the duration of the individual’s presence in South Carolina, whichever period is shorter; and

WHEREAS, on March 28, 2020, the undersigned issued Executive Order No. 2020-15, declaring a new, separate, and distinct State of Emergency based on a determination that COVID-19 posed an actual, ongoing, and evolving public health threat to the State of South Carolina and extending certain provisions of the aforementioned Orders for the duration of the State of Emergency, unless otherwise modified, amended, or rescinded; and

WHEREAS, on March 29, 2020, the President of the United States extended and expanded the provisions of his Coronavirus Guidelines for America until April 30, 2020, based on the ongoing nature and evolving scope of the global COVID-19 pandemic; and

WHEREAS, on March 30, 2020, the undersigned issued Executive Order No. 2020-16, directing that any and all public beach access points and public piers, docks, wharfs, boat ramps, and boat landings that provide public access to the public waters of this State shall be closed to public access for recreational purposes for the duration of the State of Emergency; and

WHEREAS, on March 31, 2020, the undersigned issued Executive Order No. 2020-17, directing that certain “non-essential” businesses, venues, facilities, services, and activities in the following categories be closed to non-employees and the public, effective Wednesday, April 1, 2020, at 5:00 p.m.: entertainment venues and facilities, recreational and athletic facilities and activities, and close-contact service providers; and

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WHEREAS, on April 3, 2020, the undersigned issued Executive Order No. 2020-18, superseding the provisions of Executive Order No. 2020-17 and directing that certain additional “non-essential” businesses, venues, facilities, services, and activities in the general category of retail stores also be closed to non-employees and the public, effective Monday, April 6, 2020, at 5:00 p.m.; and

WHEREAS, on April 3, 2020, the undersigned issued Executive Order No. 2020-19, directing that effective Friday, April 3, 2020, at 5:00 p.m., any and all individuals, entities, or establishments engaged in the provision of short-term rentals, vacation rentals, or other lodging accommodations or operations in exchange for consideration in the State of South Carolina are prohibited from making or accepting new reservations or bookings from or for individuals residing in or travelling from any country, state, municipality, or other geographic area subject to or identified in a CDC travel advisory or other CDC notice as a location with extensive community transmission of COVID-19, to include the Tri-State Area (consisting of the States of New York, New Jersey, and Connecticut); and

WHEREAS, on April 6, 2020, the undersigned issued Executive Order No. 2020-21, directing, *inter alia*, that effective Tuesday, April 7, 2020, at 5:00 p.m., any and all residents and visitors of the State of South Carolina are required to limit social interaction, practice “social distancing” in accordance with CDC guidance, and take every possible precaution to avoid potential exposure to, and to slow the spread of, COVID-19, and shall limit their movements outside of their Residence, except for purposes of engaging in Essential Business, Essential Activities, or Critical Infrastructure Operations, as such terms are further defined therein; and

WHEREAS, on April 7, 2020, the undersigned issued Executive Order No. 2020-22, authorizing and directing the South Carolina Department of Employment and Workforce to take certain actions to allow employers to provide COVID-19 Support Payments to furloughed employees, while still allowing such individuals to qualify for unemployment benefits if they are otherwise eligible for the same; and

WHEREAS, on April 12, 2020, the undersigned issued Executive Order No. 2020-23, declaring an additional State of Emergency based on new facts and circumstances and a determination that the accelerated spread of COVID-19 throughout the State posed a different and distinct public health threat to the State of South Carolina and extending provisions of certain of the aforementioned Orders for the duration of the State of Emergency, unless otherwise modified, amended, or rescinded; and

WHEREAS, on April 16, 2020, the undersigned issued Executive Order No. 2020-25, modifying certain emergency restrictions related to the public waters of the State to facilitate authorized outdoor exercise and recreational activities in accordance with Section 1 of Executive Order No. 2020-21 (Home or Work Order), as well as modifying and extending previous emergency measures pertaining to unemployment claims and benefits; and

WHEREAS, on April 16, 2020, the President of the United States issued new Guidelines on Opening Up America Again, which contemplate individual States reopening in phases using a deliberate, data-driven approach tailored to address the situation in each State; and

WHEREAS, on April 20, 2020, the undersigned issued Executive Order No. 2020-28, amending prior emergency restrictions related to public beaches and waters and initiating certain modifications to prior “non-essential” business closures—specifically, “retail stores,” as identified therein by general description—so as to begin the process of safely, strategically, and incrementally reopening businesses and facilitating economic recovery and revitalization; and

WHEREAS, on April 27, 2020, the undersigned issued Executive Order No. 2020-29, declaring an additional, distinct State of Emergency—based on, *inter alia*, the continued spread of COVID-19 and the significant economic consequences for individuals and businesses in this State—and implementing additional extraordinary measures to address the same, while also extending provisions of certain prior Orders for the duration of the State of Emergency, unless otherwise modified, amended, or rescinded; and

WHEREAS, on May 1, 2020, the undersigned issued Executive Order No. 2020-30, rescinding Executive Order Nos. 2020-14 and 2020-19, as amended, which imposed the aforementioned mandatory self-quarantine and lodging and travel restrictions for individuals entering South Carolina from high-risk areas; and

WHEREAS, on May 3, 2020, the undersigned issued Executive Order No. 2020-31, modifying Section 1 of Executive Order No. 2020-21 (Home or Work Order), as well as amending the provisions of Section 4 of Executive Order No. 2020-10, as extended by Executive Order No. 2020-29, so as to authorize restaurants to provide outdoor customer dining services, effective Monday, May 4, 2020, at 12:01 a.m., in addition to previously authorized services for off-premises consumption; and

WHEREAS, on May 8, 2020, the undersigned issued Executive Order No. 2020-33, ordering that any election postponed pursuant to the provisions of Executive Order Nos. 2020-09 and 2020-29 shall be held on Tuesday, July 14, 2020; and

WHEREAS, on May 8, 2020, the undersigned issued Executive Order No. 2020-34, modifying and amending certain prior Orders so as to authorize restaurants to provide services for limited indoor, on-premises customer dining, effective Monday, May 11, 2020, at 12:01 a.m., in addition to previously authorized services for off-premises consumption and outdoor customer dining, as well as rescinding those restrictions previously imposed on boating activities; and

WHEREAS, on May 12, 2020, the undersigned issued Executive Order No. 2020-35, declaring an additional, distinct State of Emergency—based on, *inter alia*, the continued spread of COVID-19, the disproportionate impact of COVID-19 on the State’s elderly population, and the need for the rapid deployment and widespread implementation of enhanced tracing and testing to identify, isolate, and address cases of COVID-19—and implementing additional extraordinary measures to address the same, while also extending provisions of certain prior Orders for the duration of the State of Emergency, unless otherwise modified, amended, or rescinded; and

WHEREAS, on May 15, 2020, upon consultation with, *inter alia*, various state and federal agencies, officials, and experts, the undersigned issued Executive Order No. 2020-36, amending certain prior Orders so as to initiate additional modifications to prior “non-essential” business closures—namely, “close-contact service providers” and specific “recreational and athletic facilities and activities,” as identified by general description and further defined therein—and continue the process of safely, strategically, and incrementally reopening businesses and facilitating economic recovery and revitalization; and

WHEREAS, on May 18, 2020, the undersigned signed H. 3411, R-140, Act No. 135 of 2020, as passed by the General Assembly and ratified on May 12, 2020, which acknowledged “the public health emergency associated with the 2019 Novel Coronavirus (COVID-19)” and recognized that “given the extraordinary challenges facing our State, our nation, and the world due to COVID-19, it is necessary to take emergency measures to combat the spread of this deadly virus”; and

WHEREAS, on May 21, 2020, upon further consultation with, *inter alia*, various state and federal agencies, officials, and experts, the undersigned issued Executive Order No. 2020-37, amending prior Orders so as to initiate additional modifications to prior “non-essential” business closures—namely, certain categories of entertainment venues and facilities and recreational and athletic facilities and activities, as identified by general description and further defined therein—as part of the ongoing process of safely, strategically, and incrementally reopening businesses and facilitating economic recovery and revitalization; and

WHEREAS, while the foregoing emergency measures have helped limit and slow the spread of COVID-19, the COVID-19 pandemic represents an ongoing and evolving public health threat, which requires that the State of South Carolina continue to take all necessary and appropriate actions in proactively preparing

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for and promptly responding to the current public health emergency and the significant economic impacts and other consequences associated with the same; and

WHEREAS, section 1-3-420 of the South Carolina Code of Laws, as amended, provides that “[t]he Governor, when in his opinion the facts warrant, shall, by proclamation, declare that, because of . . . a public health emergency . . . a danger exists to the person or property of any citizen and that the peace and tranquility of the State, or any political subdivision thereof, or any particular area of the State designated by him, is threatened, and because thereof an emergency, with reference to such threats and danger, exists”; and

WHEREAS, as the elected Chief Executive of the State, the undersigned is authorized pursuant to section 25-1-440 of the South Carolina Code of Laws, as amended, to “declare a state of emergency for all or part of the State if he finds a disaster or a public health emergency . . . has occurred, or that the threat thereof is imminent and extraordinary measures are considered necessary to cope with the existing or anticipated situation”; and

WHEREAS, in accordance with section 44-4-130 of the South Carolina Code of Laws, as amended, a “public health emergency” exists when there is an “occurrence or imminent risk of a qualifying health condition,” which includes “an illness or health condition that may be caused by . . . epidemic or pandemic disease, or a novel infectious agent . . . that poses a substantial risk of a significant number of human fatalities [or] widespread illness”; and

WHEREAS, section 1-3-430 of the South Carolina Code of Laws, as amended, provides that when a state of emergency has been declared, the undersigned “may further, cope with such threats and danger, order and direct any person or group of persons to do any act which would in his opinion prevent or minimize danger to life, limb or property, or prevent a breach of the peace; and he may order any person or group of persons to refrain from doing any act or thing which would, in his opinion, endanger life, limb or property, or cause, or tend to cause, a breach of the peace, or endanger the peace and good order of the State or any section or community thereof, and he shall have full power by use of all appropriate available means to enforce such order or proclamation”; and

WHEREAS, pursuant to section 1-3-460 of the South Carolina Code of Laws, as amended, the foregoing and other emergency authority is “supplemental to and in aid of powers now vested in the Governor under the Constitution, statutory laws[,] and police powers of the State”; and

WHEREAS, in accordance with section 25-1-440 of the South Carolina Code of Laws, as amended, when an emergency has been declared, the undersigned is “responsible for the safety, security, and welfare of the State and is empowered with [certain] additional authority to adequately discharge this responsibility,” to include issuing, amending, and rescinding “emergency proclamations and regulations,” which shall “have the force and effect of law as long as the emergency exists”; and

WHEREAS, pursuant to section 25-1-440 of the South Carolina Code of Laws, when an emergency has been declared, the undersigned is further authorized to “suspend provisions of existing regulations prescribing procedures for conduct of state business if strict compliance with the provisions thereof would in any way prevent, hinder, or delay necessary action in coping with the emergency”; and

WHEREAS, in addition to the foregoing, section 25-1-440 of the South Carolina Code of Laws authorizes the undersigned, during a declared emergency, to “transfer the direction, personnel, or functions of state departments, agencies, and commissions, or units thereof, for purposes of facilitating or performing emergency services as necessary or desirable,” and to “compel performance by elected and appointed state, county, and municipal officials and employees of the emergency duties and functions assigned them in the State Emergency Plan or by Executive Order”; and

WHEREAS, the undersigned is further authorized, pursuant to section 25-1-440 of the South Carolina Code of Laws, to “direct and compel evacuation of all or part of the populace from any stricken or threatened area if this action is considered necessary for the preservation of life or other emergency mitigation, response, or recovery; to prescribe routes, modes of transportation, and destination in connection with evacuation; and to control ingress and egress at an emergency area, the movement of persons within the area, and the occupancy of premises therein”; and

WHEREAS, in the context of a public health emergency, section 25-1-440 of the South Carolina Code of Laws also “authorizes the deployment and use of any resources and personnel including, but not limited to, local officers and employees qualified as first responders, to which the plans apply and the use or distribution of any supplies, equipment, materials, and facilities assembled, stockpiled, or arranged to be made available pursuant to this act”; and

WHEREAS, in accordance with section 16-7-10(A) of the South Carolina Code of Laws, as amended, “[i]n any area designated by the Governor in his proclamation that a state of emergency exists, and during the duration of the proclamation, it is unlawful for a person to: violate a provision in the proclamation including, but not limited to, any curfew set forth by the proclamation; congregate, unless authorized or in their homes, in groups of three or more and to refuse to disperse upon order of a law enforcement officer; or wilfully fail or refuse to comply with any lawful order or direction of any law enforcement officer”; and

WHEREAS, it is axiomatic that “[t]he health, welfare, and safety of the lives and property of the people are beyond question matters of public concern, and reasonable regulations and laws designed to preserve and protect the same are clearly contained in the police power inherent in the sovereign,” 1980 S.C. Op. Att’y Gen. 142 (Sept. 5, 1980); and

WHEREAS, in issuing Executive Order No. 2020-08 and declaring an initial State of Emergency in connection with COVID-19, the undersigned’s determination was made in accordance with section 44-4-130 of the South Carolina Code of Laws, as amended, and based on the “imminent risk of a qualifying health condition,” which includes “an illness or health condition that may be caused by . . . epidemic or pandemic disease, or a novel infectious agent . . . that poses a substantial risk of a significant number of human fatalities [or] widespread illness”; and

WHEREAS, the public health threat posed by COVID-19 subsequently evolved from one that presented the “imminent risk of a qualifying health condition” to one that involved an actual and widespread “occurrence” of a “qualifying health condition,” pursuant to section 44-4-130 of the South Carolina Code of Laws; and

WHEREAS, due to the aforementioned evolution of COVID-19 from an “imminent risk of a qualifying health condition,” to an actual “occurrence” of a “qualifying health condition” or “pandemic,” and with confirmed cases of COVID-19 in over eighty-five percent (85%) of South Carolina’s forty-six (46) counties, the undersigned issued Executive Order No. 2020-15 on March 28, 2020, finding, concluding, and declaring that COVID-19 presented a unique and distinct public health emergency for the State of South Carolina, which must be dealt with on its own accord; and

WHEREAS, the State of South Carolina subsequently transitioned from the investigation, recognition, and initiation phases of the COVID-19 pandemic to the acceleration phase, with DHEC reporting cases of COVID-19 in each of the State’s forty-six (46) counties; and

WHEREAS, based on the aforementioned transition and the accelerated, statewide spread of COVID-19, which presented different and additional risks and dangers, the undersigned issued Executive Order No. 2020-23 on April 12, 2020, declaring a new and distinct State of Emergency and initiating additional proactive action and directing the implementation and enforcement of further extraordinary measures; and

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WHEREAS, the undersigned thereafter issued Executive Order No. 2020-29 on April 27, 2020, declaring a separate and distinct State of Emergency in response to, *inter alia*, the continued spread of COVID-19 and the significant economic consequences for individuals and businesses in this State, as well as the State's ongoing recovery operations and relief efforts associated with the severe storm system that moved across the southeastern region of the United States beginning on April 12, 2020; and

WHEREAS, based on, *inter alia*, the continued spread of COVID-19, the disproportionate impact of COVID-19 on the State's elderly population, and the need for the rapid deployment and widespread implementation of enhanced tracing and testing to identify, isolate, and address cases of COVID-19, the undersigned issued Executive Order No. 2020-35 on May 12, 2020, declaring an additional, distinct State of Emergency, which required the implementation of further extraordinary measures to respond to the same; and

WHEREAS, the State of South Carolina has made significant progress to date in slowing, limiting, and controlling the outbreak and continued spread of COVID-19, but the extraordinary circumstances and conditions that necessitated the undersigned's prior emergency declarations have since evolved to present different and additional threats, which must be dealt with on their own terms; and

WHEREAS, as of May 27, 2020, DHEC has identified at least 10,623 confirmed cases of COVID-19 in the State of South Carolina, including 466 deaths due to COVID-19; and

WHEREAS, the State of South Carolina must take additional proactive action to control the spread of COVID-19 and mitigate the impacts associated with the same, particularly on certain portions of the State's population, to include the continued deployment and widespread implementation of enhanced tracing and testing to identify, isolate, and address cases of COVID-19; and

WHEREAS, consistent with the findings set forth in section 44-4-110 of the South Carolina Code of Laws, as amended, the different and additional public health threats posed by COVID-19, as well as the need to deploy widespread testing and tracing to address the same, "require the exercise of extraordinary government functions . . . to respond, rapidly and effectively" to the evolving emergency currently facing the entire State; and

WHEREAS, it is imperative that the State of South Carolina continue to utilize extraordinary measures and deploy substantial resources to meet the unprecedented threat posed by COVID-19 and the evolving nature and scope of this public health emergency, and in order to promptly and effectively do so, the State must take any and all necessary and appropriate steps to coordinate additional intergovernmental and interagency resources and response efforts to address the current and anticipated circumstances; and

WHEREAS, in addition to the foregoing, in further proactively preparing for and promptly responding to the continued spread of COVID-19, the State of South Carolina must simultaneously confront the significant economic impacts and other consequences associated with COVID-19, to include stabilizing and reinvigorating the State's economy by addressing issues related to unemployment, facilitating the reopening of businesses and industries, and accessing and utilizing federal funds and resources to assist with emergency operations; and

WHEREAS, as part of the ongoing process of facilitating economic recovery and revitalization in a safe, strategic, and incremental manner, the State of South Carolina must also continue to encourage effective "social distancing" practices and implement additional narrowly tailored measures to combat COVID-19 and provide for and ensure the health, safety, security, and welfare of the people of this State; and

WHEREAS, for the aforementioned and other reasons, and in recognition and furtherance of the undersigned's responsibility to provide for and ensure the health, safety, security, and welfare of the people of the State of South Carolina, the undersigned has determined—based on recent developments, updated data, new facts, changing conditions, and the previously unforeseen occurrence of a combination of extraordinary circumstances—that an effective response to the ongoing COVID-19 pandemic, including the different,

additional, and intensifying threats cited herein, represents and requires a new and distinct emergency, which warrants further proactive action by the State of South Carolina and the implementation and enforcement of additional extraordinary measures to address the same.

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, I hereby declare that a State of Emergency exists in South Carolina. Accordingly, for the foregoing reasons and in accordance with the cited authorities and other applicable law, I further order and direct as follows:

Section 1. Emergency Measures

To prepare for and respond to the ongoing and evolving public health threat posed by the COVID-19 pandemic and to coordinate additional intergovernmental and interagency resources, operations, and efforts related to the same, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. The State of South Carolina must take additional proactive action and implement further extraordinary measures to address the evolving public health threat posed by the COVID-19 pandemic, to include the continued coordination of intergovernmental and interagency resources, operations, and response efforts.

B. I hereby memorialize and confirm my prior activation of the Plan and direct that the Plan be further placed into effect and that all prudent preparations be taken at the individual, local, and state levels to proactively prepare for and promptly respond to the COVID-19 pandemic and the significant economic impacts and other consequences associated with the same. I further direct the continued utilization of all available resources of state government as reasonably necessary to address the current State of Emergency.

C. I hereby direct DHEC to utilize and exercise any and all emergency powers, as set forth in the Emergency Health Powers Act, codified as amended in Title 44, Chapter 4 of the South Carolina Code of Laws, deemed necessary to promptly and effectively address the current public health emergency. In accordance with section 44-4-500 of the South Carolina Code of Laws, as amended, DHEC shall continue to “use every available means to prevent the transmission of infectious disease and to ensure that all cases of infectious disease are subject to proper control and treatment.” I further direct DHEC to restrict visitation to nursing homes and assisted living facilities, with the exception of end-of-life situations, as DHEC deems necessary and appropriate.

D. I hereby authorize and direct state correctional institutions and local detention facilities to suspend visitation processes and procedures, as necessary, during this State of Emergency.

E. I hereby place specified units and/or personnel of the South Carolina National Guard on State Active Duty, pursuant to section 25-1-1840 of the South Carolina Code of Laws, as amended, and direct the Adjutant General to issue the requisite supplemental orders as he deems necessary and appropriate. I further order the activation of South Carolina National Guard personnel and the utilization of appropriate equipment at the discretion of the Adjutant General, and in coordination with the Director of EMD, to take necessary and prudent actions to assist the people of this State. I authorize Dual Status Command, as necessary, to allow the Adjutant General or his designee to serve as commander over both federal (Title 10) and state forces (National Guard in Title 32 and/or State Active Duty status).

F. I hereby order that all licensing and registration requirements regarding private security personnel or companies who are contracted with South Carolina security companies in protecting property and restoring essential services in South Carolina shall be suspended, and I direct the South Carolina Law Enforcement Division (“SLED”) to initiate an emergency registration process for those personnel or companies for a period specified, and in a manner deemed appropriate, by the Chief of SLED.

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G. I hereby declare that the prohibitions against price gouging pursuant to section 39-5-145 of the South Carolina Code of Laws, as amended, are in effect and shall remain in effect for the duration of this State of Emergency.

H. I hereby declare that the provisions of the following Orders shall remain in full force and effect for the duration of the State of Emergency declared herein, unless otherwise modified, amended, or rescinded below or by prior or future Order: Executive Order Nos. 2020-09, 2020-10, 2020-11, 2020-12, 2020-13, 2020-16, 2020-18, 2020-21, 2020-22, 2020-25, 2020-28, 2020-30, 2020-31, 2020-33, 2020-34, 2020-36, and 2020-37.

Section 2. School Closures

To provide for and protect the health, safety, and welfare of the people of this State and to minimize and control the spread of COVID-19, while also facilitating continued educational activities, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. I hereby direct the continued closure of all public schools in the State of South Carolina for students and non-essential employees for the duration of the State of Emergency. This Section applies to all students and employees of public schools in the State of South Carolina, to include charter schools and residential programs at the Governor's School for the Arts and Humanities, the Governor's School for Science and Mathematics, and the South Carolina School for the Deaf and the Blind, with the exception of those emergency or other critical personnel designated as essential, or whose presence is otherwise deemed necessary, by the appropriate school district officials. I further authorize the requisite school district officials to make any necessary and appropriate decisions or arrangements to account for local needs and other unique circumstances. As applicable and to the maximum extent possible, and to promote and facilitate effective "social distancing" practices in accordance with CDC guidance, school districts are authorized and encouraged to provide the following services, resources, and support to students and families for the duration of the State of Emergency: (1) preparation and implementation of distance learning activities; (2) preparation, distribution, and delivery of meals to children; (3) planning and implementation of alternative and innovative high school graduation ceremonies or celebrations; (4) delivery of services to students with disabilities, including those with Individualized Education Programs ("IEP"), consistent with guidance from the South Carolina Department of Education ("Department"); (5) provision of individualized support to students who are struggling academically or who need additional mental health counseling; and (6) collection of instructional materials and textbooks during the last two weeks of the district's regular calendar year, while also allowing students, parents, and families the opportunity to retrieve personal belongings.

B. I hereby urge school districts to work with the Department, in collaboration with the South Carolina Education Oversight Committee and school districts participating in the eLearning pilot program, to assess their instructional technology strengths and weaknesses, including devices, connectivity, online content, and professional learning, to improve access to and the effectiveness of digital learning. School districts are encouraged to consider utilizing federal funds allocated through the Elementary and Secondary School Relief Fund to improve their digital learning capabilities as identified by aforementioned thorough assessment. As applicable and to the maximum extent possible, and to promote and facilitate effective "social distancing" practices in accordance with CDC guidance, I also urge school districts to work with the Department to provide voluntary, in-person summer learning opportunities for students who were enrolled in kindergarten through the eighth grade during the 2019–2020 school year but who are at risk of falling behind in their learning. The Department will work with districts to identify any available state and federal funds to facilitate such voluntary summer learning opportunities.

C. I further authorize all state-supported colleges, universities, and technical colleges in the State of South Carolina, as necessary and appropriate and in accordance with and to the extent allowed by state and federal law, to continue to provide instruction by delivering virtual and remote learning, by housing only out-of-state or displaced students, and by restricting on-campus services and activities to emergency or other

critical personnel designated as essential, or whose presence is otherwise deemed necessary, by the appropriate college or university officials. I further authorize the requisite college, university, and technical college officials to continue to make any necessary and appropriate decisions or arrangements to account for specific needs and other unique circumstances or to deal with students, employees, or other critical personnel designated as essential, or whose presence is otherwise deemed necessary, by the appropriate college, university, or technical college officials.

D. This Section shall not be interpreted, applied, implemented, or construed in a manner so as to suspend, restrict, or otherwise limit the existing authority of, *inter alia*, the Department and the South Carolina Commission on Higher Education (“CHE”). I further expressly authorize the Department and the CHE, as applicable, to provide or issue any necessary and appropriate additional or supplemental guidance, rules, regulations, or restrictions regarding the application of this Section or to otherwise provide clarification regarding the same, through appropriate means, without the need for further Orders.

Section 3. Protection of First Responders

To ensure the uninterrupted performance and provision of emergency services and to maintain peace and good order during the State of Emergency, while simultaneously undertaking additional proactive measures to safeguard the health and safety of law enforcement authorities and other first responders, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. The State of South Carolina must promptly undertake and implement additional proactive measures to safeguard the health and safety of law enforcement authorities and other first responders who risk potential exposure to COVID-19 while providing emergency and other essential services during the State of Emergency.

B. I hereby authorize and direct any and all 911 operators or other emergency dispatchers to ask any individual placing a call for service whether such individual or any member of their household has tested positive for COVID-19 or is exhibiting symptoms consistent with the same.

C. I hereby authorize and instruct DHEC, upon consultation with SLED, to provide any necessary and appropriate additional or supplemental guidance regarding the interpretation, application, or enforcement of this Section.

Section 4. Transportation Waivers

To expedite the State of South Carolina’s continued preparation for and response to the ongoing and evolving emergency conditions related to COVID-19 and to facilitate the prompt transportation and delivery of any critical resources, supplies, and personnel identified and deemed necessary in connection with the same, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. I hereby suspend certain rules and regulations, as set forth below, for commercial vehicles and operators of commercial vehicles in accordance with 49 C.F.R. § 390.23 and section 56-5-70 of the South Carolina Code of Laws, as amended.

B. I hereby authorize and direct the South Carolina Department of Transportation (“DOT”) and the South Carolina Department of Public Safety (“DPS”), including the State Transport Police, as needed, to waive or suspend application and enforcement of the requisite state and federal rules and regulations pertaining to registration, permitting, length, width, weight, load, and hours of service for commercial vehicles and operators of commercial vehicles operating in accordance with the provisions of the Federal Motor Carrier Safety Administration’s May 13, 2020 Extension of Expanded Emergency Declaration No. 2020-002 Under 49 C.F.R. § 390.25, or any future amendments or supplements thereto; responding to the declared emergency in the State of South Carolina or providing direct assistance to supplement state and local efforts and capabilities to protect

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public health and safety in connection with COVID-19; or otherwise assisting with the public health threat posed by COVID-19, to include commercial vehicles and operators of commercial vehicles transporting essential goods and products, such as food, water, medicine, medical supplies and equipment, fuels and petroleum products (to include fuel oil, diesel oil, gasoline, kerosene, propane, and liquid petroleum), livestock, poultry, feed for livestock and poultry, and crops and other agricultural products ready to be harvested (to include timber and wood chips). I further authorize and direct DOT and DPS to issue, provide, or promulgate any necessary and appropriate clarification, guidance, rules, regulations, or restrictions regarding the application of this Section.

C. This Section shall not be construed to require or allow an ill or fatigued driver to operate a commercial motor vehicle. In accordance with 49 C.F.R. § 390.23, “a driver who informs the motor carrier that he or she needs immediate rest must be permitted at least ten (10) consecutive hours off duty before the driver is required to return to such terminal or location.” Likewise, this Section shall not be construed as an exemption from the applicable controlled substances and alcohol use and testing requirements in 49 C.F.R. § 382, the commercial driver’s license requirements in 49 C.F.R. § 383, or the financial responsibility requirements in 49 C.F.R. § 387, and it shall not be interpreted to relieve compliance with any other state or federal statute, rule, order, regulation, restriction, or other legal requirement not specifically waived, suspended, or addressed herein.

D. This Section is subject to any clarification, guidance, rules, regulations, or restrictions issued, provided, or promulgated, or which may be issued, provided, or promulgated, by DOT or DPS, as authorized herein or as otherwise provided by law. Notwithstanding the waiver or suspension of certain rules and regulations as set forth above, drivers in South Carolina are still subject to the following state requirements to ensure public safety:

(a) Weight, height, length, and width for any such vehicle on highways or roadways maintained by the State of South Carolina shall not exceed, for continuous travel on all non-interstates, United States, and South Carolina designated routes, maximum dimensions of twelve (12) feet in width, thirteen (13) feet six (6) inches in height, and ninety thousand (90,000) pounds in gross weight.

(b) Posted bridges may not be crossed.

(c) All vehicles shall be operated in a safe manner, shall not damage the highways nor unduly interfere with highway traffic, shall maintain the required limits of insurance, and shall be clearly identified as a utility vehicle or shall provide appropriate documentation indicating they are responding to the emergency.

(d) Any vehicles that exceed the above dimensions, weights, or both, must obtain a permit with defined routes from the South Carolina Department of Transportation Oversized/Overweight Permit Office. To order a permit, please call (803) 737-6769 during normal business hours, 8:30 a.m. – 5:00 p.m., or (803) 206-9566 after normal business hours.

(e) Transporters are responsible for ensuring they have oversize signs, markings, flags, and escorts as required by the South Carolina Code of Laws relating to oversized/overweight loads operating on South Carolina roadways.

E. This Section is effective immediately and shall remain in effect for thirty (30) days or the duration of the State of Emergency, whichever is less, in accordance with 49 C.F.R. § 390.23 and section 56-5-70(D) of the South Carolina Code of Laws, except that requirements relating to registration, permitting, length, width, weight, and load are suspended for commercial and utility vehicles travelling on non-interstate routes for up to one hundred twenty (120) days, pursuant to the provisions of section 56-5-70(A) of the South Carolina Code of Laws, unless otherwise modified, amended, or rescinded by subsequent Order.

Section 5. Enforcement

A. I hereby authorize any and all law enforcement officers of the State, or any political subdivision thereof, to do whatever may be deemed necessary to maintain peace and good order during the State of

Emergency and to enforce the provisions of this Order and any prior or future Orders issued by the undersigned in connection with the present State of Emergency.

B. Pursuant to section 16-7-10(A) of the South Carolina Code of Laws, any individual who “refuse[s] to disperse upon order of a law enforcement officer,” “wilfully fail[s] or refuse[s] to comply with any lawful order or direction of any law enforcement officer,” or otherwise violates any provision of any Order issued by the undersigned in connection with the State of Emergency “is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned for not more than thirty days.”

C. In accordance with section 1-3-440(4) of the South Carolina Code of Laws, I further authorize, order, and direct any State, county, or city official to enforce the provisions of this Order and any prior or future Orders issued in connection with the present State of Emergency, as necessary and appropriate, in the courts of the State by injunction, mandamus, or other appropriate legal action.

D. In addition to the foregoing, I further authorize, order, and direct DHEC to exercise and utilize any and all necessary and appropriate emergency powers, as set forth in the Emergency Health Powers Act, codified as amended in Title 44, Chapter 4 of the South Carolina Code of Laws, to implement and enforce the provisions of this Order. In accordance with section 44-4-500 of the South Carolina Code of Laws, as amended, DHEC shall continue to “use every available means to prevent the transmission of infectious disease and to ensure that all cases of infectious disease are subject to proper control and treatment.”

Section 6. General Provisions

A. This Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of South Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any other person.

B. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this Order is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this Order, as the undersigned would have issued this Order, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

C. If or to the extent that any political subdivision of this State seeks to adopt or enforce a local ordinance, rule, regulation, or other restriction that conflicts with this Order, this Order shall supersede and preempt any such local ordinance, rule, regulation, or other restriction.

D. This Order is effective immediately and shall remain in effect for a period of fifteen (15) days unless otherwise expressly stated herein or modified, amended, or rescinded by subsequent Order. Further proclamations, orders, and directives deemed necessary to ensure the fullest possible protection of life and property during this State of Emergency shall be issued orally by the undersigned and thereafter reduced to writing and published for dissemination within the succeeding 24-hour period.

**GIVEN UNDER MY HAND AND THE GREAT
SEAL OF THE STATE OF SOUTH CAROLINA,
THIS 27th DAY OF MAY, 2020.**

**HENRY MCMASTER
Governor**

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Executive Order No. 2020-39

WHEREAS, the undersigned has been notified of the passing of First Lieutenant Trevarius Ravon Bowman, South Carolina National Guard, who lost his life on May 19, 2020, in a non-combat-related incident, while dutifully serving in support of Operation Freedom’s Sentinel; and

WHEREAS, Lieutenant Bowman, a South Carolina native, dedicated his life to serving his country, fighting terrorism, and defending freedom, and his loss warrants the people of this State appropriately recognizing and honoring his distinguished service and sacrifice; and

WHEREAS, Title 4, Section 7(m) of the United States Code, as amended, provides that “[i]n the event of . . . the death of a member of the Armed Forces from any State, territory, or possession who dies while serving on active duty, . . . the Governor of that State, territory, or possession may proclaim that the National flag shall be flown at half-staff”; and

WHEREAS, section 10-1-161 of the South Carolina Code of Laws, as amended, similarly provides that “the flags which are flown atop the State Capitol Building must be lowered to half-staff on the day on which funeral services are conducted for . . . members of the United States military services who were residents of South Carolina and who lost their lives in the line of duty while in combat”; and

WHEREAS, section 10-1-161 of the South Carolina Code of Laws further states that “[u]pon the occurrence of an extraordinary event resulting in death or upon the death of a person of extraordinary stature, the Governor may order that the flags atop the State Capitol Building be lowered to half-staff at a designated time or for a designated period of time.”

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and of these United States and the powers conferred upon me therein, I hereby order that the flags which are flown atop the State Capitol Building be lowered to half-staff from sunrise until sunset on Saturday, June 6, 2020, in tribute to Lieutenant Bowman and in honor of his distinguished service and sacrifice. This Order is effective immediately.

**GIVEN UNDER MY HAND AND THE GREAT
SEAL OF THE STATE OF SOUTH CAROLINA,
THIS 5th DAY OF JUNE, 2020.**

HENRY MCMASTER
Governor

Executive Order No. 2020-40

WHEREAS, the State of South Carolina has taken, and must continue to take, all necessary and appropriate actions in coping with and mitigating the significant public health threat and other impacts associated with the 2019 Novel Coronavirus (“COVID-19”), and in doing so, the State must remain flexible to account for the evolving nature of the ongoing emergency, while simultaneously continuing to focus on facilitating and encouraging economic recovery and revitalization in a safe, strategic, and incremental manner; and

WHEREAS, in furtherance of the foregoing, the undersigned has, *inter alia*, convened the Public Health Emergency Plan Committee (“PHEPC”), activated the South Carolina Emergency Operations Plan (“Plan”), and regularly conferred with state and federal agencies, officials, and experts, to include the South Carolina Department of Health and Environmental Control (“DHEC”), and the South Carolina Emergency Management Division (“EMD”); and

WHEREAS, in addition to the aforementioned actions, on March 11, 2020, the undersigned issued Executive Order No. 2020-07, suspending certain transportation-related rules and regulations, pursuant to 49 C.F.R. § 390.23 and section 56-5-70 of the South Carolina Code of Laws, as amended, for commercial vehicles and operators of commercial vehicles providing direct assistance to supplement state and local efforts and capabilities to protect public health and safety in connection with COVID-19; and

WHEREAS, on March 13, 2020, the undersigned issued Executive Order No. 2020-08, declaring a State of Emergency based on a determination that COVID-19 posed an imminent public health emergency for the State of South Carolina; and

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-19 outbreak a pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia, pursuant to Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5207 (“Stafford Act”); and

WHEREAS, on March 13, 2020, the President of the United States also declared that the COVID-19 pandemic in the United States constitutes a national emergency, pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. §§ 1601 *et seq.*, and consistent with Section 1135 of the Social Security Act, 42 U.S.C. § 1320b-5, as amended, retroactive to March 1, 2020; and

WHEREAS, in proactively preparing for and promptly responding to the aforementioned emergency, the undersigned initiated and implemented various measures to address the significant public health, economic, and other impacts associated with COVID-19 and to mitigate the resulting burdens on healthcare providers, individuals, and businesses in the State of South Carolina; and

WHEREAS, on March 15, 2020, the undersigned issued Executive Order No. 2020-09, directing, *inter alia*, the closure of all public schools in the State of South Carolina for students and non-essential employees beginning Monday, March 16, 2020, and through Tuesday, March 31, 2020, and the postponement or rescheduling of any election scheduled to be held in this State on or before May 1, 2020, as well as urging that indoor and outdoor public gatherings be cancelled, postponed, or rescheduled, to the extent possible, or limited so as not to exceed one hundred (100) people; and

WHEREAS, on March 16, 2020, based on updated information and recommendations from the Centers for Disease Control and Prevention (“CDC”), the President of the United States and the White House Coronavirus Task Force issued new guidance—titled, “The President’s Coronavirus Guidelines for America: 15 Days to Slow the Spread of Coronavirus (COVID-19)” —to help protect Americans during the global COVID-19 outbreak; and

WHEREAS, the President’s Coronavirus Guidelines for America recommend, *inter alia*, that the American people “[w]ork or engage in schooling from home whenever possible”; “[a]void social gatherings in groups of more than 10 people”; “[a]void eating or drinking at bars, restaurants, and food courts—use drive-thru, pickup, or delivery options”; and “[a]void discretionary travel, shopping trips, and social visits”; and

WHEREAS, on March 17, 2020, based on updated information and recommendations from the CDC, the President of the United States, and the White House Coronavirus Task Force, the undersigned issued Executive Order No. 2020-10, directing additional emergency measures in response to the threat posed by COVID-19, to include temporarily prohibiting restaurants from providing certain food services for on-premises consumption and prohibiting events at government facilities that would convene fifty (50) or more people in a single room, area, or other confined indoor or outdoor space; and

WHEREAS, in addition to the foregoing directives, Executive Order No. 2020-10 also “authorize[d] and direct[ed] any agency within the undersigned’s Cabinet or any other department within the Executive Branch, as defined by section 1-30-10 of the South Carolina Code of Laws, as amended, through its respective

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director or secretary, to waive or ‘suspend provisions of existing regulations prescribing procedures for conduct of state business if strict compliance with the provisions thereof would in any way prevent, hinder, or delay necessary action in coping with the emergency,’ in accordance with section 25-1-440 of the South Carolina Code of Laws and other applicable law”]; and

WHEREAS, on March 19, 2020, the undersigned issued Executive Order No. 2020-11, initiating further emergency measures and suspending certain regulations to ensure the proper function and continuity of state government operations and the uninterrupted performance and provision of emergency, essential, or otherwise mission-critical state government services, while simultaneously undertaking additional measures to safeguard the health and safety of state employees, mitigate significant economic impacts and burdens on affected individuals and employers, and provide regulatory relief to expedite emergency response initiatives and enhance the availability of critical healthcare services; and

WHEREAS, on March 21, 2020, the undersigned issued Executive Order No. 2020-12, initiating additional actions to provide regulatory relief to facilitate “social distancing” practices and to mitigate the significant economic impacts of COVID-19 on individuals and businesses throughout the State, particularly restaurants and other food-service establishments; and

WHEREAS, on March 23, 2020, the undersigned issued Executive Order No. 2020-13, authorizing and directing law enforcement officers of the State, or any political subdivision thereof, to, *inter alia*, prohibit or disperse any congregation or gathering of people, unless authorized or in their homes, in groups of three (3) or more people, if any such law enforcement official determines, in their discretion, that any such congregation or gathering of people poses, or could pose, a threat to public health; and

WHEREAS, on March 24, 2020, the undersigned requested that the President of the United States declare that a major disaster exists in the State of South Carolina pursuant to Section 401 of the Stafford Act, and on March 27, 2020, the President of the United States granted the undersigned’s request and declared that such a major disaster exists and ordered federal assistance to supplement state, tribal, and local recovery efforts in the areas affected by the COVID-19 pandemic, with an effective date retroactive to January 20, 2020, and continuing; and

WHEREAS, on March 27, 2020, the undersigned issued Executive Order No. 2020-14, directing that individuals who enter the State of South Carolina from an area with substantial community spread of COVID-19 shall be required to isolate or self-quarantine for a period of fourteen (14) days from the time of entry into the State of South Carolina or the duration of the individual’s presence in South Carolina, whichever period is shorter; and

WHEREAS, on March 28, 2020, the undersigned issued Executive Order No. 2020-15, declaring a new, separate, and distinct State of Emergency based on a determination that COVID-19 posed an actual, ongoing, and evolving public health threat to the State of South Carolina and extending certain provisions of the aforementioned Orders for the duration of the State of Emergency, unless otherwise modified, amended, or rescinded; and

WHEREAS, on March 29, 2020, the President of the United States extended and expanded the provisions of his Coronavirus Guidelines for America until April 30, 2020, based on the ongoing nature and evolving scope of the global COVID-19 pandemic; and

WHEREAS, on March 30, 2020, the undersigned issued Executive Order No. 2020-16, directing that any and all public beach access points and public piers, docks, wharfs, boat ramps, and boat landings that provide public access to the public waters of this State shall be closed to public access for recreational purposes for the duration of the State of Emergency; and

WHEREAS, on March 31, 2020, the undersigned issued Executive Order No. 2020-17, directing that certain “non-essential” businesses, venues, facilities, services, and activities in the following categories be closed to non-employees and the public, effective Wednesday, April 1, 2020, at 5:00 p.m.: entertainment venues and facilities, recreational and athletic facilities and activities, and close-contact service providers; and

WHEREAS, on April 3, 2020, the undersigned issued Executive Order No. 2020-18, superseding the provisions of Executive Order No. 2020-17 and directing that certain additional “non-essential” businesses, venues, facilities, services, and activities in the general category of retail stores also be closed to non-employees and the public, effective Monday, April 6, 2020, at 5:00 p.m.; and

WHEREAS, on April 3, 2020, the undersigned issued Executive Order No. 2020-19, directing that effective Friday, April 3, 2020, at 5:00 p.m., any and all individuals, entities, or establishments engaged in the provision of short-term rentals, vacation rentals, or other lodging accommodations or operations in exchange for consideration in the State of South Carolina are prohibited from making or accepting new reservations or bookings from or for individuals residing in or travelling from any country, state, municipality, or other geographic area subject to or identified in a CDC travel advisory or other CDC notice as a location with extensive community transmission of COVID-19, to include the Tri-State Area (consisting of the States of New York, New Jersey, and Connecticut); and

WHEREAS, on April 6, 2020, the undersigned issued Executive Order No. 2020-21, directing, *inter alia*, that effective Tuesday, April 7, 2020, at 5:00 p.m., any and all residents and visitors of the State of South Carolina are required to limit social interaction, practice “social distancing” in accordance with CDC guidance, and take every possible precaution to avoid potential exposure to, and to slow the spread of, COVID-19, and shall limit their movements outside of their Residence, except for purposes of engaging in Essential Business, Essential Activities, or Critical Infrastructure Operations, as such terms are further defined therein; and

WHEREAS, on April 7, 2020, the undersigned issued Executive Order No. 2020-22, authorizing and directing the South Carolina Department of Employment and Workforce to take certain actions to allow employers to provide COVID-19 Support Payments to furloughed employees, while still allowing such individuals to qualify for unemployment benefits if they are otherwise eligible for the same; and

WHEREAS, on April 12, 2020, the undersigned issued Executive Order No. 2020-23, declaring an additional State of Emergency based on new facts and circumstances and a determination that the accelerated spread of COVID-19 throughout the State posed a different and distinct public health threat to the State of South Carolina and extending provisions of certain of the aforementioned Orders for the duration of the State of Emergency, unless otherwise modified, amended, or rescinded; and

WHEREAS, on April 16, 2020, the undersigned issued Executive Order No. 2020-25, modifying certain emergency restrictions related to the public waters of the State to facilitate authorized outdoor exercise and recreational activities in accordance with Section 1 of Executive Order No. 2020-21 (Home or Work Order), as well as modifying and extending previous emergency measures pertaining to unemployment claims and benefits; and

WHEREAS, on April 16, 2020, the President of the United States issued new Guidelines on Opening Up America Again, which contemplate individual States reopening in phases using a deliberate, data-driven approach tailored to address the situation in each State; and

WHEREAS, on April 20, 2020, the undersigned issued Executive Order No. 2020-28, amending prior emergency restrictions related to public beaches and waters and initiating certain modifications to prior “non-essential” business closures—specifically, “retail stores,” as identified therein by general description—so as to begin the process of safely, strategically, and incrementally reopening businesses and facilitating economic recovery and revitalization; and

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WHEREAS, on April 27, 2020, the undersigned issued Executive Order No. 2020-29, declaring an additional, distinct State of Emergency—based on, *inter alia*, the continued spread of COVID-19 and the significant economic consequences for individuals and businesses in this State—and implementing additional extraordinary measures to address the same, while also extending provisions of certain prior Orders for the duration of the State of Emergency, unless otherwise modified, amended, or rescinded; and

WHEREAS, on May 1, 2020, the undersigned issued Executive Order No. 2020-30, rescinding Executive Order Nos. 2020-14 and 2020-19, as amended, which imposed the aforementioned mandatory self-quarantine and lodging and travel restrictions for individuals entering South Carolina from high-risk areas; and

WHEREAS, on May 3, 2020, the undersigned issued Executive Order No. 2020-31, modifying Section 1 of Executive Order No. 2020-21 (Home or Work Order), as well as amending the provisions of Section 4 of Executive Order No. 2020-10, as extended by Executive Order No. 2020-29, so as to authorize restaurants to provide outdoor customer dining services, effective Monday, May 4, 2020, at 12:01 a.m., in addition to previously authorized services for off-premises consumption; and

WHEREAS, on May 8, 2020, the undersigned issued Executive Order No. 2020-33, ordering that any election postponed pursuant to the provisions of Executive Order Nos. 2020-09 and 2020-29 shall be held on Tuesday, July 14, 2020; and

WHEREAS, on May 8, 2020, the undersigned issued Executive Order No. 2020-34, modifying and amending certain prior Orders so as to authorize restaurants to provide services for limited indoor, on-premises customer dining, effective Monday, May 11, 2020, at 12:01 a.m., in addition to previously authorized services for off-premises consumption and outdoor customer dining, as well as rescinding those restrictions previously imposed on boating activities; and

WHEREAS, on May 12, 2020, the undersigned issued Executive Order No. 2020-35, declaring an additional, distinct State of Emergency—based on, *inter alia*, the continued spread of COVID-19, the disproportionate impact of COVID-19 on the State’s elderly population, and the need for the rapid deployment and widespread implementation of enhanced tracing and testing to identify, isolate, and address cases of COVID-19—and implementing additional extraordinary measures to address the same, while also extending provisions of certain prior Orders for the duration of the State of Emergency, unless otherwise modified, amended, or rescinded; and

WHEREAS, on May 15, 2020, upon consultation with, *inter alia*, various state and federal agencies, officials, and experts, the undersigned issued Executive Order No. 2020-36, amending certain prior Orders so as to initiate additional modifications to prior “non-essential” business closures—namely, “close-contact service providers” and specific “recreational and athletic facilities and activities,” as identified by general description and further defined therein—and continue the process of safely, strategically, and incrementally reopening businesses and facilitating economic recovery and revitalization; and

WHEREAS, on May 18, 2020, the undersigned signed H. 3411, R-140, Act No. 135 of 2020, as passed by the General Assembly and ratified on May 12, 2020, which acknowledged “the public health emergency associated with the 2019 Novel Coronavirus (COVID-19)” and recognized that “given the extraordinary challenges facing our State, our nation, and the world due to COVID-19, it is necessary to take emergency measures to combat the spread of this deadly virus”; and

WHEREAS, on May 21, 2020, upon further consultation with, *inter alia*, various state and federal agencies, officials, and experts, the undersigned issued Executive Order No. 2020-37, amending prior Orders so as to initiate additional modifications to prior “non-essential” business closures—namely, certain categories of entertainment venues and facilities and recreational and athletic facilities and activities, as identified by general

description and further defined therein—as part of the ongoing process of safely, strategically, and incrementally reopening businesses and facilitating economic recovery and revitalization; and

WHEREAS, on May 27, 2020, the undersigned issued Executive Order No. 2020-38, declaring an additional, distinct State of Emergency—based on new circumstances and the continued need to, *inter alia*, control the spread of COVID-19, mitigate the impacts associated with the same on certain portions of the State’s population, deploy enhanced testing and tracing, and coordinate additional intergovernmental and interagency resources and response efforts—and implementing additional extraordinary measures, while also extending provisions of certain prior Orders for the duration of the State of Emergency, unless otherwise modified, amended, or rescinded; and

WHEREAS, while the foregoing emergency measures have helped limit and slow the spread of COVID-19, the COVID-19 pandemic represents an ongoing and evolving public health threat, which requires that the State of South Carolina continue to take all necessary and appropriate actions in proactively preparing for and promptly responding to the current public health emergency and the significant economic impacts and other consequences associated with the same; and

WHEREAS, section 1-3-420 of the South Carolina Code of Laws, as amended, provides that “[t]he Governor, when in his opinion the facts warrant, shall, by proclamation, declare that, because of . . . a public health emergency . . . a danger exists to the person or property of any citizen and that the peace and tranquility of the State, or any political subdivision thereof, or any particular area of the State designated by him, is threatened, and because thereof an emergency, with reference to such threats and danger, exists”; and

WHEREAS, as the elected Chief Executive of the State, the undersigned is authorized pursuant to section 25-1-440 of the South Carolina Code of Laws, as amended, to “declare a state of emergency for all or part of the State if he finds a disaster or a public health emergency . . . has occurred, or that the threat thereof is imminent and extraordinary measures are considered necessary to cope with the existing or anticipated situation”; and

WHEREAS, in accordance with section 44-4-130 of the South Carolina Code of Laws, as amended, a “public health emergency” exists when there is an “occurrence or imminent risk of a qualifying health condition,” which includes “an illness or health condition that may be caused by . . . epidemic or pandemic disease, or a novel infectious agent . . . that poses a substantial risk of a significant number of human fatalities [or] widespread illness”; and

WHEREAS, section 1-3-430 of the South Carolina Code of Laws, as amended, provides that when a state of emergency has been declared, the undersigned “may further, cope with such threats and danger, order and direct any person or group of persons to do any act which would in his opinion prevent or minimize danger to life, limb or property, or prevent a breach of the peace; and he may order any person or group of persons to refrain from doing any act or thing which would, in his opinion, endanger life, limb or property, or cause, or tend to cause, a breach of the peace, or endanger the peace and good order of the State or any section or community thereof, and he shall have full power by use of all appropriate available means to enforce such order or proclamation”; and

WHEREAS, pursuant to section 1-3-460 of the South Carolina Code of Laws, as amended, the foregoing and other emergency authority is “supplemental to and in aid of powers now vested in the Governor under the Constitution, statutory laws[,] and police powers of the State”; and

WHEREAS, in accordance with section 25-1-440 of the South Carolina Code of Laws, as amended, when an emergency has been declared, the undersigned is “responsible for the safety, security, and welfare of the State and is empowered with [certain] additional authority to adequately discharge this responsibility,” to include issuing, amending, and rescinding “emergency proclamations and regulations,” which shall “have the force and effect of law as long as the emergency exists”; and

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WHEREAS, pursuant to section 25-1-440 of the South Carolina Code of Laws, when an emergency has been declared, the undersigned is further authorized to “suspend provisions of existing regulations prescribing procedures for conduct of state business if strict compliance with the provisions thereof would in any way prevent, hinder, or delay necessary action in coping with the emergency”; and

WHEREAS, in addition to the foregoing, section 25-1-440 of the South Carolina Code of Laws authorizes the undersigned, during a declared emergency, to “transfer the direction, personnel, or functions of state departments, agencies, and commissions, or units thereof, for purposes of facilitating or performing emergency services as necessary or desirable,” and to “compel performance by elected and appointed state, county, and municipal officials and employees of the emergency duties and functions assigned them in the State Emergency Plan or by Executive Order”; and

WHEREAS, the undersigned is further authorized, pursuant to section 25-1-440 of the South Carolina Code of Laws, to “direct and compel evacuation of all or part of the populace from any stricken or threatened area if this action is considered necessary for the preservation of life or other emergency mitigation, response, or recovery; to prescribe routes, modes of transportation, and destination in connection with evacuation; and to control ingress and egress at an emergency area, the movement of persons within the area, and the occupancy of premises therein”; and

WHEREAS, in the context of a public health emergency, section 25-1-440 of the South Carolina Code of Laws also “authorizes the deployment and use of any resources and personnel including, but not limited to, local officers and employees qualified as first responders, to which the plans apply and the use or distribution of any supplies, equipment, materials, and facilities assembled, stockpiled, or arranged to be made available pursuant to this act”; and

WHEREAS, in accordance with section 16-7-10(A) of the South Carolina Code of Laws, as amended, “[i]n any area designated by the Governor in his proclamation that a state of emergency exists, and during the duration of the proclamation, it is unlawful for a person to: violate a provision in the proclamation including, but not limited to, any curfew set forth by the proclamation; congregate, unless authorized or in their homes, in groups of three or more and to refuse to disperse upon order of a law enforcement officer; or wilfully fail or refuse to comply with any lawful order or direction of any law enforcement officer”; and

WHEREAS, it is axiomatic that “[t]he health, welfare, and safety of the lives and property of the people are beyond question matters of public concern, and reasonable regulations and laws designed to preserve and protect the same are clearly contained in the police power inherent in the sovereign,” 1980 S.C. Op. Att’y Gen. 142 (Sept. 5, 1980); and

WHEREAS, in issuing Executive Order No. 2020-08 and declaring an initial State of Emergency in connection with COVID-19, the undersigned’s determination was made in accordance with section 44-4-130 of the South Carolina Code of Laws, as amended, and based on the “imminent risk of a qualifying health condition,” which includes “an illness or health condition that may be caused by . . . epidemic or pandemic disease, or a novel infectious agent . . . that poses a substantial risk of a significant number of human fatalities [or] widespread illness”; and

WHEREAS, the public health threat posed by COVID-19 subsequently evolved from one that presented the “imminent risk of a qualifying health condition” to one that involved an actual and widespread “occurrence” of a “qualifying health condition,” pursuant to section 44-4-130 of the South Carolina Code of Laws; and

WHEREAS, due to the aforementioned evolution of COVID-19 from an “imminent risk of a qualifying health condition,” to an actual “occurrence” of a “qualifying health condition” or “pandemic,” and with confirmed cases of COVID-19 in over eighty-five percent (85%) of South Carolina’s forty-six (46) counties, the undersigned issued Executive Order No. 2020-15 on March 28, 2020, finding, concluding, and declaring that

COVID-19 presented a unique and distinct public health emergency for the State of South Carolina, which must be dealt with on its own accord; and

WHEREAS, the State of South Carolina subsequently transitioned from the investigation, recognition, and initiation phases of the COVID-19 pandemic to the acceleration phase, with DHEC reporting cases of COVID-19 in each of the State's forty-six (46) counties; and

WHEREAS, based on the aforementioned transition and the accelerated, statewide spread of COVID-19, which presented different and additional risks and dangers, the undersigned issued Executive Order No. 2020-23 on April 12, 2020, declaring a new and distinct State of Emergency and initiating additional proactive action and directing the implementation and enforcement of further extraordinary measures; and

WHEREAS, the undersigned thereafter issued Executive Order No. 2020-29 on April 27, 2020, declaring a separate and distinct State of Emergency in response to, *inter alia*, the continued spread of COVID-19 and the significant economic consequences for individuals and businesses in this State, as well as the State's ongoing recovery operations and relief efforts associated with the severe storm system that moved across the southeastern region of the United States beginning on April 12, 2020; and

WHEREAS, based on, *inter alia*, the continued spread of COVID-19, the disproportionate impact of COVID-19 on the State's elderly population, and the need for the rapid deployment and widespread implementation of enhanced tracing and testing to identify, isolate, and address cases of COVID-19, the undersigned issued Executive Order No. 2020-35 on May 12, 2020, declaring an additional, distinct State of Emergency, which required the implementation of further extraordinary measures to respond to the same; and

WHEREAS, the undersigned subsequently issued Executive Order No. 2020-38 on May 27, 2020, declaring a separate and distinct State of Emergency based on new facts and circumstances and requiring the implementation of further extraordinary measures in an effort to, *inter alia*, control the spread of COVID-19, mitigate the impacts associated with the same on certain portions of the State's population, deploy enhanced testing and tracing, and coordinate additional intergovernmental and interagency resources and response efforts; and

WHEREAS, the State of South Carolina has made significant progress to date in limiting and controlling the outbreak and continued spread of COVID-19, but the extraordinary circumstances and conditions that necessitated the undersigned's prior emergency declarations have since evolved to present different and additional threats, which must be dealt with on their own terms; and

WHEREAS, as of June 11, 2020, DHEC has identified at least 16,441 confirmed cases of COVID-19 in the State of South Carolina, including 588 deaths due to COVID-19; and

WHEREAS, over the past several weeks, the State has significantly increased the availability of, and access to, COVID-19 testing, and although the expansion of testing capability and capacity was expected to produce higher daily numbers of confirmed cases of COVID-19, DHEC has also noted sizable increases in the rate or percentage of positive cases; and

WHEREAS, as a result of South Carolina's enhanced testing and tracing initiatives, DHEC has also identified the emergence of new "hot spots" in certain areas of the State, which warrants the implementation of targeted outreach efforts and additional efforts to control the spread of COVID-19; and

WHEREAS, the State of South Carolina must take additional proactive action to control the spread of COVID-19 and mitigate the impacts associated with the same, particularly on certain portions of the State's population, to include the continued deployment and widespread implementation of enhanced tracing and testing to identify, isolate, and address cases of COVID-19; and

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WHEREAS, consistent with the findings set forth in section 44-4-110 of the South Carolina Code of Laws, as amended, the different and additional public health threats posed by COVID-19, as well as the continued need to deploy widespread testing and tracing and other initiatives to address the same, “require the exercise of extraordinary government functions . . . to respond, rapidly and effectively” to the evolving emergency currently facing the entire State; and

WHEREAS, it is imperative that the State of South Carolina continue to utilize extraordinary measures and deploy substantial resources to meet the unprecedented threat posed by COVID-19 and the evolving nature and scope of this public health emergency, and in order to promptly and effectively do so, the State must take any and all necessary and appropriate steps to coordinate additional intergovernmental and interagency resources and response efforts to address the current and anticipated circumstances; and

WHEREAS, in addition to the foregoing, in further proactively preparing for and promptly responding to the continued spread of COVID-19, the State of South Carolina must simultaneously confront the significant economic impacts and other consequences associated with COVID-19, to include stabilizing and reinvigorating the State’s economy by addressing issues related to unemployment, facilitating the reopening of businesses and industries, permitting economic flexibility by reducing regulations, and accessing and utilizing federal funds and resources to assist with emergency operations; and

WHEREAS, as part of the ongoing process of facilitating economic recovery and revitalization in a safe, strategic, and incremental manner, the State of South Carolina must also continue to encourage effective “social distancing” practices and implement additional narrowly tailored measures to combat COVID-19 and provide for and ensure the health, safety, security, and welfare of the people of this State; and

WHEREAS, for the aforementioned and other reasons, and in recognition and furtherance of the undersigned’s responsibility to provide for and ensure the health, safety, security, and welfare of the people of the State of South Carolina, the undersigned has determined—based on recent developments, updated data, new facts, changing conditions, and the previously unforeseen occurrence of a combination of extraordinary circumstances—that an effective response to the ongoing COVID-19 pandemic, including the different, additional, and intensifying threats cited herein, represents and requires a new and distinct emergency, which warrants further proactive action by the State of South Carolina and the implementation and enforcement of additional extraordinary measures to address the same.

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, I hereby declare that a State of Emergency exists in South Carolina. Accordingly, for the foregoing reasons and in accordance with the cited authorities and other applicable law, I further order and direct as follows:

Section 1. Emergency Measures

To prepare for and respond to the ongoing and evolving public health threat posed by the COVID-19 pandemic and to mitigate the significant impacts associated with the same, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. The State of South Carolina must take additional proactive action and implement further extraordinary measures to prepare for, respond to, and address the ongoing and evolving public health threat posed by the COVID-19 pandemic, to include the continued utilization and coordination of intergovernmental and interagency resources, operations, and response efforts.

B. I hereby memorialize and confirm my prior activation of the Plan and direct that the Plan be further placed into effect and that all prudent preparations be taken at the individual, local, and state levels to proactively prepare for and promptly respond to the COVID-19 pandemic and the significant economic impacts

and other consequences associated with the same. I further direct the continued utilization of all available resources of state government as reasonably necessary to address the current State of Emergency.

C. I hereby direct DHEC to utilize and exercise any and all emergency powers, as set forth in the Emergency Health Powers Act, codified as amended in Title 44, Chapter 4 of the South Carolina Code of Laws, deemed necessary to promptly and effectively address the current public health emergency. In accordance with section 44-4-500 of the South Carolina Code of Laws, as amended, DHEC shall continue to “use every available means to prevent the transmission of infectious disease and to ensure that all cases of infectious disease are subject to proper control and treatment.” I further direct DHEC to restrict visitation to nursing homes and assisted living facilities, with the exception of end-of-life situations, as DHEC deems necessary and appropriate.

D. I hereby authorize and direct state correctional institutions and local detention facilities to suspend visitation processes and procedures, as necessary, during this State of Emergency.

E. I hereby place specified units and/or personnel of the South Carolina National Guard on State Active Duty, pursuant to section 25-1-1840 of the South Carolina Code of Laws, as amended, and direct the Adjutant General to issue the requisite supplemental orders as he deems necessary and appropriate. I further order the activation of South Carolina National Guard personnel and the utilization of appropriate equipment at the discretion of the Adjutant General, and in coordination with the Director of EMD, to take necessary and prudent actions to assist the people of this State. I authorize Dual Status Command, as necessary, to allow the Adjutant General or his designee to serve as commander over both federal (Title 10) and state forces (National Guard in Title 32 and/or State Active Duty status).

F. I hereby order that all licensing and registration requirements regarding private security personnel or companies who are contracted with South Carolina security companies in protecting property and restoring essential services in South Carolina shall be suspended, and I direct the South Carolina Law Enforcement Division (“SLED”) to initiate an emergency registration process for those personnel or companies for a period specified, and in a manner deemed appropriate, by the Chief of SLED.

G. I hereby declare that the prohibitions against price gouging pursuant to section 39-5-145 of the South Carolina Code of Laws, as amended, are in effect and shall remain in effect for the duration of this State of Emergency.

H. I hereby declare that the provisions of the following Orders shall remain in full force and effect for the duration of the State of Emergency declared herein, unless otherwise modified, amended, or rescinded below or by prior or future Order: Executive Order Nos. 2020-09, 2020-10, 2020-11, 2020-12, 2020-13, 2020-16, 2020-18, 2020-21, 2020-22, 2020-25, 2020-28, 2020-30, 2020-31, 2020-33, 2020-34, 2020-36, and 2020-37.

Section 2. School Closures

To provide for and protect the health, safety, and welfare of the people of this State and to minimize and control the spread of COVID-19, while also facilitating continued educational activities, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. I hereby direct the continued closure of all public schools in the State of South Carolina for students and non-essential employees for the duration of the State of Emergency. This Section applies to all students and employees of public schools in the State of South Carolina, to include charter schools and residential programs at the Governor’s School for the Arts and Humanities, the Governor’s School for Science and Mathematics, and the South Carolina School for the Deaf and the Blind, with the exception of those emergency or other critical personnel designated as essential, or whose presence is otherwise deemed necessary, by the appropriate school district officials. I further authorize the requisite school district officials to make any necessary and appropriate decisions or arrangements to account for local needs and other unique circumstances.

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As applicable and to the maximum extent possible, and to promote and facilitate effective “social distancing” practices in accordance with CDC guidance, school districts are authorized and encouraged to provide the following services, resources, and support to students and families for the duration of the State of Emergency: (1) preparation and implementation of distance learning activities; (2) preparation, distribution, and delivery of meals to children; (3) planning and implementation of alternative and innovative high school graduation ceremonies or celebrations; (4) delivery of services to students with disabilities, including those with Individualized Education Programs (“IEP”), consistent with guidance from the South Carolina Department of Education (“Department”); (5) provision of individualized support to students who are struggling academically or who need additional mental health counseling; and (6) collection of instructional materials and textbooks during the last two weeks of the district’s regular calendar year, while also allowing students, parents, and families the opportunity to retrieve personal belongings.

B. I hereby urge school districts to work with the Department, in collaboration with the South Carolina Education Oversight Committee and school districts participating in the eLearning pilot program, to assess their instructional technology strengths and weaknesses, including devices, connectivity, online content, and professional learning, to improve access to and the effectiveness of digital learning. School districts are encouraged to consider utilizing federal funds allocated through the Elementary and Secondary School Relief Fund to improve their digital learning capabilities as identified by aforementioned thorough assessment. As applicable and to the maximum extent possible, and to promote and facilitate effective “social distancing” practices in accordance with CDC guidance, I also urge school districts to work with the Department to provide voluntary, in-person summer learning opportunities for students who were enrolled in kindergarten through the eighth grade during the 2019–2020 school year but who are at risk of falling behind in their learning. The Department will work with districts to identify any available state and federal funds to facilitate such voluntary summer learning opportunities.

C. I further authorize all state-supported colleges, universities, and technical colleges in the State of South Carolina, as necessary and appropriate and in accordance with and to the extent allowed by state and federal law, to continue to provide instruction by delivering virtual and remote learning, by housing only out-of-state or displaced students, and by restricting on-campus services and activities to emergency or other critical personnel designated as essential, or whose presence is otherwise deemed necessary, by the appropriate college or university officials. I further authorize the requisite college, university, and technical college officials to continue to make any necessary and appropriate decisions or arrangements to account for specific needs and other unique circumstances or to deal with students, employees, or other critical personnel designated as essential, or whose presence is otherwise deemed necessary, by the appropriate college, university, or technical college officials.

D. This Section shall not be interpreted, applied, implemented, or construed in a manner so as to suspend, restrict, or otherwise limit the existing authority of, *inter alia*, the Department and the South Carolina Commission on Higher Education (“CHE”). I further expressly authorize the Department and the CHE, as applicable, to provide or issue any necessary and appropriate additional or supplemental guidance, rules, regulations, or restrictions regarding the application of this Section or to otherwise provide clarification regarding the same, through appropriate means, without the need for further Orders.

Section 3. Protection of First Responders

To ensure the uninterrupted performance and provision of emergency services and to maintain peace and good order during the State of Emergency, while simultaneously undertaking additional proactive measures to safeguard the health and safety of law enforcement authorities and other first responders, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. The State of South Carolina must promptly undertake and implement additional proactive measures to safeguard the health and safety of law enforcement authorities and other first responders who risk

potential exposure to COVID-19 while providing emergency and other essential services during the State of Emergency.

B. I hereby authorize and direct any and all 911 operators or other emergency dispatchers to ask any individual placing a call for service whether such individual or any member of their household has tested positive for COVID-19 or is exhibiting symptoms consistent with the same.

C. I hereby authorize and instruct DHEC, upon consultation with SLED, to provide any necessary and appropriate additional or supplemental guidance regarding the interpretation, application, or enforcement of this Section.

Section 4. Transportation Waivers

To expedite the State of South Carolina's continued preparation for and response to the ongoing and evolving emergency conditions related to COVID-19 and to facilitate the prompt transportation and delivery of any critical resources, supplies, and personnel identified and deemed necessary in connection with the same, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. I hereby suspend certain rules and regulations, as set forth below, for commercial vehicles and operators of commercial vehicles in accordance with 49 C.F.R. § 390.23 and section 56-5-70 of the South Carolina Code of Laws, as amended.

B. I hereby authorize and direct the South Carolina Department of Transportation ("DOT") and the South Carolina Department of Public Safety ("DPS"), including the State Transport Police, as needed, to waive or suspend application and enforcement of the requisite state and federal rules and regulations pertaining to registration, permitting, length, width, weight, load, and hours of service for commercial vehicles and operators of commercial vehicles operating in accordance with the provisions of the Federal Motor Carrier Safety Administration's May 13, 2020 Extension of Expanded Emergency Declaration No. 2020-002 Under 49 C.F.R. § 390.25, or any future amendments or supplements thereto; responding to the declared emergency in the State of South Carolina or providing direct assistance to supplement state and local efforts and capabilities to protect public health and safety in connection with COVID-19; or otherwise assisting with the public health threat posed by COVID-19, to include commercial vehicles and operators of commercial vehicles transporting essential goods and products, such as food, water, medicine, medical supplies and equipment, fuels and petroleum products (to include fuel oil, diesel oil, gasoline, kerosene, propane, and liquid petroleum), livestock, poultry, feed for livestock and poultry, and crops and other agricultural products ready to be harvested (to include timber and wood chips). I further authorize and direct DOT and DPS to issue, provide, or promulgate any necessary and appropriate clarification, guidance, rules, regulations, or restrictions regarding the application of this Section.

C. This Section shall not be construed to require or allow an ill or fatigued driver to operate a commercial motor vehicle. In accordance with 49 C.F.R. § 390.23, "a driver who informs the motor carrier that he or she needs immediate rest must be permitted at least ten (10) consecutive hours off duty before the driver is required to return to such terminal or location." Likewise, this Section shall not be construed as an exemption from the applicable controlled substances and alcohol use and testing requirements in 49 C.F.R. § 382, the commercial driver's license requirements in 49 C.F.R. § 383, or the financial responsibility requirements in 49 C.F.R. § 387, and it shall not be interpreted to relieve compliance with any other state or federal statute, rule, order, regulation, restriction, or other legal requirement not specifically waived, suspended, or addressed herein.

D. This Section is subject to any clarification, guidance, rules, regulations, or restrictions issued, provided, or promulgated, or which may be issued, provided, or promulgated, by DOT or DPS, as authorized herein or as otherwise provided by law. Notwithstanding the waiver or suspension of certain rules and regulations as set forth above, drivers in South Carolina are still subject to the following state requirements to ensure public safety:

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1. Weight, height, length, and width for any such vehicle on highways or roadways maintained by the State of South Carolina shall not exceed, for continuous travel on all non-interstates, United States, and South Carolina designated routes, maximum dimensions of twelve (12) feet in width, thirteen (13) feet six (6) inches in height, and ninety thousand (90,000) pounds in gross weight.

2. Posted bridges may not be crossed.

3. All vehicles shall be operated in a safe manner, shall not damage the highways nor unduly interfere with highway traffic, shall maintain the required limits of insurance, and shall be clearly identified as a utility vehicle or shall provide appropriate documentation indicating they are responding to the emergency.

4. Any vehicles that exceed the above dimensions, weights, or both, must obtain a permit with defined routes from the South Carolina Department of Transportation Oversized/Overweight Permit Office. To order a permit, please call (803) 737-6769 during normal business hours, 8:30 a.m. – 5:00 p.m., or (803) 206-9566 after normal business hours.

5. Transporters are responsible for ensuring they have oversize signs, markings, flags, and escorts as required by the South Carolina Code of Laws relating to oversized/overweight loads operating on South Carolina roadways.

E. This Section is effective immediately and shall remain in effect for thirty (30) days or the duration of the State of Emergency, whichever is less, in accordance with 49 C.F.R. § 390.23 and section 56-5-70(D) of the South Carolina Code of Laws, except that requirements relating to registration, permitting, length, width, weight, and load are suspended for commercial and utility vehicles travelling on non-interstate routes for up to one hundred twenty (120) days, pursuant to the provisions of section 56-5-70(A) of the South Carolina Code of Laws, unless otherwise modified, amended, or rescinded by subsequent Order.

Section 5. Modification of Prior Emergency Measures and Non-Essential Business Closures

To facilitate further economic recovery and revitalization in a safe, strategic, and incremental manner, while also continuing to encourage effective “social distancing” practices and implement additional measures to provide for and ensure the health, safety, security, and welfare of the people of this State, pursuant to the cited authorities and other applicable law, I hereby determine, order, and direct as follows:

A. I hereby modify and amend the provisions of Executive Order No. 2020-10, as extended by Section 1(H) of Executive Order No. 2020-38—which prohibited and directed the postponement, rescheduling, or cancellation, as applicable, of certain organized events or public gatherings scheduled to be hosted or held at any location or facility owned or operated by the State of South Carolina, or any political subdivision thereof, if any such event or gathering could or would involve or require simultaneously convening fifty (50) or more persons in a single room, area, or other confined indoor or outdoor space—by deleting Section 5 in its entirety. Any such events or public gatherings scheduled to be hosted or held during the State of Emergency should be conducted in accordance with any corresponding guidelines regarding the same, and organizers or other responsible parties should undertake and implement all reasonable steps to comply with any applicable sanitation guidance promulgated by the CDC, DHEC, or any other state or federal public health officials. All remaining provisions of Executive Order No. 2020-10, as extended by Executive Order No. 2020-38, shall remain in effect for the duration of the State of Emergency unless and until otherwise modified, amended, or rescinded by subsequent Order.

B. I hereby modify and amend the provisions of Section 2 of Executive Order No. 2020-28, as extended by Section 1(H) of Executive Order No. 2020-38—which authorized certain “retail stores,” as identified by general description and further defined therein, to re-open to non-employees and for access or use by the public, subject to the emergency rules and restrictions—by deleting Section 2(B) in its entirety. Any retail stores that elect to utilize the flexibility authorized herein should consider and incorporate any corresponding industry guidelines regarding the same, in addition to undertaking and implementing all reasonable steps to comply with any applicable sanitation guidance promulgated by the CDC, DHEC, or any other state or federal

public health officials. All remaining provisions of Executive Order No. 2020-28, as extended by Executive Order No. 2020-38, shall remain in effect for the duration of the State of Emergency unless and until otherwise modified, amended, or rescinded by subsequent Order.

C. I hereby modify and amend the provisions of Executive Order Nos. 2020-18 and 2020-21, as amended by Executive Order Nos. 2020-28, 2020-31, 2020-36, and 2020-37, and as extended by Section 1(H) of Executive Order No. 2020-38, to authorize the following businesses—which were previously deemed “non-essential” and directed to close to non-employees and not to open for access or use by the public in accordance with Executive Order No. 2020-18—to re-open to non-employees and for access or use by the public: “Entertainment venues and facilities as follows: Bowling alleys.” Any bowling alleys that elect to re-open to non-employees and for access or use by the public, as authorized herein, should consider and incorporate any corresponding industry guidelines regarding the same, in addition to undertaking and implementing all reasonable steps to comply with any applicable sanitation guidance promulgated by the CDC, DHEC, or any other state or federal public health officials.

D. I hereby authorize DHEC to provide or issue any necessary and appropriate additional or supplemental guidance, rules, regulations, or restrictions regarding the application of this Section or to otherwise provide clarification regarding the same, through appropriate means, without the need for further Orders.

Section 6. Enforcement

A. I hereby authorize any and all law enforcement officers of the State, or any political subdivision thereof, to do whatever may be deemed necessary to maintain peace and good order during the State of Emergency and to enforce the provisions of this Order and any prior or future Orders issued by the undersigned in connection with the present State of Emergency.

B. Pursuant to section 16-7-10(A) of the South Carolina Code of Laws, any individual who “refuse[s] to disperse upon order of a law enforcement officer,” “wilfully fail[s] or refuse[s] to comply with any lawful order or direction of any law enforcement officer,” or otherwise violates any provision of any Order issued by the undersigned in connection with the State of Emergency “is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned for not more than thirty days.”

C. In accordance with section 1-3-440(4) of the South Carolina Code of Laws, I further authorize, order, and direct any State, county, or city official to enforce the provisions of this Order and any prior or future Orders issued in connection with the present State of Emergency, as necessary and appropriate, in the courts of the State by injunction, mandamus, or other appropriate legal action.

D. In addition to the foregoing, I further authorize, order, and direct DHEC to exercise and utilize any and all necessary and appropriate emergency powers, as set forth in the Emergency Health Powers Act, codified as amended in Title 44, Chapter 4 of the South Carolina Code of Laws, to implement and enforce the provisions of this Order. In accordance with section 44-4-500 of the South Carolina Code of Laws, as amended, DHEC shall continue to “use every available means to prevent the transmission of infectious disease and to ensure that all cases of infectious disease are subject to proper control and treatment.”

Section 7. General Provisions

A. This Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of South Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any other person.

B. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this Order is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality

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or validity of the remaining portions of this Order, as the undersigned would have issued this Order, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

C. If or to the extent that any political subdivision of this State seeks to adopt or enforce a local ordinance, rule, regulation, or other restriction that conflicts with this Order, this Order shall supersede and preempt any such local ordinance, rule, regulation, or other restriction.

D. This Order is effective immediately and shall remain in effect for a period of fifteen (15) days unless otherwise expressly stated herein or modified, amended, or rescinded by subsequent Order. Further proclamations, orders, and directives deemed necessary to ensure the fullest possible protection of life and property during this State of Emergency shall be issued orally by the undersigned and thereafter reduced to writing and published for dissemination within the succeeding 24-hour period.

**GIVEN UNDER MY HAND AND THE GREAT
SEAL OF THE STATE OF SOUTH CAROLINA,
THIS 11th DAY OF JUNE, 2020.**

**HENRY MCMASTER
Governor**

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

NOTICE OF GENERAL PUBLIC INTEREST

In accordance with Section 44-7-200(D), Code of Laws of South Carolina, the public is hereby notified that a Certificate of Need application has been accepted for filing and publication on **June 26, 2020** 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 Arnisha Keitt, Certificate of Need Program, 2600 Bull Street, Columbia, South Carolina 29201 at (803) 545-3495.

Affecting Charleston County**Bon Secours-St. Francis Xavier Hospital, Inc. d/b/a Bon Secours St. Francis Xavier Hospital**

Purchase of a da Vinci XI robotic surgical system at total project cost of \$2,584,448.

Roper St. Francis Mount Pleasant Hospital d/b/a Mount Pleasant Hospital

Purchase of a da Vinci XI robotic surgical system at total project cost of \$2,584,448.

Affecting Cherokee County**Amedisys Home Health Inc. of South Carolina d/b/a Amedisys Home Health of Clinton**

Establishment of a Home Health agency in Cherokee county at a total project cost of \$14,288.

Affecting Lancaster County**Medical University Hospital Authority d/b/a MUSC Health Indian Land Medical Center**

Construction for the establishment of a 98-bed acute care hospital in Lancaster County through the transfer of 98 licensed hospital beds from MUSC Health Lancaster Medical Center at a total project cost of \$235,020,333.

In accordance with Section 44-7-210(A), Code of Laws of South Carolina, and S.C. DHEC Regulation 61-15, the public and affected persons are hereby notified that for the following projects, applications have been deemed complete, and the review cycle has begun. A proposed decision will be made as early as 30 days, but no later than 120 days, from **June 26, 2020**. "Affected persons" have 30 days from the above date to submit requests for a public hearing to Arnisha Keitt, Certificate of Need Program, 2600 Bull Street, Columbia, South Carolina 29201. If a public hearing is timely requested, the Department's decision will be made after the public hearing, but no later than 150 days from the above date. For further information call (803) 545-3495.

Affecting Abbeville County**Intramed Plus d/b/a Intramed Plus, Inc.**

Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Abbeville County at a total project cost of \$2,000.

Affecting Aiken County**Intramed Plus d/b/a Intramed Plus, Inc.**

Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Aiken County at a total project cost of \$2,000.

Affecting Allendale County**Intramed Plus d/b/a Intramed Plus, Inc.**

Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Allendale County at a total project cost of \$2,000.

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Affecting Anderson County

Intramed Plus d/b/a Intramed Plus, Inc.

Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Anderson County at a total project cost of \$2,000.

Affecting Bamberg County

Intramed Plus d/b/a Intramed Plus, Inc.

Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Bamberg County at a total project cost of \$2,000.

Affecting Barnwell County

Intramed Plus d/b/a Intramed Plus, Inc.

Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Barnwell County at a total project cost of \$2,000.

Affecting Beaufort County

Intramed Plus d/b/a Intramed Plus, Inc.

Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Beaufort County at a total project cost of \$2,000.

Affecting Berkeley County

Intramed Plus d/b/a Intramed Plus, Inc.

Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Berkeley County at a total project cost of \$2,000.

Affecting Calhoun County

Intramed Plus d/b/a Intramed Plus, Inc.

Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Calhoun County at a total project cost of \$2,000.

Affecting Charleston County

Intramed Plus d/b/a Intramed Plus, Inc.

Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Charleston County at a total project cost of \$2,000.

Affecting Cherokee County

Intramed Plus d/b/a Intramed Plus, Inc.

Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Cherokee County at a total project cost of \$2,000.

Affecting Chester County

Intramed Plus d/b/a Intramed Plus, Inc.

Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Chester County at a total project cost of \$2,000.

Affecting Chesterfield County

Intramed Plus d/b/a Intramed Plus, Inc.

Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Chesterfield County at a total project cost of \$2,000.

Affecting Clarendon County**Intramed Plus d/b/a Intramed Plus, Inc.**

Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Clarendon County at a total project cost of \$2,000.

Affecting Colleton County**Intramed Plus d/b/a Intramed Plus, Inc.**

Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Colleton County at a total project cost of \$2,000.

Affecting Darlington County**Intramed Plus d/b/a Intramed Plus, Inc.**

Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Darlington County at a total project cost of \$2,000.

Affecting Dillon County**Intramed Plus d/b/a Intramed Plus, Inc.**

Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Dillon County at a total project cost of \$2,000.

Affecting Dorchester County**Intramed Plus d/b/a Intramed Plus, Inc.**

Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Dorchester County at a total project cost of \$2,000.

Affecting Edgefield County**Intramed Plus d/b/a Intramed Plus, Inc.**

Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Edgefield County at a total project cost of \$2,000.

Affecting Fairfield County**Intramed Plus d/b/a Intramed Plus, Inc.**

Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Fairfield County at a total project cost of \$2,000.

Affecting Florence County**Intramed Plus d/b/a Intramed Plus, Inc.**

Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Florence County at a total project cost of \$2,000.

Affecting Georgetown County**Intramed Plus d/b/a Intramed Plus, Inc.**

Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Georgetown County at a total project cost of \$2,000.

Georgetown Treatment Specialists, LLC

Establishment of an Opioid Treatment Program (OTP) in Georgetown County at a total project cost of \$111,200.

Affecting Greenville County**Intramed Plus d/b/a Intramed Plus, Inc.**

Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Greenville County at a total project cost of \$2,000.

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Affecting Greenwood County

Intramed Plus d/b/a Intramed Plus, Inc.

Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Greenwood County at a total project cost of \$2,000.

Affecting Hampton County

Intramed Plus d/b/a Intramed Plus, Inc.

Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Hampton County at a total project cost of \$2,000.

Affecting Horry County

Intramed Plus d/b/a Intramed Plus, Inc.

Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Horry County at a total project cost of \$2,000.

Affecting Jasper County

Intramed Plus d/b/a Intramed Plus, Inc.

Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Jasper County at a total project cost of \$2,000.

Affecting Kershaw County

Intramed Plus d/b/a Intramed Plus, Inc.

Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Kershaw County at a total project cost of \$2,000.

Affecting Lancaster County

Intramed Plus d/b/a Intramed Plus, Inc.

Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Lancaster County at a total project cost of \$2,000.

Affecting Laurens County

Intramed Plus d/b/a Intramed Plus, Inc.

Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Laurens County at a total project cost of \$2,000.

Affecting Lee County

Intramed Plus d/b/a Intramed Plus, Inc.

Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Lee County at a total project cost of \$2,000.

Affecting Lexington County

Intramed Plus d/b/a Intramed Plus, Inc.

Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Lexington County at a total project cost of \$12,000.

Affecting Marion County

Intramed Plus d/b/a Intramed Plus, Inc.

Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Marion County at a total project cost of \$2,000.

Affecting Marlboro County**Intramed Plus d/b/a Intramed Plus, Inc.**

Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Marlboro County at a total project cost of \$2,000.

Affecting McCormick County**Intramed Plus d/b/a Intramed Plus, Inc.**

Establishment of a Specialty Home Health Agency limited to home infusion nursing services in McCormick County at a total project cost of \$2,000.

Affecting Newberry County**Intramed Plus d/b/a Intramed Plus, Inc.**

Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Newberry County at a total project cost of \$2,000.

Affecting Oconee County**Intramed Plus d/b/a Intramed Plus, Inc.**

Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Oconee County at a total project cost of \$2,000.

Affecting Orangeburg County**Intramed Plus d/b/a Intramed Plus, Inc.**

Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Orangeburg County at a total project cost of \$2,000.

The Regional Medical Center of Orangeburg and Calhoun Counties d/b/a RMC Ambulatory Surgery Center

Renovation of an existing 10,016 sf building for the establishment of a multi-specialty Ambulatory Surgery Facility with 6 operating rooms at a total project cost of \$2,406,060.

Ambulatory Partners, LLC

Construction of a 16,640 sf Multi-Specialty Ambulatory Surgery Facility with 2 operating rooms and diagnostic imaging at a total project cost of \$12,537,535.

Affecting Pickens County**Intramed Plus d/b/a Intramed Plus, Inc.**

Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Pickens County at a total project cost of \$2,000.

Affecting Richland County**Intramed Plus d/b/a Intramed Plus, Inc.**

Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Richland County at a total project cost of \$2,000.

Affecting Saluda County**Intramed Plus d/b/a Intramed Plus, Inc.**

Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Saluda County at a total project cost of \$2,000.

Affecting Spartanburg County**Intramed Plus d/b/a Intramed Plus, Inc.**

Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Spartanburg County at a total project cost of \$2,000.

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Affecting Sumter County

Intramed Plus d/b/a Intramed Plus, Inc.

Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Sumter County at a total project cost of \$2,000.

Sumter Behavioral Health, LLC d/b/a Midlands Behavioral Health Hospital

Construction for the establishment of a 32-bed psychiatric hospital in Sumter County at a total project cost of \$15,079,889.

Affecting Union County

Intramed Plus d/b/a Intramed Plus, Inc.

Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Union County at a total project cost of \$2,000.

Affecting Williamsburg County

Intramed Plus d/b/a Intramed Plus, Inc.

Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Williamsburg County at a total project cost of \$2,000.

Affecting York County

Intramed Plus d/b/a Intramed Plus, Inc.

Establishment of a Specialty Home Health Agency limited to home infusion nursing services in York County at a total project cost of \$2,000.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

NOTICE OF GENERAL PUBLIC INTEREST

DHEC-Bureau of Land and Waste Management, File # 400211
Cognis Corporation Site

NOTICES OF VOLUNTARY CLEANUP CONTRACT, CONTRIBUTION PROTECTION, AND COMMENT PERIOD

PLEASE TAKE NOTICE that the South Carolina Department of Health and Environmental Control (the Department) intends to enter into a Voluntary Cleanup Contract (VCC) with BASF Corporation (the Responsible Party). The VCC provides that the Responsible Party, with DHEC's oversight, will fund and perform future response actions at the Cognis Corporation facility located in Greenville County at 1520 Old Stage Road, Mauldin, South Carolina and any surrounding area impacted by the migration of hazardous substances, pollutants, or contaminants (the Site).

Response actions addressed in the VCC include, but may not be limited to, the Responsible Party funding and performing a remedial investigation and, if necessary, an evaluation of cleanup alternatives for addressing any contamination. Further, the Responsible Party shall reimburse the Department's future costs of overseeing the work performed by the Responsible Party and other Department response costs pursuant to the VCC.

The VCC is subject to a thirty-day public comment period consistent with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. Section 9613, and the South Carolina Hazardous Waste Management Act (HWMA), S.C. Code Ann. Section 44-56-200 (as amended). Notices of contribution protection and comment period will be provided to other known potentially responsible parties. The VCC is available:

- (1) On-line at <http://www.scdhec.gov/PublicNotices>; or
- (2) By contacting Elisa Vincent at 803-898-0882 or vincenef@dhec.sc.gov.

Any comments to the proposed VCC must be submitted in writing, postmarked no later than July 27th, 2020, and addressed to: Elisa Vincent, DHEC-BLWM-SARR, 2600 Bull Street, Columbia, SC 29201.

Upon the successful completion of the VCC, the Responsible Party will receive a covenant not to sue for the work done in completing the response actions specifically covered in the VCC and completed in accordance with the approved work plans and reports. Upon execution of the VCC, the Responsible Party shall be deemed to have resolved their liability to the State in an administrative settlement for purposes of, and to the extent authorized under CERCLA, 42 U.S.C. Sections 9613(f)(2) and 9613(f)(3)(B), and under HWMA, S.C. Code Ann. Section 44-56-200, for the matters addressed in the VCC. Further, to the extent authorized under 42 U.S.C. Section 9613(f)(3)(B), S.C. Code Ann. Section 44-56-200, the Responsible Party may seek contribution from any person who is not a party to this administrative settlement.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

NOTICE OF GENERAL PUBLIC INTEREST

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

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

Pursuant to Section IV.B.1., the Department is required to place a list of those contractors requesting certification on public notice and accept comments from the public for a period of thirty (30) days. If you wish to provide comments regarding the companies and/or individuals listed below, please submit your comments in writing, no later than July 27, 2020 to:

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

The following company has applied for certification as Underground Storage Tank Site Rehabilitation Contractor:

Class II

M & W Drilling, LLC
 Attn: Firas Mishu
 8321 Oak Ridge Highway
 Knoxville, TN 37931

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

ERRATA

State Register Document No. 4954

The Department promulgated amendments to R.61-93, Standards for Licensing Facilities for Chemically Dependent or Addicted Persons, which takes legal effect as a final regulation in the June 26, 2020, *State Register*.

This notice corrects the Table of Contents listing for Section 2623 to remove incorrect punctuation in the section title. This is corrected to read:

2623. Telephone Service.

This notice further corrects missing punctuation in a South Carolina Code citation in Section 1001, Informed Consent. Section 1001.A.4. is corrected to read:

4. Each person enrolling in an Opioid Treatment Program shall be notified of the autopsy provision in South Carolina Code Section 44-53-750 as a part of such person's informed consent.

**DEPARTMENT OF LABOR, LICENSING AND REGULATION
OFFICE OF OCCUPATIONAL SAFETY AND HEALTH**

NOTICE OF GENERAL PUBLIC INTEREST

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

South Carolina Department of Labor, Licensing, and Regulation (SCDLLR) does hereby give notice under Section 41-15-220, SC Code of Laws, 1976, as amended, that a virtual public hearing will be held on July 29, 2020 at 10:00 AM.

The hearing is to determine if the Director of the SCDLLR will promulgate, revoke, or modify rules and regulations pursuant to Section 41-15-210, SC Code of Laws, 1976. The rule being considered for adoption corrects typographical errors, including extraneous or omitted materials and inaccurate graphics, in several OSHA standards. These revisions do not affect the substantive requirements or coverage of the standards, do not modify or revoke existing rights or obligations, and do not establish new rights or obligations.

Persons desiring either to speak at the hearing or to have their views submitted on the record if they cannot appear must file with the Director of the SCDLLR either a notice of intention to appear or a summary of their views on the matter no later than July 22, 2020.

Emily Farr, Director
SCDLLR
PO Box 11329
Columbia, SC 29211-1329

**OFFICE OF THE ATTORNEY GENERAL
CHAPTER 102**

Statutory Authority: 1976 Code Sections 33-55-10 et seq.

Notice of Drafting:

The Office of the Attorney General proposes to repeal Regulation 102-1, relating to Fees to Accompany Request for Confirmation of Solicitation Exemption. This is part of the Attorney General - Division of Public Charities Chapter, and this Division is no longer part of the Attorney General's Office. Interested persons may submit comments to Mary Frances Jowers, Assistant Deputy Attorney General, Office of the S.C. Attorney General, P.O. Box 11549, Columbia, SC 29211-1549. To be considered, comments must be received no later than 5:00 p.m. on July 27, 2020, the close of the drafting comment period.

Synopsis:

The Office of the Attorney General proposes to repeal a Regulation related to the Division of Public Charities which is no longer part of the Attorney General's Office. Act No. 368 of 1998 devolved the duties, functions, and responsibilities of the Public Charities Section of the Attorney General's Office upon the Secretary of State's Office on July 1, 1998. The Public Charities Division has remained with the Secretary of State's Office since that time. The proposed regulation will repeal Regulation 102-1, Fees to Accompany Request for Confirmation of Solicitation Exemption.

Legislative review of the proposed regulations will be required.

**OFFICE OF THE ATTORNEY GENERAL
CHAPTER 13**

Statutory Authority: 1976 Code Section 62-7-405(e)

Notice of Drafting:

The Office of the Attorney General proposes to repeal Regulations 13-1 through 13-4, related to records of charitable trusts. Interested persons may submit comments to Mary Frances Jowers, Assistant Deputy Attorney General, Office of the S.C. Attorney General, P.O. Box 11549, Columbia, SC 29211-1549. To be considered, comments must be received no later than 5:00 p.m. on July 27, 2020, the close of the drafting comment period.

Synopsis:

The Office of the Attorney General proposes to repeal certain outdated regulations related to records of charitable trusts. The General Assembly passed Act No. 330 of 2006, effective June 2, 2006, which provided that charitable trusts are not required to be filed with the Attorney General unless required by statute, rule, or regulation. There is currently no statute, rule, or regulation requiring charitable trusts to be filed with the Attorney General's Office. The proposed regulation will repeal Regulations 13-1 through 13-4.

Legislative review of the proposed regulations will be required.

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DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL CHAPTER 61

Statutory Authority: 1976 Code Sections 44-1-60, 44-1-65, 46-45-80, and 48-1-10 et seq.

Notice of Drafting:

The Department of Health and Environmental Control (“Department” or “DHEC”) proposes amending R.61-43, Standards for the Permitting of Agricultural Animal Facilities. Interested persons may submit comment(s) on the proposed amendment to Charles Williams of the Bureau of Water; S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201; williacj@dhec.sc.gov. To be considered, the Department must receive comments no later than 5:00 p.m. on July 27, 2020, the close of the draft comment period.

Synopsis:

Pursuant to R.61-43, Standards for the Permitting of Agricultural Animal Facilities, the Department permits facilities for the growing or confining of animals that have a lagoon and/or over 30,000 pounds of animals to ensure the proper processing of animal waste and by-products. The Department proposes amending R.61-43 to incorporate the following statutory changes made by the General Assembly through passage of Act No. 139, which took effect March 12, 2018:

1. The General Assembly amended Section 44-1-65 to establish specific requirements for the review and appeal of decisions by DHEC regarding the permitting, licensing, certification, or other approval of poultry and other animal facilities (except swine facilities);
2. The General Assembly amended Section 44-1-60 to revise and clarify procedures for reviewing permits for poultry and other animal facilities (except swine facilities); and
3. The General Assembly amended Section 46-45-80 regarding setback distances for poultry and other animal facilities (except swine facilities) to prohibit DHEC from requiring additional setback distances if established distances are achieved, to allow waiver of the established setback distances in certain circumstances, and other purposes.

The Department may also include changes such as corrections for clarity and readability, grammar, punctuation, codification, and other such regulatory text improvements.

The Administrative Procedures Act, S.C. Code Section 1-23-120(A), requires General Assembly review of these proposed amendments.

Document No. 4970
COMMISSION ON HIGHER EDUCATION
 CHAPTER 62
 Statutory Authority: 1976 Code Section 59-114-75

62-250 through 62-262. South Carolina National Guard College Assistance Program.

Preamble:

The South Carolina Commission on Higher Education promulgates Regulation 62-250 through 62-262 that governs requirements for the operation and administration of the South Carolina National Guard College Assistance Program under SC Code of Laws, Section 59-114-10 et seq. The program is administered by the Commission in coordination with the South Carolina National Guard and provides financial assistance for eligible enlisted guard members enrolled in undergraduate programs. The Commission on Higher Education proposes to amend the regulation (R.62-251, R.62-252 and R.62-253) defining degree-seeking student, program benefits and maximum assistance and college assistance program terms of eligibility (student eligibility) for the South Carolina National Guard College Assistance Program. The regulation for the South Carolina National Guard College Assistance Program was last amended in 2020.

A Notice of Drafting for the proposed regulation was published in the *South Carolina State Register* on March 27, 2020.

Section-by-Section Discussion

- Section 62-251(G) Amended to expand the definition of degree-seeking student to include less than one-year certificates, certifications and expanded eligibility for two-year programs and associate’s degrees.
- Section 62-251(H) Amended program definition for eligible programs of study to include less than one-year certificates and certifications, courses completed as the education component of a registered apprenticeship and expanded the eligibility for a certificate and associate’s degree.
- Section 62-252(C) Amended to allow eligibility for the college assistance program in preceding degree levels for service members with bachelor’s degrees.
- Section 62-252(D) Amended to reflect eligibility for service members with bachelor’s degrees for the college assistance program.
- Section 62-253(D) Amended to allow an exception to policy (ETP) regarding required training for service member eligibility for the college assistance program.

Notice of Public Hearing and Opportunity for Public Comment:

Interested members of the public and regulated community are invited to make oral or written comments on the proposed regulation at a public hearing to be conducted by the South Carolina Commission on Higher Education on July 30, 2020, to be held in the Main Conference Room at 1122 Lady Street, Suite 300, Columbia, SC. The meeting will commence at 12:30 p.m. at which time the Commission will consider items on its agenda in the order presented. The order of presentation for public hearings will be noted in the Commission’s agenda to be published by the Commission ten days in advance of the meeting.

Interested persons are also provided an opportunity to submit written comments on the proposed regulation by writing to Dr. Karen Woodfaulk, Director of Student Services, South Carolina Commission on Higher

64 PROPOSED REGULATIONS

Education, 1122 Lady Street, Suite 300, Columbia, SC 29201. Comments must be received no later than 5:00 p.m. on July 27, 2020. Comments received shall be considered by the staff in formulating the final proposed regulation for the public hearing on July 30, 2020, as noticed above. Comments received by the deadline shall be submitted to the Commission in summary of public comments for consideration at the public hearing.

Preliminary Fiscal Impact Statement:

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

Statement of Need and Reasonableness:

DESCRIPTION OF REGULATION: R.62-251(G) and R.62-251(H), PROGRAM DEFINITIONS; R.62.252(C) and R.62.252(D), PROGRAM BENEFITS AND MAXIMUM ASSISTANCE AND R.62.253(D), COLLEGE ASSISTANCE PROGRAM TERMS OF ELIGIBILITY (STUDENT ELIGIBILITY).

Purpose: R.62-251(G), R.62-251(H), R.62.252(C) and R.62.252(D) are being amended to expand opportunities for an education benefit and R.62.253(D) to allow an exception to policy (ETP) for service members who cannot attend required training immediately.

Legal Authority: The legal authority for R.62-251(G), R.62-251(H), R.62-252(C), R.62-252(D) and R.62.253(D) is 1976 Code Section 59-114.75.

Plan for Implementation: The proposed regulation will take effect upon approval by the South Carolina General Assembly and publication in the *State Register*. The proposed regulation will be implemented by providing the regulated community with copies of the regulation.

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

The proposed regulation is needed to expand opportunities for service members to receive an education benefit and to allow service members who cannot attend required training for several months due to the unavailability of an open training slot an exception to policy (ETP) for college assistance program benefits.

DETERMINATION OF COSTS AND BENEFITS:

Promulgation of this regulation will not result in additional costs to the state or its political subdivisions. Service members would be eligible to receive up to the \$18,000 maximum benefit not to exceed the 130 attempted credit hour maximum. This represents no change to the current maximum benefit and maximum credit hour requirement.

UNCERTAINTIES OF ESTIMATES:

None.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

Not applicable.

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

Not applicable.

Statement of Rationale:

R.62-251(G), R.62-251(H), R.62-252(C), R.62-252(D) are being amended to expand opportunities for service members to receive an education benefit. Expanding the SCNG CAP would address the needs of those service members with high school diplomas who have no desire to pursue a traditional two- or four-year post-secondary degree. The inclusion of less than one-year certificate programs as eligible programs of study would provide additional post-secondary education opportunities for service members. Also, the regulatory change will provide the opportunity for service members with bachelor’s degrees to obtain a certificate, certification or a second associate’s degree. Service members would be eligible to receive up to the \$18,000 maximum benefit not to exceed the 130 attempted credit hour maximum. This represents no change to the current maximum benefit and maximum credit hour requirement.

R.62-253(D) is being amended to allow an exception to policy (ETP) regarding required training for service member eligibility. Individuals joining the SC National Guard become eligible for SCNG CAP benefits upon completion of required training. However, an individual may graduate from Basic Combat Training/Basic Military Training and cannot attend Advanced Individual Training/Initial Active Duty Training for several months due to unavailability of an open training slot, thereby preventing the service member from receiving the SCNG CAP.

Text:

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

Document No. 4969
PUBLIC SERVICE COMMISSION
 CHAPTER 103
 Statutory Authority: 1976 Code Section 58-3-140

103-823.2. Protection of Customer Data. (New)

Preamble:

The Public Service Commission of South Carolina proposes to add a regulation which pertains to protection of jurisdictional public utility customer data. On November 27, 2019, the Office of Regulatory Staff (ORS) filed a Petition for Rulemaking with the Public Service Commission “for the purpose of promulgating a regulation to help prevent the potential for misleading advertisements by prohibiting the sale of customer data by regulated utilities absent a customer’s direct consent.” The Public Service Commission is proposing a new regulation which addresses the ORS’s Petition for Rulemaking. Interested persons may submit comments to the Public Service Commission, Clerk’s Office, 101 Executive Center Drive, Suite 100, Columbia, South Carolina 29210. Please reference Docket Number 2019-387-A. To be considered, comments must be received no later than 4:45 p.m. on Monday, August 3, 2020. The Notice of Drafting regarding this regulation was published on January 24, 2020, in the *State Register, Volume 44, Issue 1*.

Section-by-Section Discussion

103-823.2. This regulation, when it becomes effective, addresses the protection of jurisdictional public utilities’ customer data such as personal identifying information, customers’ names, account numbers, billing history, email addresses and telephone numbers, customer-specific usage or consumption information, and other information related to customers’ participation in regulated utilities’ programs.

66 PROPOSED REGULATIONS

Notice of Public Hearing and Opportunity for Public Comment:

Interested persons may submit written comments to the Public Service Commission, Clerk's Office, 101 Executive Center Drive, Suite 100, Columbia, South Carolina 29210. Please reference Docket Number 2019-387-A. To be considered, comments must be received no later than 4:45 p.m. on Monday, August 3, 2020. Interested members of the public and the regulated community are invited to make oral or written comments on the proposed regulation at a virtual public hearing to be conducted by the Public Service Commission on Wednesday, September 16, 2020, at 10:00 a.m.

Preliminary Fiscal Impact Statement:

The Commission anticipates utilizing its current resources to address administrative and legal issues in dockets related to the protection of jurisdictional public utilities' customer data. The Commission does not anticipate a fiscal impact to the Agency as a result of the implementation of Regulation 103-823.2.

Statement of Need and Reasonableness:

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

DESCRIPTION OF REGULATION: 103-823.2. Protection of Customer Data.

Purpose: In the ORS's Petition for Rulemaking, it stated that "the protection of the public interest requires that the Commission hold a rulemaking proceeding to determine appropriate parameters and standards regarding a utility's use of customer data." ORS further recommended in its Petition that "the regulations regarding a utility's ability to sell customers' data be examined. ORS recommend[ed] the Commission consider regulations to apply to all regulated utilities that help prevent the potential for misleading advertisements by prohibiting the sale of customer data by regulated utilities absent a customer's consent." After the ORS filed its Petition for Rulemaking "for the purpose of promulgating a regulation to help prevent the potential for misleading advertisements by prohibiting the sale of customer data by regulated utilities absent a customer's direct consent", the Commission issued Order Number 2019-877 on December 18, 2019. In Order Number 2019-877, the Commission approved the ORS's request to initiate a rulemaking, and the Commission opened a docket for this rulemaking. On December 20, 2019, the ORS filed its Proposed Regulation to Protect Customer Data with the Public Service Commission.

Legal Authority: S.C. Code Ann. Section 58-3-140.

Plan for Implementation: The proposed regulation will take effect upon approval by the General Assembly and publication in the *State Register*. Thereafter, the proposed regulation will provide a documented process to help prevent the dissemination of customer data absent a customer's consent.

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

In its November 27, 2019, Petition for Rulemaking, the Office of Regulatory Staff noted that "[o]n November 25, 2019, in a regularly scheduled Commission Business Meeting, Commissioner Ervin addressed an article filed in *The State* newspaper regarding the sale of customer information from one regulated utility to an outside third party, which then proceeded to use that information to attempt to sell insurance by way of mail marketing." ORS continued in its Petition to state that it would "show unto the Commission that the protection of the public interest requires that the Commission hold a rulemaking proceeding to determine appropriate parameters and standards regarding a utility's use of customer data." On December 18, 2019, in Order No. 2019-877, the Commission approved the Office of Regulatory Staff's request to initiate a rulemaking and open a docket for the rulemaking. The need for a regulation to protect customer data is justified to help prevent the potential for

“misleading advertisements” by prohibiting the sale of customer data by regulated public utilities absent a customer’s direct consent.

DETERMINATION OF COSTS AND BENEFITS:

The Commission opines that it can absorb the administrative costs related to processing and adjudicating issues relevant to the protection of customer data. The benefits of the promulgation of this regulation include, in part, documented guidelines to protect customer data and documented guidelines that state when the disclosure of customer data is allowed.

UNCERTAINTIES OF ESTIMATES:

None.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

None.

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

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

Statement of Rationale:

Currently, no regulation exists which governs the protection of customer data in the custody of public utilities. To protect the public interest, a regulation should be promulgated which outlines the appropriate parameters and standards regarding a public utility’s use of customer data. There was no scientific or technical basis relied upon in the development of this regulation.

Text:

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

68 EMERGENCY REGULATIONS

Filed: May 18, 2020 10:53am

Document No. 4966
COMMISSION ON HIGHER EDUCATION
CHAPTER 62
Statutory Authority: 1976 Code Section 59-149-10

62-1200.1 - 62-1200.75. Legislative Incentives for Future Excellence (LIFE) Scholarship Program and Legislative Incentives for Future Excellence (LIFE) Scholarship Enhancement.

Emergency Situation:

During Spring 2020 the United States experienced the beginning of the COVID-19 pandemic. Because of this pandemic, South Carolina, along with the rest of the nation, saw cancellations of various educational testing opportunities for students. This included the cancellation of standardized tests such as the SAT and ACT examinations. In addition, many students will need to sit out the upcoming Fall 2020 academic semester for various COVID-19 related reasons. This emergency regulation seeks to assist affected high school students by providing them with an opportunity to take the ACT test examination through the July 2020, and to use the earned scores to meet the qualifications for state scholarships. In addition, the emergency regulation also provides students with the opportunity to take a break in enrollment during the Fall 2020 academic term and still maintain their remaining terms of LIFE Scholarship and LIFE Scholarship Enhancement eligibility.

Text:

Table of Contents:

- 62-1200.1. Purpose of the LIFE Scholarship Program
- 62-1200.5. Program Definitions
- 62-1200.10. Student Eligibility: LIFE Scholarship and LIFE Scholarship Enhancement
- 62-1200.15. Continued Eligibility: LIFE Scholarship and LIFE Scholarship Enhancement
- 62-1200.20. Terms of Eligibility: LIFE Scholarship and LIFE Scholarship Enhancement
- 62-1200.25. Regaining or Earning Eligibility: LIFE Scholarship and LIFE Scholarship Enhancement
- 62-1200.30. Transfer Students: LIFE Scholarship and LIFE Scholarship Enhancement
- 62-1200.35. Students with Disabilities: LIFE Scholarship and LIFE Scholarship Enhancement
- 62-1200.40. Enrollment in Internships, Cooperative Work Programs, Travel Study Programs, and National and International Student Exchange Programs: LIFE Scholarship and LIFE Scholarship Enhancement
- 62-1200.45. Military Mobilization: LIFE Scholarship and LIFE Scholarship Enhancement
- 62-1200.50. Refunds and Repayments: LIFE Scholarship and LIFE Scholarship Enhancement
- 62-1200.55. Appeals Procedures: LIFE Scholarship and LIFE Scholarship Enhancement
- 62-1200.60. Institutional Policies and Procedures for Awarding: LIFE Scholarship and LIFE Scholarship Enhancement
- 62-1200.65. Institutional Disbursements: LIFE Scholarship and LIFE Scholarship Enhancement
- 62-1200.70. Program Administration and Audits: LIFE Scholarship and LIFE Scholarship Enhancement
- 62-1200.75. Suspension and Termination of Institutional Participation: LIFE Scholarship and LIFE Scholarship Enhancement

62-1200.1. Purpose of the LIFE Scholarship Program.

Pursuant to Act 418, which was initially established in 1998 as Title 59 of the 1976 code and amended by Act 162 during the 2005 legislative session, the Commission on Higher Education shall promulgate regulation and establish procedures for administration of the LIFE Scholarship Program. The General Assembly established the LIFE Scholarship Program in order to increase the access to higher education, improve the employability of South Carolina's students so as to attract business to the State, provide incentives for students to be better prepared for college, and to encourage students to graduate from college on time.

With Act 115, which was established in 2007 as Title 59 of the 1976 code during the 2007 legislative session, the General Assembly established the LIFE Scholarship Enhancement in order to increase the number of students in the State majoring in mathematics and science and to increase the access to higher education, improve the employability of South Carolina's students so as to attract business to the State, provide incentives for students to be better prepared for college, and to encourage students to graduate from college on time. Students enrolled at two-year institutions are not eligible to receive a LIFE Scholarship Enhancement. In order to receive a LIFE Scholarship Enhancement, all students must qualify for the LIFE Scholarship as stipulated herein.

Independent and public institutions of higher learning in this, or any other state in the U.S., outside the U.S. or abroad, are prohibited from using the Legislative Incentive for Future Excellence or "LIFE" Scholarship in programs that promote financial aid incentives or packages. Any mention of the Legislative Incentive for Future Excellence or "LIFE" Scholarship in these financial aid packages must indicate the scholarship to be separate from the University that is offering the financial aid package, and reference the Legislative Incentive for Future Excellence or "LIFE" Scholarship as a separate financial aid award, provided to the student by the State of South Carolina.

All eligible independent and public institutions that participate in the program must verify the lawful presence of any student who receives a LIFE Scholarship and LIFE Scholarship Enhancement prior to awarding the Scholarship to the student. When verifying the lawful presence of an individual, institutional personnel shall not attempt to independently verify the immigration status of any alien, but shall verify any alien's immigration status with the federal government pursuant to 8 USC Section 1373(c).

For the Fall 2020 term, students may take a break in enrollment. Students who break enrollment for the Fall 2020 term may not attempt college coursework or earn college credit during this term. Students who are eligible to receive the LIFE Scholarship for the 2020-21 academic year, but who break enrollment for the Fall 2020 term may receive the maximum award amount allotted for a semester upon return to school in the Spring 2021 term. Students who take a break in enrollment during Fall 2020 will be expected to meet all scholarship requirements, including credit hour requirements, to be eligible for the award in 2021-22.

62-1200.5. Program Definitions.

A. "Academic year" is defined as the twelve month period during which a full-time student is expected to earn thirty credit hours. The period of time used to measure the academic year will consist of the fall, spring and summer terms (or its equivalent).

B. A student who has earned a GED diploma or SC High School Diploma through Adult Education without a cumulative GPA may be eligible to earn the LIFE Scholarship at the end of the first academic year of a non-GED program. The student must meet the annual credit hour requirement (or equivalent) and a 3.0 "LIFE GPA" at the end of the first academic year. To qualify for subsequent years, the student must meet all eligibility requirements as stated in Section 62-1200.15., Continued Eligibility section of the LIFE Scholarship and LIFE Scholarship Enhancement.

C. An "approved five-year bachelor's degree program" shall mean a five-year bachelor's program as defined and approved by the Commission on Higher Education to receive the LIFE Scholarship for a maximum of ten terms at the same eligible institution in order to complete the requirements for a bachelor's degree. An approved

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five-year bachelor's degree program does not include inter-institutional and cooperative "3+2" programs (normally in a science degree field and an engineering program).

D. "Annual credit hour requirement" shall be defined as an average of thirty (30) credit hours earned at the end of the academic year based on initial college enrollment at all eligible institutions attended, excluding hours for remedial, continuing education, and non-degree coursework. Credit hours earned before high school graduation, including Advanced Placement (AP) credit hours, International Baccalaureate (IB) credit hours, exempted credit hours as well as credit hours earned on active duty, must be placed on the student's official college transcript by the institution at which they are earned, and must be counted toward the annual credit hour requirement.

E. "Associate's degree program" is defined as a two-year technical or occupational program, or at least a two-year program that is acceptable for full credit towards a bachelor's degree as defined by the U.S. Department of Education.

F. "Attempted credit hours" shall be defined as courses in which a student earns a grade and is included in the grade point calculation for that institution. Eligible credit hours that do not transfer must also be included. Credit hours earned through dual-enrollment prior to high school graduation must be included in the LIFE GPA. Exempted credit hours, Advanced Placement (AP), International Baccalaureate (IB), College Level Examination Program (CLEP), remedial/developmental courses, non-degree credit courses for an associate's degree or higher, Pass/Fail, Satisfactory/Unsatisfactory and non-penalty withdrawal credit hours are excluded from the "attempted credit hours." If a student transfers, refer to the institution's grading policy where the credit hours were earned. Any credit hours attempted or earned before high school graduation, hours exempted by examination, Advanced Placement (AP) or International Baccalaureate (IB) credit hours do not count against the terms of eligibility.

G. "Bachelor's degree program" is defined as an undergraduate program of study leading to a bachelor's degree as defined by the U.S. Department of Education.

H. "Book allowance" shall mean funds that may be applied to the student's account for expenses towards the cost-of-attendance including the cost of textbooks.

I. "CIP Code (Classification of Instructional Program)" The U.S. Department of Education's standard for federal surveys and state reporting for institutional data (majors, minors, options and courses). For the purpose of receiving the LIFE Scholarship Enhancement, CIP codes have been approved by the Commission on Higher Education for eligible degree programs in the fields of mathematics and science.

J. "Cost-of-attendance" as defined by Title IV Regulations and may include tuition, fees, living expenses, and other expenses such as costs related to disability or dependent care.

K. "Cost-of-tuition" shall mean the amount charged for enrolling in credit hours of instruction and mandatory fees assessed to all students. Other fees, charges, or cost of textbooks cannot be included.

L. "Declared major" shall be defined, for the purposes of the LIFE Scholarship Enhancement, as a degree program in which a student is enrolled as a full-time, degree-seeking student. The student must meet all requirements as stipulated by the policies established by the institution and the academic department to be enrolled as a declared major in an eligible program. Students cannot take courses related to a specific program without meeting institutional and departmental policies and be considered as a declared major. Students must be enrolled as a declared major in an eligible program that is approved and assigned a CIP code by the Commission. Eligible programs are those listed as such on the Commission's website.

M. "Degree-seeking student" is defined as any full-time student enrolled in an eligible institution which leads to the first one-year certificate, first two-year program or associate's degree, or first bachelor's or program of study that is structured so as not to require a bachelor's degree for acceptance into the program and leads to a

graduate degree. Upon completion of the first one-year certificate, first two-year program or associate's degree, or first bachelor's or program of study that is structured so as not to require a bachelor's degree for acceptance into the program and leads to a graduate degree, the student cannot use scholarship funds to pursue a program in the same or preceding level. Students are eligible to receive the Scholarship for a maximum of eight terms (or its equivalent) towards an undergraduate degree, as long as all other eligibility requirements are met and the program is approved by the Commission on Higher Education. Students must be enrolled in an undergraduate degree program in order to receive a LIFE Scholarship and a LIFE Scholarship Enhancement each academic term. In cases where students are enrolled in a program of study that is structured so as not to require a bachelor's degree for acceptance into the program and leads to a graduate degree, which will be the students' first academic degree awarded, the students must maintain their undergraduate status to be awarded the LIFE Scholarship and the LIFE Scholarship Enhancement, with the exception of students declaring a major in the Doctor of Pharmacy Program at South University, the Doctor of Pharmacy Program at Presbyterian College, the Master's of Science in Physician Assistant Studies Program, the Master's of Science in Cytology and Biosciences Program and the Doctor of Pharmacy Program at the University of South Carolina-Columbia and the Medical University of South Carolina. Students who have been awarded a bachelor's degree or graduate degree are not eligible to be awarded a LIFE Scholarship or a LIFE Scholarship Enhancement. Students enrolled in a CHE approved five-year bachelor's degree program may be eligible to receive a LIFE Scholarship for a fifth year of full-time, undergraduate work and a LIFE Scholarship Enhancement for a fourth year of full-time undergraduate coursework.

N. "Eligible institution" shall be defined, solely for the purposes of the annual credit hour requirement and the LIFE GPA calculation, as an accredited public or independent postsecondary, degree-granting institution located in-state or out-of-state. The institution must be accredited by an agency recognized by the U.S. Department of Education for participation in federally funded financial aid programs. This list may be found on the US Department of Education's website.

O. "Eligible program of study" is defined as a program of study leading to: 1) at least a one-year educational program that leads to a first certificate or other recognized educational credential (e.g., diploma); 2) the first associate's degree; 3) at least a two-year program that is acceptable for full credit towards a bachelor's degree; 4) the first bachelor's degree; or 5) a program of study that is structured so as not to require a bachelor's degree for acceptance into the program and leads to a graduate degree. Students are eligible to receive the LIFE Scholarship for a maximum of eight terms (or its equivalent) towards an undergraduate degree as long as all eligibility requirements are met and the program is approved by the Commission on Higher Education. Students who have been awarded a bachelor's or graduate degree are not eligible for Scholarship or Enhancement funding. Students enrolled in an approved five-year degree program may be eligible to receive a LIFE Scholarship for a fifth year of full-time, undergraduate work and a LIFE Scholarship Enhancement for a fourth year of full-time undergraduate coursework.

P. "Eligible degree program/Qualifying degree program" shall be defined, for the purposes of the LIFE Scholarship Enhancement, as a degree program in mathematics or science as approved by the SC Commission on Higher Education. These programs shall include science and mathematics disciplines, computer science or informational technology, engineering, science education, math education and health care and related disciplines including medicine and dentistry as defined by the Commission on Higher Education. Enrollment in a minor does not meet the requirement of an eligible degree program for a LIFE Scholarship Enhancement. Students must be enrolled as a declared major in an eligible program that is approved and assigned a CIP code by the Commission. Eligible programs must be approved by the South Carolina Commission on Higher Education. Eligible/Qualifying programs are those listed as such on the Commission's website.

Q. "Felonies" shall be defined as a crimes classified under State statute (16-1-10) and typically require imprisonment for more than one year.

R. "Fifth year/senior year" shall mean any student who is enrolled in his or her ninth or tenth semester of full-time, undergraduate coursework in an approved five-year program following high school graduation. The

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student is in his/her fifth year of ~~consecutive~~, full-time college enrollment based on the student's initial date of college enrollment after graduation from high school.

S. "First year student/Freshman" is defined as any student who is enrolled as a first year student in his or her first or second semester of undergraduate coursework following high school graduation.

T. "Fourth year/senior year" shall mean seventh or eighth semester of full-time, undergraduate coursework following high school graduation. The student is in his/her fourth year of ~~consecutive~~, full-time college enrollment based on the student's initial date of college enrollment after graduation from high school.

U. "Full-time student" shall mean a student who has matriculated into an eligible program of study and who enrolls full-time, usually fifteen credit hours for fall and spring terms or twelve credit hours for fall, eight credit hours for winter, and twelve credit hours for spring trimester terms. The student must earn an average of thirty credit hours per academic year to receive a LIFE Scholarship. In order for the student to be eligible for Scholarship disbursement, the student must be enrolled full-time at the home institution as stipulated by Title IV Regulations, except that credit hours may not include remedial/developmental, continuing education, and non-degree credit courses for an associate's degree or higher.

V. "General Educational Development (GED) Diploma" is defined as a GED high school diploma that was completed in South Carolina or outside of the state while the student was a dependent of a legal resident of South Carolina who had custody or paid child support and college expenses of the dependent GED diploma student. A student who earns a GED diploma cannot receive a LIFE Scholarship during his/her initial year (or equivalent) of college enrollment but may earn the scholarship in subsequent years.

W. "High school" is defined as a high school located in South Carolina, an approved home school program as defined in the State Statute, (Sections 59-65-40, 45, and 47) or a preparatory high school located outside of the state while the student is a dependent of a legal resident of South Carolina who has custody or pays child support and college expenses of the dependent high school student in accordance with State Statute 59-112-10. A "preparatory high school" (out-of-state) is defined as a school recognized by the state in which the school is located to offer curricula through the twelfth grade and prepares students for college entrance.

X. "Home institution" shall mean the institution where the student is currently enrolled as a degree-seeking student and may be eligible for financial aid at the same institution.

Y. "Independent institutions/private institutions" are those institutions eligible to participate in the South Carolina Tuition Grants Program as defined in Chapter 113 of Title 59 of the 1976 Code, which stipulates that an "independent institution of higher learning means any independent eleemosynary junior or senior college in South Carolina which is accredited by the Southern Association of Colleges and Schools; or an independent bachelor's level institution chartered before 1962 whose major campus and headquarters are located within South Carolina; or an independent bachelor's level institution which was incorporated in its original charter in 1962, was granted a license to operate in 1997 by the Commission on Higher Education, has continued to maintain a campus in South Carolina, and is accredited by the Southern Association of Colleges and Schools. Institutions whose sole purpose is religious or theological training or the granting of professional degrees do not meet the definition of 'public or independent institution' for purposes of this chapter."

Z. "Ineligible degree program" shall be defined, for the purposes of the LIFE Scholarship Enhancement, as a degree program that is not included on the Commission's posted list of approved eligible programs and assigned a CIP code.

AA. "Initial college enrollment" shall mean the first time the student enrolls into a postsecondary degree-granting institution after high school graduation, completion of a GED/Adult Education Program or completion of an approved home school program. The terms of eligibility and the annual credit hour requirement are based upon initial college enrollment ~~and continuous enrollment~~ with the exception of students who wish to break

enrollment for the Fall 2020 term, only. This means that students must adhere to the 30 credit hour requirement even if they have a break in enrollment. Any break in enrollment (excluding summer) will also count against the terms of eligibility, with the exception of students who wish to break enrollment for the Fall 2020 term, only. Students who break enrollment for the Fall 2020 term may not attempt college coursework or earn college credit during this term. Students who are eligible to receive the LIFE Scholarship for the 2020-21 academic year, but who break enrollment for the Fall 2020 term may receive the maximum award amount allotted for a semester upon return to school in the Spring 2021 term. Students who take a break in enrollment during Fall 2020 will be expected to meet all scholarship requirements, including credit hour requirements, to be eligible for the award in 2021-22.

BB. “LIFE GPA” shall be defined as the cumulative grade point average calculation that includes credit hours and grades earned at all eligible institutions based on a 4.0 scale. The LIFE grade point average must not include attempted credit hours earned for continuing education courses, non-degree credit courses for an associate’s degree or higher and remedial/developmental courses. See Section 62-900.55 for the steps to calculate the “LIFE GPA.”

CC. “LIFE Scholarship recipient” is defined as a student who meets all of the eligibility requirements to receive a LIFE Scholarship and is awarded LIFE Scholarship funds during a given academic year. Students who meet the eligibility requirements for a LIFE Scholarship but do not receive any LIFE Scholarship funds, due to the cost of attendance being met by other sources of financial aid, do not meet the definition of a LIFE Scholarship recipient.

DD. “Military mobilization” is defined as a situation in which the U.S. Department of Defense orders members of the United States Armed Forces to active duty away from their normal duty assignment during a time of war or national emergency.

EE. “Misdemeanor offenses” shall be defined as a crimes classified under State statute (16-1-100) which are typically punishable by fine or imprisonment for less than one year. A complete listing is located in title 16 of State statute. Examples of alcohol and drug misdemeanors in South Carolina include but are not limited to possession of alcohol under the age of 21, possession of marijuana/illegal drugs, open-container, transfer of alcohol to person under 21, false information as to age (fake ID), etc.

FF. “Non-degree credit courses” shall be defined as courses that count towards graduation in a certificate or diploma program only. Non-degree credit courses must not be used in the “LIFE GPA” calculation or towards the annual credit hour requirement for an associate’s degree or higher.

GG. A “one-year educational program” is defined as an undergraduate program of study leading to recognized credentials (e.g., certificates or diplomas), as defined by the U.S. Department of Education for participation in federally funded financial aid programs and which prepares students for gainful employment in recognized occupations.

HH. “Private institutions” are those institutions eligible to participate in the South Carolina Tuition Grants Program as defined in Chapter 113 of Title 59 of the 1976 Code, which stipulates that an “independent institution of higher learning means any independent eleemosynary junior or senior college in South Carolina which is accredited by the Southern Association of Colleges and Schools; or an independent bachelor’s level institution chartered before 1962 whose major campus and headquarters are located within South Carolina; or an independent bachelor’s level institution which was incorporated in its original charter in 1962, was granted a license to operate in 1997 by the Commission on Higher Education, has continued to maintain a campus in South Carolina, and is accredited by the Southern Association of Colleges and Schools. Institutions whose sole purpose is religious or theological training or the granting of professional degrees do not meet the definition of ‘public or independent institution’ for purposes of this chapter.”

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II. “Program of study that is structured so as not to require a bachelor’s degree for acceptance into the program and leads to a graduate degree”, which will be the student’s first academic degree awarded. Students are eligible to receive the LIFE Scholarship for a maximum of eight terms (or its equivalent) and the LIFE Scholarship Enhancement for a maximum of six terms (or its equivalent) as long as all other eligibility requirements are met and the program is approved by the Commission on Higher Education. Students who have been awarded a bachelor’s or graduate degree are not eligible for Scholarship funding. Students must maintain their undergraduate status in order to receive a LIFE Scholarship and a LIFE Scholarship Enhancement each academic term, with the exception of students declaring a major in the Doctor of Pharmacy Program at South University, the Doctor of Pharmacy Program at Presbyterian College, the Master’s of Science in Physician Assistant Studies Program, the Master’s of Science in Cytology and Biosciences Program and the Doctor of Pharmacy Program at the University of South Carolina-Columbia and the Medical University of South Carolina.

JJ. “Public institutions” are institutions of higher learning as defined in Chapter 103 of Title 59 of the 1976 Code, which stipulates “public higher education shall mean any state supported postsecondary educational institution and shall include technical and comprehensive educational institutions.”

KK. “Remedial/developmental coursework” shall mean sub-collegiate level preparatory courses in English, mathematics, reading and any courses classified as remedial by the institution where the course is taken.

LL. “Satisfactory academic progress” shall be defined as the academic progress in the declared major as required by the institution and academic department in which the student is enrolled as a full-time, degree-seeking student. The student must meet all requirements for satisfactory academic progress towards completion of the declared major as established by the policies of both the institution and academic department in which the student is enrolled to meet the requirements of satisfactory academic progress.

MM. “Second year/sophomore year” shall mean any student who is enrolled in his or her third or fourth semester of full-time, undergraduate coursework following high school graduation. The student is in his/her second year of ~~consecutive~~, full-time college enrollment based on the student’s initial date of college enrollment after graduation from high school.

NN. “South Carolina resident” shall be defined as an individual who satisfies the requirements of residency in accordance with the State of South Carolina State Statute for Tuition and Fees, Section 59-112-10 and all related guidelines and regulations promulgated by the Commission on Higher Education as established by the institutional residency officer each academic year.

OO. “Third year/junior year” shall mean the fifth or sixth semester of full-time, undergraduate coursework following high school graduation. The student is enrolled in his/her third year of ~~consecutive~~, full-time enrollment based on the student’s initial date of college enrollment after graduation from high school.

PP. “3 plus 2 programs” is defined, for the purposes of the LIFE Scholarship Enhancement, as a program (typically an engineering major) in which a student completes three years of a baccalaureate program at one institution, at which time the student transfers to a second institution and completes the remaining two years of an undergraduate degree program. When the student completes the fourth year of enrollment, credit hours are transferred back to the initial institution, which confers the first baccalaureate degree (e.g., physics) using articulated credits from the second institution. At the end of the second year of enrollment at the second institution, the student receives the second baccalaureate degree (e.g., engineering). 3 plus 2 programs for the purposes of receiving the LIFE Scholarship Enhancement shall be defined and approved by the SC Commission on Higher Education. Students must be enrolled as a declared major in an eligible program that is approved and assigned a CIP code by the Commission. Enrollment in a minor does not meet the requirement of an eligible degree program for a LIFE Scholarship Enhancement award.

QQ. “Transfer student” shall be defined as a student who has changed enrollment from one institution to a SC public or independent institution.

RR. "Substantially deviates" shall be defined, for the purposes of reviewing out-of-state preparatory high school grading scales, as being less than equivalent to the 2007 Uniform Grading Policy.

SS. "Preparatory high school" (out-of-state) is defined as a school recognized by the state in which the school is located to offer curricula through the twelfth grade and prepares students for college entrance.

TT. "Lawful Presence" is defined as individuals who are US citizens, permanent residents, or non-US citizens and non-permanent residents who are legally present in the US. When verifying the lawful presence of an individual, institutional personnel shall not attempt to independently verify the immigration status of any alien, but shall verify any alien's immigration status with the federal government pursuant to 8 USC Section 1373(c).

UU. "Continuously enrolled" is defined as enrollment without an interruption that would require the student to pursue a formal process of readmission to that institution. Formal petitions or applications for change of degree level shall be considered readmissions. Students who attend summer terms or are selected for military mobilization are considered continuously enrolled. Students who are enrolled in internships, cooperative work programs, travel study programs, or National or International Exchange Programs that are approved by the home institution are considered continuously enrolled. For the Fall 2020 term, students will not be required to maintain continuous enrollment. Students who break enrollment for the Fall 2020 term may not attempt college coursework or earn college credit during this term. Students who are eligible to receive the LIFE Scholarship for the 2020-21 academic year, but who break enrollment for the Fall 2020 term may receive the maximum award amount allotted for a semester upon return to school in the Spring 2021 term. Students who take a break in enrollment during Fall 2020 will be expected to meet all scholarship requirements, including credit hour requirements, to be eligible for the award in 2021-22.

62-1200.10. Student Eligibility: LIFE Scholarship and LIFE Scholarship Enhancement.

A. To be eligible for a LIFE Scholarship, students must:

1. Be a U.S. citizen or a legal permanent resident that meets the definition of an eligible non-citizen under State Residency Statutes whose lawful presence has been verified at the time of enrollment at the institution; and

2. Be a South Carolina resident for in-state purposes at the time of high school graduation and at the time of enrollment at the institution, as set forth by Section 59-112-10, and be either a member of a class graduating from a high school located in this State, or a student who has successfully completed at least three of the final four years of high school within this State, or a home school student who has successfully completed a high school home school program in this State in the manner required by law, or a student graduating from a preparatory high school outside this State, while a dependent of a parent or guardian who is a legal resident of this State and has custody of the dependent according to State Statute, Section 59-149-50A or a student whose parent or guardian has served in or has retired from one of the United States Armed Forces within the last four years, paid income taxes in this State for a majority of the years of service, and is a resident of this State. A student must be a legal permanent resident of the United States before being considered to be a South Carolina resident;

3. Meet two of the following three criteria if a first-time entering freshman at an eligible four-year institution:

a. Earn a cumulative 3.0 grade point average (GPA) based on the Uniform Grading Policy (UGP) upon high school graduation. No other grading policy will be allowed to qualify for the LIFE Scholarship. Grade point averages must be reported to two decimal places (minimum) and may not be rounded. For example, a student who earns a 2.99 GPA is not eligible. Institutions shall use the final GPA as reported on the official transcript.

b. Score at least an 1100 on the Scholastic Assessment Test (SAT) or an equivalent ACT score of 24.

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Test scores will be accepted through the ~~June~~ July national test administration of the SAT and ACT during the year of high school graduation. The student must use the highest SAT Math score combined with the highest SAT Critical Reading score (formerly known as the Verbal score). It is permissible to select scores from different test administrations in order to obtain the qualifying composite score. Students cannot use the Writing subsection score to obtain the qualifying composite score. The composite ACT score must be based upon one test administration.

c. Rank in the top thirty percent of the graduating class consisting of high school diploma candidates only. The rank must also be based on the UGP only. Ranking percentages must be reported to two decimal places (minimum) and may not be rounded. For example, a student who has a class rank of 13 of 43 ($13/43 \times 100 = 30.23\%$) will not rank in the top thirty percent of the class since 30.23% is not within thirty percent. To determine the top thirty percent for graduating classes with three or less students, the student who is ranked number one in the class would be considered in the top thirty percent for LIFE Scholarship eligibility. Institutions shall use the final ranking as reported by the high school on the official transcript. If a student is a member of an approved home school association that ranks, a ranking report must be attached to the official transcript. High schools or home school associations that do not rank as a policy; or high schools whose grading policy deviates from the current SC Uniform Grading Policy and that do not convert the graduating class to the current SC UGP to determine class rank, must use the GPA and SAT or ACT criteria when attempting to meet the academic requirements for the LIFE Scholarship. High schools or home school associations shall not use ranking for the sole purpose of obtaining eligibility for the state scholarships.

d. For the purposes of meeting the rank criterion, the existing high school rank of a South Carolina resident attending an out-of-state high school may be used provided it is calculated pursuant to a state-approved, standardized grading scale at the respective out-of-state high school. If the eligible South Carolina institution determines that a state-approved standardized grading scale substantially deviates from the S.C. Uniform Grading Policy (UGP), the institution must submit the grading scale to CHE for further review. If CHE confirms the out-of-state grading scale substantially deviates from the S.C. UGP, the state-approved, standardized grading scale shall not be used to meet the eligibility requirements for the LIFE Scholarship. When converting scores to the SC UGP, weighting must adhere to the SC UGP (i.e. honors no more than .50 and AP/IB no more than 1.0). In addition, scores/grades must correspond to the SC UGP. For example, if a student earned a 90 in an honors class, the conversion of the score/grade must be equivalent to the points assigned according to the current SC UGP. The guidance counselor from the out-of-state preparatory school also has the option of converting the cumulative GPAs of all students in the applicant's class to the S.C. UGP to determine if the student ranks within the top thirty percent of the class. To be considered equivalent to the SC UGP, the out-of-state school's grading scale must adhere to the following minimum requirements:

(1) Must include all courses carrying Carnegie units, including units earned at the middle school and high school level;

(2) To be equivalent to an "A" letter grade, the numerical average must be ≥ 93 ; to be equivalent to a "B" letter grade the numerical average must be between 85 and 92; to be equivalent to a "C" letter grade the numerical average must be between 77 and 84; to be equivalent to a "D" letter grade the numerical average must be between 70 and 76; and to be equivalent to a "F" letter grade the numerical average must be between 62 and 69 (if a course with a numerical average of < 62 is considered passing by the high school the student earned the grade, then a 73 numerical average should be given);

(3) Cannot add more than one half (.50) additional quality point for honors courses; cannot add more than one additional quality point for dual enrollment (DE) courses, Advanced Placement (AP) courses, and standard level International Baccalaureate (IB) courses; and, cannot add more than two additional quality points for higher level IB courses;

(4) Must classify all other courses as College Preparatory if they are not already classified as honors, DE, AP or IB. For a class to be classified as honors, the course must be in English, mathematics, science or social studies or be the third/fourth level for all other content areas; and,

(5) If no numerical average is available, all letter grades must be converted to the equivalent numerical average based on the following: all "A" letter grades must be converted to a 96 numerical average, all "B" letter grades must be converted to a 88 numerical average, all "C" letter grades must be converted to a 80 numerical average, all "D" letter grades must be converted to a 73 numerical average, and all "F" numerical averages must be converted a 61 numerical average.

4. Earn a cumulative 3.0 grade point average (GPA) on the Uniform Grading Policy upon high school graduation and score at least an 1100 on the Scholastic Assessment Test (SAT I) or an equivalent ACT score of 24 if a first-time entering freshman graduates from a non-ranking South Carolina high school, non-ranking South Carolina approved home school association or out-of-state preparatory high school and attends an eligible four-year institution;

5. Earn a cumulative 3.0 grade point average (GPA) upon high school graduation on the Uniform Grading Policy if a first-time entering freshman at an eligible two-year or technical institution. No other grading policy will be allowed to qualify for the LIFE Scholarship. Grade point ratios must be reported to two decimal places (minimum) and may not be rounded. For example, a student who earns a 2.99 GPA is not eligible. Institutions shall use the final GPA as reported by the high school on the official transcript;

6. Be admitted, enrolled full-time, and classified as a degree-seeking student at a public or independent institution in South Carolina;

7. Certify that he/she has never been adjudicated delinquent, convicted, or pled guilty or *nolo contendere* to any felonies or any second or subsequent alcohol/drug related offenses under the laws of this or any other state or under the laws of the United States in order to be eligible for a LIFE Scholarship, except that a high school or college student otherwise qualified who has been adjudicated delinquent or has been convicted or pled guilty or *nolo contendere* to a second or subsequent alcohol or drug-related misdemeanor offense nevertheless shall be eligible or continue to be eligible for such scholarships after the expiration of one academic year from the date of the adjudication, conviction, or plea by submitting an affidavit each academic year to the institution. However, a high school or college student who has been adjudicated delinquent, convicted, or pled guilty or *nolo contendere* to a second alcohol/drug related misdemeanor offense is ineligible for the next academic year of enrollment at an eligible institution after the date of the adjudication, conviction or plea. If the adjudication, conviction, or plea occurs during the academic year after the student has already submitted a signed affidavit to the institution, the student will be eligible to receive the Scholarship the remainder of the academic year. However, the student will be ineligible for the Scholarship the following entire academic year of enrollment. If a student completes a pretrial intervention program and has his/her record expunged the conviction will not affect Scholarship eligibility; and

8. Certify that he/she has not defaulted and does not owe a refund or repayment on any federal or state financial aid. If a student has an Institutional Student Information Record (ISIR) or its equivalent on file, the ISIR information will be used to verify default status or refund/repayment owed on any Federal or State financial aid. Students who have not completed a Free Application for Federal Student Aid (FAFSA) must have an affidavit on file to verify that he/she is not in default and does not owe a refund or repayment on any Federal or State financial aid including, state grants/scholarships, Federal Pell Grant, Supplemental Educational Opportunity Grant, Perkins Loan and Federal Stafford Loan.

B. Any credit hours attempted or earned before high school graduation, hours exempted by examination, International Baccalaureate (IB) or Advanced Placement (AP) credit hours do not count against the terms of eligibility as provided in State Statute, Section 59-149-60. The credit hours earned before high school graduation

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can be used toward the credit hour requirement. Credit hours earned through CLEP, IB or AP will be used toward the credit hour requirement.

C. Service members of the United States Armed Forces will not be penalized for any credit hours earned while on active duty. The credit hours earned on active duty will not count against the terms of eligibility, but will be used towards the annual credit hour requirement.

D. First-time entering freshmen will not be penalized for any credit hours earned during the summer session immediately prior to the student's initial college enrollment. The credit hours earned will not count against the terms of eligibility. The credit hours may be used toward the annual credit hour requirement.

E. Students who complete their high school graduation requirements prior to the official graduation date reported on the final high school transcript may be eligible to receive the LIFE Scholarship dependent on the approval of the Commission on Higher Education (CHE). The student must complete and submit an Early Graduation Application, an official high school transcript, an official letter from the high school principal verifying that he/she has met all graduation requirements, and SAT/ACT scores (if attending a four-year institution) by the established deadline. Early graduates cannot use class rank in order to qualify for the LIFE Scholarship at four-year institutions for the spring semester since the class has not officially graduated. A student may use class rank to receive the Scholarship after the class officially graduates. Early graduates who enroll mid-year (spring term) and are awarded the LIFE Scholarship through the Early Graduation process will officially begin their initial college enrollment. In order to receive the LIFE Scholarship the next academic year, the student must earn a minimum of fifteen credit hours and a 3.0 "LIFE GPA" at the end of the academic year. The student will be eligible to receive the maximum number of terms of eligibility based on initial college enrollment. If a student does not submit an early graduation application for the spring term and has not officially graduated, the student should not have received the LIFE Scholarship and that term will not count against his/her terms of Scholarship eligibility.

F. First-time entering freshmen who enroll mid-year (spring semester) are eligible for the LIFE Scholarship if they qualified upon high school graduation.

G. LIFE Scholarship funds may not be applied to the cost of continuing education, remedial/developmental or non-degree credit courses for an associate's degree or higher. Twelve credit hours of the courseload must be non-remedial/developmental, non-continuing education or degree-credit courses for an associate's degree or higher in order to receive LIFE Scholarship funds. Continuing education, non-degree credit for an associate's degree or higher and remedial/developmental courses will not be included in the "LIFE GPA" or credit hour calculations.

H. Non-degree credit hours shall be used to meet the full-time eligibility criteria for a diploma or certificate program only. Students must sign an affidavit certifying that they understand that non-degree credit hours will not be used in calculating the "LIFE GPA" or credit hour requirements if they are enrolled in an Associate's degree or higher.

I. Credit hours earned during the student's first two term(s) of remedial/developmental enrollment will not be used to determine remaining Scholarship eligibility at the completion of remediation unless the student has completed at least twelve credit hours of non-remedial/developmental coursework each term of enrollment. First-time entering freshmen attending an eligible two-year institution or technical college who enroll in fewer than twelve credit hours of non-remedial/developmental, including at least three hours of remedial/developmental courses during the first term(s) will not be eligible for Scholarship funds during this period. The student's initial college enrollment will begin after a maximum of two terms of remediation at an eligible two-year or technical college only. The student will be eligible for the Scholarship for the term following completion of remediation if the student was eligible to receive the LIFE Scholarship upon high school graduation. If the student requires more than one academic year of remedial/developmental coursework, then he/she will not be eligible for the LIFE Scholarship the term after completion of remediation. If the student was

not eligible for the Scholarship upon high school graduation, the student must meet the conditions set forth in Section J below in order to gain the LIFE Scholarship.

J. Students who do not meet the scholarship eligibility requirements upon high school graduation and enroll in remedial/developmental courses during a maximum of two terms at an eligible two-year institution or technical college, and who enroll in fewer than twelve credit hours of non-remedial/developmental courses, must meet the scholarship eligibility requirements (earn a 3.0 “LIFE GPA” and earn an average of thirty credit hours for the academic year) at the end of the first year of enrollment in non-remedial/developmental courses to be eligible to receive the scholarship for the second year of enrollment in non-remedial/developmental courses. Credit hours earned during the student’s first two term(s) of remedial/developmental enrollment will not be used to determine remaining Scholarship eligibility at the completion of remediation unless the student has completed at least twelve credit hours of non-remedial/developmental coursework each term of enrollment.

K. Students receiving a LIFE Scholarship are not eligible to receive a Palmetto Fellows Scholarship, SC HOPE Scholarship or Lottery Tuition Assistance in the same academic year.

L. Students who have already been awarded their first bachelor’s degree or graduate degree are not eligible to receive the LIFE Scholarship. In cases where students are enrolled in a program of study that is structured so as not to require a bachelor’s degree for acceptance into the program and leads to a graduate degree, which will be the students’ first academic degree awarded, the students must maintain their undergraduate status in order to receive a LIFE Scholarship and a LIFE Scholarship Enhancement each academic term, with the exception of students majoring in the Doctor of Pharmacy Program at South University, the Doctor of Pharmacy Program at Presbyterian College, the Master’s of Science in Physician Assistant Studies Program, Master’s of Science in Cytology and Biosciences Program and the Doctor of Pharmacy Program at the University of South Carolina-Columbia and the Medical University of South Carolina.

M. All documents required for determining LIFE Scholarship eligibility must be submitted to the institution by their established deadline(s). Students must submit official transcripts from all previous and current institutions, which provide evidence to calculate the “LIFE GPA,” determine initial college enrollment and earned annual credit hour requirement. Students that complete coursework at another institution at any time during the academic year (fall, spring, summer) must submit an official transcript to the home institution at the end of the academic year to determine eligibility for the LIFE Scholarship.

N. First-time entering freshmen who attended out-of-state preparatory high schools or graduated from a SC high school prior to the full implementation of the Uniform Grading Policy must have their high school transcript converted to the UGP in order to qualify for the LIFE Scholarship.

O. To be eligible for a LIFE Scholarship Enhancement each academic year, the student must:

1. Meet all of the eligibility requirements at the end of each academic year to receive a LIFE Scholarship as stipulated by state law and regulation and be a recipient of LIFE Scholarship funds at the time of LIFE Scholarship Enhancement disbursement. The student must receive the underlying LIFE Scholarship;

2. Be enrolled as a full-time, degree-seeking student in a declared major of science or mathematics in an eligible program that is approved and assigned a CIP code by the Commission on Higher Education at the time of disbursement of LIFE Scholarship Enhancement funds. Eligible programs include degrees awarded in math and science fields, computer science or informational technology, engineering, science education, math education and healthcare and related disciplines including medicine and dentistry. The student must meet all requirements for satisfactory academic progress towards completion of the declared major as established by the policies of both the institution and the academic department in which the student is enrolled;

3. Be enrolled at an eligible four-year public or independent institution located in South Carolina;

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4. Effective for the 2007-08 academic year only, all students who are enrolled at a four-year institution as a sophomore, junior or senior must meet the continued eligibility requirements of earning a minimum average of 30 credit hours and a minimum 3.0 LIFE GPA as stipulated by law and regulation for the LIFE Scholarship by the end of each academic year, be a recipient of LIFE Scholarship funds, and be enrolled as a full-time, degree-seeking student in a declared major of science or mathematics in an eligible program that is approved and assigned a CIP code by the Commission on Higher Education at the time of disbursement of LIFE Scholarship Enhancement funds. These students may continue to receive the LIFE Scholarship Enhancement for their remaining terms of eligibility for the LIFE Scholarship. To be awarded a LIFE Scholarship Enhancement each year, these students must meet all requirements for the LIFE Scholarship and be enrolled as a full-time, degree-seeking student in a declared major of science or mathematics in an eligible program that is approved and assigned a CIP code by the Commission on Higher Education at the time of disbursement of LIFE Scholarship Enhancement funds;

5. Beginning with the Fall 2007 freshman class and thereafter, all students must have successfully completed a total of at least fourteen credit hours of instruction in mathematics and life and physical science courses, in any combination, by the end of the student's first year of enrollment in college (based on initial date of college enrollment). For purposes of meeting the required minimum level of instruction in mathematics and life and physical science courses during a student's first year, Exempted Credit Hours placed on the student's official college transcript by the institution at which they were earned, College Level Examination Program (CLEP), Dual Enrollment, Pass/Fail courses with a grade of "Pass" (only), Satisfactory/Unsatisfactory courses with a grade of "Satisfactory" (only), International Baccalaureate (IB) courses and Advanced Placement (AP) courses in mathematics and life and physical sciences taken in high school in which the student scored a three or more on the advanced placement test and received college credit may count toward the fulfillment of this minimum requirement. The Commission will issue a list of eligible courses by CIP code for determining eligible coursework to meet the fourteen credit hour requirement. Remedial/developmental, continuing education, non-degree credit coursework and credit hours earned for courses taken after the end of the student's first year of college enrollment cannot be used to meet the specified minimum fourteen credit hour course level requirement to gain eligibility to receive the LIFE Scholarship Enhancement;

6. Meet the continued eligibility requirements for the LIFE Scholarship of a minimum 3.0 LIFE GPA and a minimum average of 30 credit hours by the end of each academic year;

7. Be in the second, third or fourth year of full-time enrollment (based on initial date of college enrollment after high school graduation) at an eligible four-year public or independent institution in South Carolina. Students enrolled full-time in an eligible, approved five-year degree program may also be eligible to receive a LIFE Scholarship Enhancement in their fifth year of college enrollment (based on initial date of college enrollment); and

8. Students who initially enroll in college mid-year (i.e., spring term) as a freshman and meet the requirements under Section 62-1200.10 may be eligible to receive a LIFE Scholarship Enhancement at the beginning of the spring term of the next academic year (i.e., beginning with the third ~~consecutive~~ term of full-time enrollment based on initial date of college enrollment). The student must earn a minimum average of 15 credit hours and a 3.0 LIFE GPA to be awarded a LIFE Scholarship the following academic year and a minimum average of 30 credit hours by the end of the first academic year (i.e., by the end of the fall term or second ~~consecutive~~ term of full-time enrollment based on initial date of college enrollment) of enrollment to receive a LIFE Scholarship Enhancement beginning the spring term of the second, third and/or fourth year of college enrollment.

P. The LIFE Scholarship and LIFE Scholarship Enhancement are to be annual awards. Half of the Scholarship and Enhancement funds are to be disbursed in the fall and half are to be disbursed in the spring. In the cases where students who initially enroll in college mid-year (i.e., spring term) as a freshman and meet the requirements under Sections 62-1200.10 (O) and 62-1200.15 (C), such student shall be awarded the LIFE Scholarship Enhancement one year after initial college enrollment (i.e., spring term). Students who change their

major from an ineligible degree program to an eligible degree program during the same academic year shall not receive the LIFE Scholarship Enhancement until the beginning of the next academic year (i.e., fall term). Students who change their major from an eligible degree program to an ineligible degree program during the same academic year may continue to receive the LIFE Scholarship Enhancement during the current academic year; however, the student cannot be awarded the LIFE Scholarship Enhancement the next academic year of enrollment in an ineligible degree program.

62-1200.15. Continued Eligibility: LIFE Scholarship and LIFE Scholarship Enhancement.

A. Students must meet the following criteria to renew eligibility for the LIFE Scholarship:

1. Continue to meet all eligibility requirements as stated in the “Student Eligibility” Section;
2. Earn at least a 3.0 “LIFE GPA” by the end of the academic year; and
3. Meet the annual credit hour requirement (or its equivalent) by the end of the academic year based on initial college enrollment:
 - (a) earn a minimum of 30 (or the equivalent) credit hours if entering the second year; or
 - (b) earn a minimum of 60 (or the equivalent) credit hours if entering the third year; or
 - (c) earn a minimum of 90 (or the equivalent) credit hours if entering the fourth year; or
 - (d) earn a minimum of 120 (or its equivalent) credit hours if entering the fifth year of an approved five-year bachelor’s degree program.

B. Students who meet the continued eligibility requirements by the end of the spring term and who enroll in Maymester or summer term will not be eligible to receive the LIFE Scholarship if their cumulative grade point average falls below the minimum 3.0 “LIFE GPA” requirement by the end of the summer term.

C. Students who are LIFE eligible upon high school graduation and initially enroll in college mid-year (spring term) may be eligible to receive the LIFE Scholarship the next academic year, if the student earns a minimum of fifteen (15) credit hours and a 3.0 “LIFE GPA” at the end of the academic year. For subsequent years, the student must meet the annual credit hour requirement and 3.0 LIFE GPA for renewal:

- (a) earn a minimum of 45 (or the equivalent) credit hours if entering the fourth semester based on initial college enrollment; or
- (b) earn a minimum of 75 (or the equivalent) credit hours if entering the sixth semester based on initial college enrollment; or
- (c) earn a minimum of 105 (or the equivalent) credit hours if entering the eighth semester based on initial college enrollment; or
- (d) earn a minimum of 135 (or its equivalent) credit hours if entering the tenth semester of an approved five-year bachelor’s degree program based on initial college enrollment.

Students who fail to meet the initial academic eligibility criteria to receive the LIFE Scholarship upon high school graduation, and who initially enroll in college mid-year (spring term) may be eligible to receive the LIFE Scholarship beginning in their second Fall term of college attendance at an eligible institution, if the student earns a minimum of forty-five (45) credit hours and a 3.0 “LIFE GPA” by the end of the prior academic year.

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The student may be eligible to receive the maximum number of terms of eligibility based on initial college enrollment.

D. Students must meet the following criteria to renew eligibility for the LIFE Scholarship Enhancement:

1. Continue to meet all eligibility requirements as stated in the “Student Eligibility: LIFE Scholarship and the LIFE Scholarship Enhancement” Section;

2. Be a recipient of LIFE Scholarship funds at the time of LIFE Scholarship Enhancement disbursement; and

3. Be enrolled full-time at an eligible four-year public or independent institution as a declared major in an eligible science or mathematics program as stipulated under Section 62-1200.10.

E. Students who meet the continued eligibility requirements by the end of the spring term and who enroll in Maymester or summer term will not be eligible to receive the LIFE Scholarship Enhancement if their cumulative grade point average falls below the minimum 3.0 “LIFE GPA” requirement by the end of the summer term resulting in ineligibility for a LIFE Scholarship. Students who do not meet the continued eligibility requirements to receive the LIFE Scholarship cannot receive a Scholarship or LIFE Scholarship Enhancement for the following academic year.

F. The student may be eligible to receive the maximum number of terms of eligibility (i.e., six ~~consecutive~~ terms) for a LIFE Scholarship Enhancement starting the second year of college enrollment (based on initial date of college enrollment after high school graduation).

62-1200.20. Terms of Eligibility: LIFE Scholarship and LIFE Scholarship Enhancement.

A. The maximum number of terms of eligibility is based on the student’s initial college enrollment with the exception of the summer term immediately prior to the student’s initial college enrollment and up to one academic year of full-time enrollment in remedial/developmental coursework.

B. Students may receive a LIFE Scholarship for a maximum of two terms for a one-year educational program, four terms for an associate’s degree program or at least a two-year program that is acceptable for full credit towards a bachelor’s degree, eight terms (or its equivalent) towards the first bachelor’s degree or program of study that is structured so as not to require a bachelor’s degree for acceptance into the program and leads to a graduate degree program or ten ~~consecutive~~ terms towards an approved five-year bachelor’s degree program. (See chart in “C” below.) In cases where students are enrolled in a program of study that is structured so as not to require a bachelor’s degree for acceptance into the program and leads to a graduate degree, which will be the students’ first academic degree awarded, such students must maintain their undergraduate status to be awarded the LIFE Scholarship and the LIFE Scholarship Enhancement each academic term, with the exception of students majoring in the Doctor of Pharmacy Program at South University, the Doctor of Pharmacy Program at Presbyterian College, the Master’s of Science in Physician Assistant Studies Program, the Master’s of Science in Cytology and Biosciences Program and the Doctor of Pharmacy Program at the University of South Carolina-Columbia and the Medical University of South Carolina. Students who have already been awarded their first bachelor’s degree or graduate degree are not eligible to be awarded a LIFE Scholarship or a LIFE Scholarship Enhancement. Students are eligible to receive the LIFE Scholarship for a maximum of eight ~~consecutive~~ terms (or its equivalent) and a LIFE Scholarship Enhancement for a maximum of six ~~consecutive~~ terms (or its equivalent), as long as all other eligibility requirements are met and the program is approved by the Commission on Higher Education.

C. If a student pursues the following program, the terms of eligibility for the LIFE Scholarship will be based upon the student’s initial college enrollment:

Degree/Program	Maximum Terms of Eligibility	Average Credit Hours Earned at the End of Each Academic Year				
		1st Year = 30 credit hours	2nd Year = 60 credit hours	3rd Year = 90 credit hours	4th Year = 120 credit hours	Fifth Year = 150 credit hours
Terms of Remaining Eligibility at the End of Each Academic Year						
One-year Certificate/Diploma	2	0	0	0	0	0
Associate/Two-year Program	4	2	0	0	0	0
Bachelor/First Professional	8	6	4	2	0	0
Approved Five-year Bachelor	10	8	6	4	2	0

D. The maximum number of terms of eligibility for a LIFE Scholarship Enhancement is based on the student’s continued eligibility for a LIFE Scholarship and beginning with the student’s second year of college enrollment (based on initial date of college enrollment), with the exception of the summer term immediately prior to the student’s initial college enrollment and up to one academic year of full-time enrollment in remedial/developmental coursework. Students will be allowed to break enrollment for the Fall 2020 term, only, and still maintain the allotted terms of eligibility.

E. Students may receive a LIFE Scholarship Enhancement for a maximum of six ~~consecutive~~ terms (i.e., three academic years) for a first bachelor’s degree in an eligible program or an eligible program of study that is structured so as not to require a bachelor’s degree for acceptance into the program and leads to a graduate degree program, and eight ~~consecutive~~ terms (i.e., four academic years) towards an approved five-year bachelor’s degree program and six ~~consecutive~~ terms towards a 3 plus 2 program. Students must be enrolled in an eligible four-year public or independent institution in South Carolina as a declared major in an eligible science or mathematics major or an eligible program that is approved and assigned a CIP code by the Commission on Higher Education. In cases where students are enrolled in a program of study that is structured so as not to require a bachelor’s degree for acceptance into the program and leads to a graduate degree, which will be the students’ first academic degree awarded, students must maintain their undergraduate status to be awarded the LIFE Scholarship and the LIFE Scholarship Enhancement, with the exception of students declaring a major in the Doctor of Pharmacy Program at South University, the Doctor of Pharmacy Program at Presbyterian College, the Master’s of Science in Physician Assistant Studies Program, the Master’s of Science in Cytology and Biosciences Program and the Doctor of Pharmacy Program at the University of South Carolina-Columbia and the Medical University of South Carolina. Students who have already been awarded their first bachelor’s degree or graduate degree are not eligible to be awarded a LIFE Scholarship or a LIFE Scholarship Enhancement. Students are eligible to receive a LIFE Scholarship for a maximum of eight ~~consecutive~~ terms (or its equivalent) and a LIFE Scholarship Enhancement for a maximum of six ~~consecutive~~ terms (or its equivalent) towards an undergraduate degree, as long as all other eligibility requirements are met and the program is approved by the Commission on Higher Education. Students enrolled in an approved five-year degree program may be eligible to receive a LIFE Scholarship for a fifth year of full-time, undergraduate work and a LIFE Scholarship Enhancement for a fourth year of full-time undergraduate coursework. Students will be allowed to break enrollment for the Fall 2020 term, only, and still maintain the allotted terms of eligibility. Students who break enrollment for the Fall 2020 term may not attempt college coursework or earn college credit during this term. Students who are eligible to receive the LIFE Scholarship for the 2020-21 academic year, but who break enrollment for the Fall 2020 term may receive the maximum award amount allotted for a semester upon return to school in the Spring 2021 term. Students who take a break in enrollment during Fall 2020 will be expected to meet all scholarship requirements, including credit hour requirements, to be eligible for the award in 2021-22.

62-1200.25. Regaining or Earning Eligibility: LIFE Scholarship and LIFE Scholarship Enhancement.

A. Students who were U.S. Citizens or legal permanent residents, and South Carolina residents at the time of high school graduation and college enrollment, but were not initially eligible upon high school graduation or failed to meet the continued eligibility requirements can earn or regain eligibility for the LIFE Scholarship if they:

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1. Meet all eligibility requirements as stated in the “Student Eligibility” Section;
2. Earn at least a 3.0 “LIFE GPA” by the end of the academic year;
3. Meet the annual credit hour requirement by the end of the academic year based on Initial college enrollment:
 - (a) earn a minimum of 30 (or the equivalent) credit hours if entering the second year; or
 - (b) earn a minimum of 60 (or the equivalent) credit hours if entering the third year; or
 - (c) earn a minimum of 90 (or the equivalent) credit hours if entering the fourth year; or
 - (d) earn a minimum of 120 (or its equivalent) credit hours if entering the fifth year of an approved five-year bachelor’s degree program.
 - (e) earn the required number of credit hours as stated in Section 62-1200. 15 (C) for students who initially enroll mid-year.

B. A student who has earned a GED diploma may be eligible to earn the LIFE Scholarship at the end of the first academic year of a non-GED program. The student must meet the annual credit hour requirement (or equivalent) and a 3.0 “LIFE GPA” at the end of the first academic year. To qualify for subsequent years, the student must meet all eligibility requirements as stated in Section A above.

C. A student who has graduated from a homeschool association not approved by the state of South Carolina may be eligible to earn the LIFE Scholarship at the end of the first academic year based on initial college enrollment. The student must meet the annual credit hour requirement (or equivalent) and a 3.0 “LIFE GPA” at the end of the first academic year. The student may also qualify in subsequent years by meeting all eligibility requirements as stated in Section A above.

D. Students who have met the initial eligibility criteria for the LIFE Scholarship and initially enroll in college mid-year (spring term) may be eligible to receive the LIFE Scholarship the next academic year, if the student earns a minimum of fifteen credit hours and earns a cumulative 3.0 “LIFE GPA” at the end of the academic year. For subsequent years, the student must meet the annual credit hour requirement for renewal (refer to Section 62-1200. 15 (C) for the required number of credit hours for mid-year students). The student may be eligible to receive the maximum number of terms of eligibility based on initial college enrollment.

E. Students who were not initially eligible for a LIFE Scholarship (as stated in this section) upon high school graduation or failed to meet the continued eligibility requirements for a LIFE Scholarship may earn or regain eligibility for a LIFE Scholarship Enhancement if they:

1. Meet all eligibility requirements as stipulated in Section 62-1200.10 and are recipients of a LIFE Scholarship;
2. Earn at least a 3.0 “LIFE GPA” and meet the annual credit hour requirement by the end of each academic year based on initial college enrollment to receive a LIFE Scholarship; and
3. Be a recipient of LIFE Scholarship funds at the time of LIFE Scholarship Enhancement funds disbursement.

62-1200.30. Transfer Students: LIFE Scholarship and LIFE Scholarship Enhancement.

A. Students must meet all eligibility requirements for a LIFE Scholarship and for a LIFE Scholarship Enhancement as stipulated in Section 62-1200.10.

B. Transfer students who receive the LIFE Scholarship and transfer mid-year to another institution may be eligible to receive the Scholarship for the spring term if they met the eligibility requirements at the end of the previous academic year (See “Transfer Student” Section B for eligibility requirements):

1. Freshmen who transfer mid-year to the same type of institution (two-year to two-year or four year to four-year) must have met the Scholarship requirements of the respective institution at the time of initial college enrollment; or

2. Freshmen who transfer mid-year from a two-year to a four-year institution must meet the eligibility requirements of a first-time entering freshmen enrolling at a four-year institution; or

3. Freshmen who transfer mid-year from a four-year to a two-year institution must meet the eligibility requirements of a first-time entering freshmen enrolling at a two-year institution.

C. For determining initial eligibility for transfer students for the first-time at an eligible public or independent institution in SC, students must meet the following requirements at the end of the previous academic year:

1. Earn a cumulative 3.0 LIFE GPA; and

2. Meet one of the following:

(a) earn a minimum of thirty credit hours (or equivalent) at all institutions if entering the second year of college based on initial college enrollment; or

(b) earn a minimum of sixty credit hours (or equivalent) at all institutions if entering the third year of college based on initial college enrollment; or

(c) earn a minimum of ninety credit hours (or equivalent) at all institutions if entering the fourth year of college based on initial college enrollment; or

(d) earn a minimum of one hundred twenty credit hours (or equivalent) at all institutions if entering the fifth year of college in an approved five-year bachelor’s degree program based on initial college enrollment; or

(e) earn the required number of credit hours as stated in Section 62-1200.15 (C) for students who initially enroll mid-year based on initial college enrollment.

D. For eligibility in subsequent years, transfer students must earn a 3.0 LIFE GPA and meet the annual credit hour requirement (or its equivalent) at all eligible institutions by the end of the academic year based on initial college enrollment.

E. The institution where the student is transferring will determine the classification of the entering transferring student based on initial college enrollment and will use this classification to determine the remaining terms of eligibility in compliance with the “Terms of Eligibility” Section.

F. Students transferring to an eligible public or independent four-year South Carolina institution may be eligible to receive a LIFE Scholarship Enhancement if they meet the requirements under Section 62-1200.10 and:

1. The student is a LIFE Scholarship recipient and transferring from an out-of-state institution or

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from an in-state four-year institution to an eligible public or independent four-year institution at the end of the academic year. The student must earn a minimum 3.0 LIFE GPA and a minimum average of 30 credit hours by the end of each academic year of enrollment (based on initial date of college enrollment) to receive a LIFE Scholarship Enhancement beginning the fall term of the second, third and/or fourth year of enrollment. Transfer students enrolled full-time in an eligible, approved five-year degree program may be eligible to receive a LIFE Scholarship Enhancement in their fifth year of college enrollment (based on initial date of college enrollment after high school graduation).

2. The student is a LIFE Scholarship recipient and transferring from an out-of-state institution or from an in-state four-year institution to an eligible public or independent four-year institution mid-year (i.e., spring term). The student may be eligible to receive a LIFE Scholarship Enhancement for the spring term of the second, third or fourth year of enrollment, if the student earned a 3.0 LIFE GPA and minimum average of 30 credit hours by the end of each academic year of enrollment (based on initial date of college enrollment). Transfer students enrolled full-time in an eligible, approved five-year degree program may be eligible to receive a LIFE Scholarship Enhancement in their fifth year of college enrollment (based on initial date of college enrollment after high school graduation).

3. The student is a LIFE Scholarship recipient and transferring from a two-year institution to an eligible public or independent four-year institution at the end of the academic year. The student must earn a 3.0 LIFE GPA and a minimum average of 30 credit hours by the end of each academic year of enrollment (based on initial date of college enrollment) to receive a LIFE Scholarship Enhancement beginning the fall term of the second, third and/or fourth year of enrollment. Transfer students enrolled full-time in an eligible, approved five-year degree program may be eligible to receive a LIFE Scholarship Enhancement in their fifth year of college enrollment (based on initial date of college enrollment after high school graduation).

4. The student is a LIFE Scholarship recipient and transferring from a two-year institution to an eligible public or independent four-year institution mid-year (i.e., spring term). The student may be eligible to receive a LIFE Scholarship Enhancement for the spring term of the second, third or fourth year of initial college enrollment, if the student earned a 3.0 LIFE GPA and a minimum average of 30 credit hours by the end of each academic year of enrollment (based on initial date of college enrollment). Transfer students enrolled full-time in an eligible, approved five-year degree program may be eligible to receive a LIFE Scholarship Enhancement in their fifth year of college enrollment (based on initial date of college enrollment after high school graduation).

62-1200.35. Students with Disabilities: LIFE Scholarship and LIFE Scholarship Enhancement.

A. Students who qualify under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 must meet all eligibility requirements as defined in “Student Eligibility, Continued Eligibility, Regaining or Earning Eligibility, or Transfer Students” Sections except for the full-time enrollment requirement, if approved by the Disability Services Provider at the home institution. Students must comply with all institutional policies and procedures in accordance with ADA and Section 504 of the Rehabilitation Act of 1973. It is the responsibility of the transfer student to provide written documentation concerning services from the previous institutional Disability Services Provider.

B. The institutional Disability Services Provider must provide written documentation to the Office of Financial Aid prior to each academic year verifying that the student is approved to be enrolled in less than full-time status or earn less than the required annual credit hours. The institution is responsible for retaining appropriate documentation according to the “Program Administration and Audits” Section.

C. For renewal, students who qualify under ADA and Section 504 of the Rehabilitation Act of 1973 must meet all requirements as stated in the “Continued Eligibility” Section, except that if a student does not meet the annual credit hour requirement, the student must have been approved by the institutional Disability Services Provider in the prior academic year to be enrolled in less than “full-time” status or less than the required thirty credit hours. Each academic year, students must complete the required number of credit hours approved by the

institutional Disability Services Provider for LIFE Scholarship and LIFE Scholarship Enhancement renewal and earn a 3.0 "LIFE GPA." Students must comply with all institutional policies and procedures in accordance with ADA and Section 504 of the Rehabilitation Act of 1973.

D. Students who qualify under ADA and Section 504 of the Rehabilitation Act of 1973 may receive the maximum number of terms of eligibility as stated in the "Terms of Eligibility" Section.

E. In order to be eligible for the LIFE Scholarship and LIFE Scholarship Enhancement, students who no longer qualify under ADA and Section 504 of the Rehabilitation Act of 1973 must comply with all requirements set forth under the "Student Eligibility, Continued Eligibility, Regaining or Earning Eligibility, or Transfer Students" Sections.

62-1200.40. Enrollment in Internships, Cooperative Work Programs, Travel Study Programs and National and International Student Exchange Programs: LIFE Scholarship and LIFE Scholarship Enhancement.

A. Students enrolled in internships, cooperative work programs, travel study programs, or National or International Student Exchange Programs that are approved by the home institution and that the home institution accepts as full-time transfer credit are eligible to receive LIFE Scholarship and LIFE Scholarship Enhancement funds during the period in which the student is enrolled in such programs. Students will be required to meet the continued eligibility requirements.

B. Eligible students may use the appropriated portion of LIFE Scholarship and LIFE Scholarship Enhancement funds for internships, cooperative work programs, travel study programs or National or International Student Exchange Programs that are approved by the home institution and that the home institution accepts as full-time transfer credit. LIFE Scholarship and LIFE Scholarship Enhancement funds must be paid directly to the student's account at the home institution and cannot exceed the cost-of-attendance at the home institution or the cost-of-attendance at the host institution, whichever is less. The Commission on Higher Education will not transfer LIFE Scholarship or LIFE Scholarship Enhancement funds directly to the institution where the student will participate in internships, cooperative work programs, travel study programs or National or International Student Exchange Programs. The institution is responsible for LIFE Scholarship and LIFE Scholarship Enhancement funds according to the "Policies and Procedures for Awarding" Section.

C. Students who enroll in one academic term at the home institution and also enroll in an internship, cooperative work program, travel study program or National or International Student Exchange Program that are approved by the home institution and that do not award full-time transfer credit during the same academic year, must complete fifteen credit hours and earn a 3.0 "LIFE GPA" by the end of the academic year to be eligible for LIFE Scholarship and LIFE Scholarship Enhancement renewal for the next academic year. Students who did not use the entire eligibility for LIFE Scholarship and LIFE Scholarship Enhancement funds during this period shall be allowed to receive LIFE Scholarship and LIFE Scholarship Enhancement funds during the succeeding summer or at the end of the maximum terms of eligibility based on their initial college enrollment date (provided the student meets continued eligibility requirements).

D. For students enrolled in an internship, cooperative work program, travel study program or National or International Student Exchange Program during the entire academic year that is approved by the home institution but does not award full-time transfer credit for the entire academic year, LIFE Scholarship and LIFE Scholarship Enhancement renewal for the next academic year will be based on the prior year's eligibility. Students who did not use the entire eligibility for LIFE Scholarship and LIFE Scholarship Enhancement funds during this period shall be allowed to receive LIFE Scholarship and LIFE Scholarship Enhancement funds during the succeeding summer or at the end of the maximum terms of eligibility based on initial college enrollment (provided the student meets the continued eligibility requirements).

E. Students enrolled in an internship, a cooperative work program, a travel study program or national or international student exchange program during the academic year that is approved by the home institution and

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did not use the entire eligibility for LIFE Scholarship and LIFE Scholarship Enhancement funds during this period shall be allowed to receive LIFE Scholarship and LIFE Scholarship Enhancement funds during the succeeding summer or at the end of the maximum terms of eligibility based on initial college enrollment (provided the student meets the continued eligibility requirements). In order to receive LIFE Scholarship and LIFE Scholarship Enhancement funds for summer school at the home institution, students must enroll in twelve credit hours during the summer. In order to maintain eligibility for the next academic year for students who only attend summer school at the home institution, the student must earn twelve credit hours during the academic year. For students who enroll in summer school and one other term of the academic year at the home institution, the student must earn a total of twenty-seven credit hours (or its equivalent) for the academic year. The student must meet all eligibility requirements as specified in the "Student Eligibility" and "Continued Eligibility" Sections, except for the completion of the annual credit hour requirement for the academic year.

F. The home institution will be responsible for obtaining official certification of the student's grade point average, credit hours earned, and satisfactory academic progress for the purposes of determining eligibility for LIFE Scholarship and LIFE Scholarship Enhancement renewal for the next academic year.

62-1200.45. Military Mobilization: LIFE Scholarship and LIFE Scholarship Enhancement.

A. Service members who are enrolled in college and are affected by military mobilizations will not be penalized for the term they are required to withdraw after the full refund period based on the institutional policies and procedures. Institutions are strongly encouraged to provide a full refund of required tuition, fees and other institutional charges or to provide a credit in a comparable amount against future charges for students who are forced to withdraw as a result of military mobilization. Additionally, the term(s) that the service member is mobilized will not count against the maximum terms of eligibility. The service member shall be allowed to receive the unused terms for the LIFE Scholarship and LIFE Scholarship Enhancement while mobilized during the succeeding summer or at the end of the maximum terms of eligibility based on initial college enrollment (provided the service member meets continued eligibility requirements). The service member must re-enroll in an eligible institution within twelve months upon their demobilization and provide official documentation to verify military deployment to the institutional Financial Aid Office upon re-enrollment to receive LIFE Scholarship and LIFE Scholarship Enhancement. Reinstatement of the LIFE Scholarship and the LIFE Scholarship Enhancement will be based upon the service member's eligibility at the time he/she was mobilized. If the student re-enrolls after the twelve month period, the service member must submit an Appeal Application to the Commission on Higher Education by the established deadline in order to be considered for reinstatement.

B. Service members who are enrolled in college and are mobilized for an entire academic year may renew the LIFE Scholarship and the LIFE Scholarship Enhancement for the next academic year, if they met the eligibility requirements at the end of the prior academic year. Service members who did not use the LIFE Scholarship and LIFE Scholarship Enhancement funds/terms of eligibility during this period due to military mobilization shall be allowed to receive the LIFE Scholarship and LIFE Scholarship Enhancement funds during the succeeding summer or at the end of the maximum terms of eligibility based on initial college enrollment (provided the service member meets continued eligibility requirements).

C. Service members who are enrolled in college and are mobilized for one academic term must complete fifteen credit hours and earn a 3.0 "LIFE GPA" by the end of the academic year to be eligible for LIFE Scholarship and LIFE Scholarship Enhancement renewal for the next academic year. Service members who did not use LIFE Scholarship and LIFE Scholarship Enhancement funds/terms of eligibility during this period shall be allowed to receive the LIFE Scholarship and LIFE Scholarship Enhancement during the succeeding summer or at the end of the maximum terms of eligibility based on initial college enrollment (provided the service member meets the continued eligibility requirements).

D. In order to receive the LIFE Scholarship and the LIFE Scholarship Enhancement for summer school for the unused term(s), the service member must enroll in twelve credit hours during the succeeding summer term at the home institution. For service members who enroll in summer school and one other term of the academic

year, the service member must earn a total of twenty-seven credit hours (or its equivalent) for the academic year. In order to maintain eligibility for the next academic year for service members who only attend summer school, the member must earn twelve credit hours during the academic year. The service member must meet all eligibility requirements as specified in the “Student Eligibility” and “Continued Eligibility” Sections for the LIFE Scholarship and LIFE Scholarship Enhancement, except for the completion of the thirty credit hour requirement for the academic year.

E. The home institution will be responsible for receiving verification of military mobilization status, “LIFE GPA,” credit hours earned and terms of eligibility based on the service member’s initial college enrollment and eligibility for LIFE Scholarship and LIFE Scholarship Enhancement renewal for the next academic year.

F. Service members of the United States Armed Forces will not be penalized for any credit hours earned while on military mobilization. The credit hours earned will not count against the terms of eligibility, but will be used toward the annual credit hour requirement for the LIFE Scholarship and towards the minimum fourteen credit hour course level requirement for the LIFE Scholarship Enhancement.

62-1200.50. LIFE Scholarship Refunds and Repayments.

A. In the event a student who has been awarded a LIFE Scholarship and LIFE Scholarship Enhancement withdraws, is suspended from the institution, or drops below full-time enrollment status during any term of the academic year, institutions must reimburse the LIFE Scholarship Program for the amount of the LIFE Scholarship and LIFE Scholarship Enhancement for the term in question pursuant to the refund policies of the institution. Collection is the responsibility of the institution.

B. In the event a student withdraws or drops below full-time status after the institution's refund period and therefore must pay tuition and fees for full-time enrollment, the LIFE Scholarship and LIFE Scholarship Enhancement may be retained pursuant to the refund policies of the institution.

62-1200.55. Appeals Procedures: LIFE Scholarship and LIFE Scholarship Enhancement.

A. The Commission on Higher Education shall define the appeals procedures.

B. Students who did not meet the continued eligibility requirements for the LIFE Scholarship at the end of the academic year due to an extenuating circumstance may request an appeal with the Commission on Higher Education.

C. The Commission on Higher Education will allow a student to submit only one appeal each academic year based on an extenuating circumstance.

D. A completed appeal’s application must be filed with the Commission on Higher Education by the established deadline of the academic year the scholarship is requested. The student must provide a completed application for appeal, a letter requesting an appeal describing the extenuating circumstance, official transcripts from all prior institutions, and any other supporting documentation to substantiate the basis for the appeal. It is the responsibility of the student to ensure that all documents necessary to file an appeal are received at the Commission by the established deadline. Commission staff will not contact the student regarding missing or incomplete appeals documentation. Failure to submit a completed appeal’s application by the required deadline(s) will result in forfeiture of the scholarship.

E. The LIFE Scholarship shall be suspended during the appeal period, but will be awarded retroactively if the appeal is granted.

F. Appeal Guidelines apply only to the LIFE Scholarship, not the LIFE Scholarship Enhancement. Students cannot appeal solely on the basis of a loss of a LIFE Scholarship Enhancement. However, students who appeal

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and are awarded the LIFE Scholarship under this section may be eligible to receive the LIFE Scholarship Enhancement.

G. The Appeals Committee's decision is final.

62-1200.60. Institutional Policies and Procedures for Awarding: LIFE Scholarship and LIFE Scholarship Enhancement.

A. All eligible institutions are responsible for ensuring that each student has met the criteria based on state law and regulation to determine eligibility for the LIFE Scholarship and the LIFE Scholarship Enhancement as stipulated in Section 62-1200.10 and Section 62-1200.15.

B. Each institution is responsible for reviewing all students based on the "LIFE GPA" calculation below to determine eligibility for the LIFE Scholarship. Institutions must use official transcripts from all eligible institutions for each student and the steps in Section E below.

C. The institution must use grades earned at all eligible institutions during any term (fall, spring, and/or summer) for calculating a "LIFE GPA" at the end of the academic year.

D. The student must certify by submitting a signed affidavit that he/she is responsible for submitting transcripts from all previous and current eligible institutions. Students who complete coursework at another institution at anytime during the academic year (fall, spring, summer) must submit an official transcript to the home institution at the end of the academic year to determine eligibility for the LIFE Scholarship.

E. Steps for calculating a "LIFE GPA:"

1. Convert all grades earned at an eligible institution to a 4.0 scale based on each institution's grading policy where the grades were earned = Grade Points

2. Multiply the grade points by attempted credit hours = Quality Points (QP)

3. Divide the total quality points by the total number of attempted credit hours = LIFE GPA

4. "LIFE GPA" Formula:
$$\frac{\text{Grade Points X Attempted Credited Hours} = \text{QP}}{\text{Total Attempted Credit Hours}} = \text{LIFE GPA}$$

F. The "LIFE GPA" must include all grades earned at eligible institutions, including courses that do not transfer based on the institution's policy and college courses taken while in high school.

G. The "LIFE GPA" must not include attempted credit hours earned for continuing education courses, non-degree credit courses for an associate's degree or higher and remedial/developmental courses.

H. The student must meet the annual credit hour requirement at the end of the academic year based on initial college enrollment as defined in the "Continued Eligibility," "Regaining or Earning Eligibility" or "Transfer Students" Sections.

I. LIFE Scholarship awards are to be used only for payment toward the cost-of-attendance as established by Title IV Regulations. Eligible four-year public and independent institutions shall identify award amounts up to the cost-of-tuition for thirty credit hours, not to exceed four thousand seven hundred dollars, plus a three hundred dollar book allowance (maximum \$5,000 including cost-of-tuition plus book allowance) per academic year. Eligible two-year public or technical institutions shall identify award amounts, which cannot exceed the cost-of-tuition for thirty credit hours plus a three hundred dollar book allowance (maximum \$5,000 including cost-of-tuition plus book allowance) per academic year. For students enrolled at eligible two-year independent

institutions, the award amount shall not exceed the maximum cost-of-tuition at the two-year USC regional institutions plus a three hundred dollar book allowance (not to exceed a maximum award amount of \$5,000 including cost-of-tuition plus book allowance) per academic year. Half shall be awarded during the fall term and half during the spring term (or its equivalent), assuming continued eligibility. The LIFE Scholarship in combination with all other gift aid, including Federal, State, private and institutional funds, shall not exceed the cost-of-attendance as defined in Title IV regulations for any academic year.

J. The LIFE Scholarship Enhancement is an annual award. Half of the funds are to be disbursed in the fall term and half to be disbursed in the spring term. Students who change their major from an ineligible degree program to an eligible degree program during the same academic year shall not receive the LIFE Scholarship Enhancement until the beginning of the next academic year (i.e., fall term). Students who change their major from an eligible degree program to an ineligible degree program during the same academic year may continue to receive the LIFE Scholarship Enhancement during the current academic year; however, the student cannot be awarded the LIFE Scholarship Enhancement the next academic year of enrollment in an ineligible degree program.

K. The institution shall specify exact LIFE Scholarship Enhancement amounts to be used only for payment toward the cost-of-attendance as established by Title IV Regulations at eligible four-year public and independent institutions in South Carolina. The annual LIFE Scholarship Enhancement award amount shall not exceed \$2,500.00 per academic year for no more than three years of instruction if enrolled in an eligible four-year degree program or for not more than four years of instruction if enrolled in an eligible approved five-year degree program. Students enrolled in an eligible 3 plus 2 program shall receive a LIFE Scholarship for no more than four years of instruction and a LIFE Scholarship Enhancement for no more than three years of instruction. Half of the LIFE Scholarship Enhancement funds shall be awarded in the fall term and half during the spring term (or its equivalent), assuming continued eligibility. The LIFE Scholarship Enhancement in combination with all other gift aid, including Federal, State, private and institutional funds, shall not exceed the cost-of-attendance as defined in Title IV Regulations for any academic year.

L. In determining the amount awarded for the LIFE Scholarship Enhancement, all other sources of gift aid, including federal, State, private and institutional funds and the base LIFE Scholarship must be applied to the unmet total cost of attendance in accord with Title IV Regulations before calculating the LIFE Scholarship Enhancement amount and receiving the funds. Adjustments to the financial aid package will be made to the LIFE Scholarship Enhancement in accordance with prescribed Title IV Regulations in order to prevent an over award.

M. Students who have already been awarded a first bachelor's degree or graduate degree are not eligible to receive a LIFE Scholarship or a LIFE Scholarship Enhancement. Students enrolled in a program of study that is structured so as not to require a bachelor's degree and leads to a graduate degree as defined in the "Program Definitions" Section must maintain their undergraduate status in order to receive a LIFE Scholarship and a LIFE Scholarship Enhancement each academic term, with the exception of students majoring in the Doctor of Pharmacy Program at South University, the Doctor of Pharmacy Program at Presbyterian College, the Master's of Science in Physician Assistant Studies Program, Master's of Science in Cytology and Biosciences Program and the Doctor of Pharmacy Program at the University of South Carolina-Columbia and the Medical University of South Carolina.

N. Eligible institutions shall provide an award notification to eligible students that contains the terms and conditions of the LIFE Scholarship and the LIFE Scholarship Enhancement. Institutions will notify students and the SC Commission on Higher Education of any adjustments in LIFE Scholarship and LIFE Scholarship Enhancement funds that may result from an over award, change in eligibility, change in the student's residency or change in financial status or other matters.

O. The institution must retain annual paper or electronic documentation for each LIFE Scholarship and LIFE Scholarship Enhancement award to include at a minimum:

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1. Award notification
 2. Institutional disbursement to student
 3. Student's residency status
 4. Refunds and repayments (if appropriate)
 5. Enrollment and curriculum requirements
 6. Verification of a 3.0 "LIFE GPA" and the required number of annual credit hours based on initial college enrollment
 7. Affidavit documenting that the student: a) has never been convicted of any felonies and/or a second or subsequent alcohol/ drug-related misdemeanor offenses within the past academic year; b) understands that non-degree credit hours will not be used in calculating the "LIFE GPA" or credit hour requirements if they are enrolled in an associate's degree or higher; and c) must certify that they have submitted transcripts from all previous and current institutions attended
 8. Institutional Student Information Record (ISIR) or affidavit documenting that the student is not in default or does not owe a refund or repayment on any state or federal financial aid
 9. High school transcript(s) verifying graduation or home school completion date, grade point averages and class ranks (first-time entering freshmen) or GED or Adult Education High School Diploma
 10. SAT or ACT scores (first-time entering freshmen)
 11. Verification of student's disability from Institutional Disability Service Provider and verification of reduced course-load requirement (if appropriate)
 12. Military mobilization orders (if appropriate)
 13. Beginning with the 2007-08 freshman class and thereafter, all institutions must retain documentation verifying that students met the minimum fourteen credit hour course level requirement by the end of the first year of college enrollment for the LIFE Scholarship Enhancement.
 14. Verification from academic department of enrollment in a declared major in an eligible degree program (LIFE and Palmetto Fellows Scholarship Enhancement purposes only)
 15. Documentation from Registrar or Admissions office that student's final high school GPA has been calculated pursuant to a grading scale that is at least equal to the SC UGP (For students who are attempting to use a class rank from an out-of-state institution to qualify for the LIFE Scholarship).
 16. Verification from the institution that lawful presence of the student in the US has been verified.
- P. It is the institution's responsibility to ensure that only eligible students receive a LIFE Scholarship and LIFE Scholarship Enhancement award.
- Q. Any student who has attempted to obtain or has obtained a LIFE Scholarship and a LIFE Scholarship Enhancement award through means of a willfully false statement or failure to reveal any material fact, condition, or circumstances affecting eligibility will be subject to applicable civil or criminal penalties, including loss of the LIFE Scholarship and the LIFE Scholarship Enhancement.

62-1200.65. Institutional Disbursements: LIFE Scholarship and LIFE Scholarship Enhancement.

A. Eligible four-year public and independent institutions shall award LIFE Scholarship amounts, which cannot exceed the cost-of-tuition for thirty credit hours a year, not to exceed four thousand seven hundred dollars, plus a three hundred dollar book allowance (maximum \$5,000 including cost-of-tuition plus book allowance) per academic year. Eligible two-year public or technical institutions shall award LIFE Scholarship amounts, which cannot exceed the cost-of-tuition for thirty credit hours plus a three hundred dollar book allowance (not to exceed a maximum award amount of \$5,000 including cost-of-tuition plus book allowance) per academic year. For students enrolled at eligible two-year independent institutions, the award amount for a LIFE Scholarship shall not exceed the maximum cost-of-tuition at the two-year USC regional institutions plus a three hundred dollar book allowance (not to exceed a maximum award amount of \$5,000 including cost-of-tuition plus book allowance) per academic year. Half of the LIFE Scholarship shall be awarded during the fall term and half during the spring term (or its equivalent), assuming continued eligibility. LIFE Scholarship funds cannot be disbursed during the summer or any interim sessions with the exception to disbursements that meet the requisites under the “Enrollment in Internships, Cooperative Work Programs, Travel Study Programs and National and International Student Exchange Programs” or “Military Mobilization” Sections. The LIFE Scholarship in combination with all other gift aid, including Federal, State, private and institutional funds, shall not exceed the cost-of-attendance as defined in Title IV regulations for any academic year.

B. Eligible four-year public and independent institutions only shall award LIFE Scholarship Enhancement amounts, which cannot exceed the cost-of-attendance for thirty credit hours a year, not to exceed \$2,500 per academic year. The LIFE Scholarship Enhancement cannot be disbursed during the summer or any interim sessions with the exception of disbursements that meet the requisites under the “Enrollment in Internships, Cooperative Work Programs, Travel Study Programs and National and International Student Exchange Programs” or “Military Mobilization” Sections. The LIFE Scholarship Enhancement in combination with all other gift aid, including Federal, State, private and institutional funds, shall not exceed the cost-of-attendance as defined in Title IV Regulations for any academic year.

C. The LIFE Scholarship and the LIFE Scholarship Enhancement may not be applied to a second bachelor’s degree or a graduate degree program as defined in the “Program Definitions” Section. In the event of early graduation, the LIFE Scholarship and LIFE Scholarship Enhancement awards are discontinued. Students are eligible to receive the LIFE Scholarship for a maximum of eight ~~consecutive~~ terms (or its equivalent) and a LIFE Scholarship Enhancement for a maximum of six ~~consecutive~~ terms (or its equivalent) towards an undergraduate degree, as long as all other eligibility requirements are met and the program is approved by the Commission on Higher Education. In such cases where students are enrolled in a program of study that is structured so as not to require a bachelor’s degree for acceptance into the program and leads to a graduate degree, which will be the students’ first academic degree awarded, such students must maintain their undergraduate status to be awarded the LIFE Scholarship and the LIFE Scholarship Enhancement, with the exception of students majoring in the Doctor of Pharmacy Program at South University, the Doctor of Pharmacy Program at Presbyterian College, the Master’s of Science in Physician Assistant Studies Program, the Master’s of Science in Cytology and Biosciences Program and the Doctor of Pharmacy Program at the University of South Carolina-Columbia and the Medical University of South Carolina. Students who have already been awarded their first bachelor’s degree or graduate degree are not eligible to be awarded a LIFE Scholarship or a LIFE Scholarship Enhancement. Students enrolled in an approved five-year degree program may be eligible to receive a LIFE Scholarship for a fifth year of full-time, undergraduate work and a LIFE Scholarship Enhancement for a fourth year of full-time undergraduate coursework.

D. In determining the amount awarded for the LIFE Scholarship Enhancement, all other sources of gift aid, including federal, State, private and institutional funds and the base LIFE Scholarship, must be applied to the unmet total cost-of-attendance in accord with Title IV Regulations before calculating the LIFE Scholarship Enhancement amount and receiving the funds. Adjustments to the financial aid package will be made to the base LIFE Scholarship and LIFE Scholarship Enhancement in accordance with prescribed Title IV Regulations in order to prevent an over award.

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E. After the last day to register for each term of the academic year, the institution will verify enrollment of each recipient as a South Carolina resident who is a full-time, degree-seeking student. The institution must submit a request for LIFE Scholarship and LIFE Scholarship Enhancement funds and/or return of funds by the established deadline each term. In addition, a listing of all eligible recipients by identification numbers with award amounts for the term must be sent to the Commission on Higher Education. At this time any unused funds must be returned to the Commission on Higher Education immediately.

F. The Commission will disburse LIFE Scholarship and LIFE Scholarship Enhancement awards to the eligible institutions to be placed in each eligible student's account.

G. The student must be enrolled at the time of disbursement of LIFE Scholarship and LIFE Scholarship Enhancement funds as a full-time student at the home institution, and meet all requirements as established in the "Student Eligibility" Section for a LIFE Scholarship and the a LIFE Scholarship Enhancement. Students who are retroactively awarded must have been enrolled in a minimum of twelve credit hours (full-time) as a declared major in an eligible program under Section 62-1200.10 at the home institution at the time the LIFE Scholarship and LIFE Scholarship Enhancement would have been disbursed for that term.

H. The LIFE Scholarship and LIFE Scholarship Enhancement are to be annual awards. Half of the funds are to be disbursed in the fall term and half to be disbursed in the spring term. Students who change their major from an ineligible degree program to an eligible degree program during the same academic year shall not receive the LIFE Scholarship Enhancement until the beginning of the next academic year (i.e., fall term). Students who change their major from an eligible degree program to an ineligible degree program during the same academic year may continue to receive the LIFE Scholarship Enhancement during the current academic year; however, the student cannot be awarded the LIFE Scholarship Enhancement the next academic year of enrollment in an ineligible degree program.

62-1200.70. Program Administration and Audits: LIFE Scholarship and LIFE Scholarship Enhancement.

A. The South Carolina Commission on Higher Education shall be responsible for the oversight of functions (e.g., guidelines, policies, rules, regulation) relative to this program with participating institutions. The Commission on Higher Education shall be responsible for the allocation of funds, promulgation of guidelines and regulation governing the LIFE Scholarship Program, any audits or other oversight as may be deemed necessary to monitor the expenditures of scholarship funds.

B. According to the Audit Policies and Procedures for Scholarship and Grant Programs Manual, all eligible institutions that participate in the program must abide by program policies, rules or regulation. Institutions also agree to maintain and provide all pertinent information, records, reports or any information as may be required or requested by the Commission on Higher Education or the General Assembly to ensure proper administration of the program.

C. The Chief Executive Officer at each participating institution shall identify to the Commission on Higher Education a LIFE Scholarship institutional representative who is responsible for the operation of the program on the campus and will serve as the contact person. The institutional representative will act as the student's fiscal agent to receive and deliver funds for use under the program.

D. The participating institution shall identify to the Commission on Higher Education an institutional representative who is responsible for determining residency classification for the purposes of awarding the LIFE Scholarship.

E. All eligible independent and public institutions that participate in the program must verify the lawful presence of any student who receives a LIFE Scholarship and LIFE Scholarship Enhancement prior to awarding the Scholarship to the student. When verifying the lawful presence of an individual, institutional personnel shall

not attempt to independently verify the immigration status of any alien, but shall verify any alien's immigration status with the federal government pursuant to 8 USC Section 1373(c).

62-1200.75. Suspension or Termination of Institutional Participation: LIFE Scholarship and LIFE Scholarship Enhancement.

A. The Commission may review institutional administrative practices to determine institutional compliance with pertinent statutes, guidelines, rules or regulations. If such a review determines that an institution has failed to comply with Program statutes, guidelines, rules or regulations, the Commission may suspend, terminate, or place certain conditions upon the institution's continued participation in the Program and require reimbursement to the LIFE Scholarship Program for any LIFE Scholarship or LIFE Scholarship Enhancement funds lost or improperly awarded.

B. Upon receipt of evidence that an institution has failed to comply, the Commission on Higher Education shall notify the institution in writing of the nature of such allegations and conduct an audit.

C. If an audit indicates that a violation or violations may have occurred or are occurring at any eligible public or independent institution, the Commission on Higher Education shall secure immediate reimbursement from the institution in the event that any funds were expended out of compliance with the provisions of the Act, any relevant statutes, guidelines, rules, and regulations.

D. The institution is responsible for determining SC residency and lawful presence of all LIFE Scholarship and LIFE Scholarship Enhancement recipients. If it is determined that the institution has failed to verify the lawful presence and SC residency of a LIFE Scholarship or LIFE Scholarship Enhancement recipient, the institution shall immediately reimburse the funds disbursed in error.

E. Independent and public institutions of higher learning in this, or any other state in the U.S., outside the U.S. or abroad, are prohibited from using the Legislative Incentive for Future Excellence or "LIFE" Scholarship in programs that promote financial aid incentives or packages. Any mention of the Legislative Incentive for Future Excellence or "LIFE" Scholarship in these financial aid packages must indicate the scholarship to be separate from the University that is offering the financial aid package, and reference the Legislative Incentive for Future Excellence or "LIFE" Scholarship as a separate financial aid award, provided to the student by the State of South Carolina.

F. The student shall be required to provide a nationally recognized, unique identifier in order to award, disburse and/or transfer the student's LIFE Scholarship to an eligible institution.

Fiscal Impact Statement:

This amendment of Regulation will result in a later testing opportunity for students than in previous years. Despite this change, CHE anticipates that the increased number of scholarship recipients as a result of this change will be minimal. The additional change will allow for a break in enrollment for students during Fall 2020. CHE does not anticipate increased costs to the state as a result of this change for 2020-21.

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COMMISSION ON HIGHER EDUCATION
CHAPTER 62
Statutory Authority: 1976 Code Section 59-104-20

62-300 through 62-375. Palmetto Fellows Scholarship Program.

Emergency Situation:

During Spring 2020 the United States experienced the beginning of the COVID-19 pandemic. Because of this pandemic, South Carolina, along with the rest of the nation, saw cancellations of various educational testing opportunities for students. This included the cancellation of standardized tests such as the SAT and ACT examinations. In addition, many students will need to sit out the upcoming Fall 2020 academic semester for various COVID-19 related reasons. This emergency regulation seeks to assist affected high school students by providing them with an opportunity to take the ACT examination through July 2020, and to use the earned scores to meet the qualifications for state scholarships. In addition, the emergency regulation also provides students with the opportunity to take a break in enrollment during the Fall 2020 academic term and still maintain their remaining terms of Palmetto Fellows Scholarship and Palmetto Fellows Scholarship Enhancement eligibility.

Text:

- 62-300. Purpose of the Palmetto Fellows Scholarship and Scholarship Enhancement
- 62-305. Allocation of Program Funds
- 62-310. Definitions
- 62-315. Initial Eligibility for Palmetto Fellows Scholarship
- 62-318. Eligibility for Palmetto Fellows Scholarship Enhancement
- 62-320. Palmetto Fellows Scholarship Application
- 62-325. Palmetto Fellows Scholarship Selection Process
- 62-330. Policies and Procedures for Awarding the Palmetto Fellows Scholarship and the Palmetto Fellows Scholarship Enhancement
- 62-335. Duration and Renewal of Awards
- 62-340. Transfer of Reapplication for the Palmetto Fellows Scholarship and the Palmetto Fellows Scholarship Enhancement
- 62-345. Students with Disabilities
- 62-350. Enrollment in Internships, Cooperative Work Programs, Travel Study Programs, or National or International Exchange Programs
- 62-351. Military Mobilization
- 62-355. Appeals Procedures
- 62-360. Institutional Disbursement of Funds
- 62-365. Refunds and Repayments
- 62-370. Program Administration and Audits
- 62-375. Suspension or Termination of Institutional Participation

62-300. Purpose of the Palmetto Fellows Scholarship and Scholarship Enhancement.

A. Pursuant to Act 458 and amended by Act 95 and Act 162 in 2005, the Commission on Higher Education shall promulgate regulation and establish procedures to administer the Palmetto Fellows Scholarship Program. The General Assembly established the Palmetto Fellows Scholarship Program to foster scholarship among the State's postsecondary students and retain outstanding South Carolina high school graduates in the State through awards based on scholarship and achievement. The purpose of the Palmetto Fellows Scholarship Program is to

recognize the most academically talented high school seniors in South Carolina and to encourage them to attend eligible colleges or universities in the State. A secondary purpose is to help retain talented minority students who might otherwise pursue studies outside the State.

B. Pursuant to Act 115 and amended by Act 235 in 2008, the Commission on Higher Education shall promulgate regulation and establish procedures for administration of the Palmetto Fellows Scholarship Enhancement. The General Assembly established the Palmetto Fellows Scholarship Enhancement in order to foster scholarship among the State's postsecondary students through awards based on scholarship and achievement. The purpose of the Palmetto Fellows Scholarship Enhancement Program is to recognize the most academically talented college students throughout the state of South Carolina in the areas of mathematics and science and encourage them to attend eligible colleges or universities in the State. In order to receive a Palmetto Fellows Scholarship Enhancement, all students must qualify for a Palmetto Fellows Scholarship as stipulated herein.

C. Independent and public institutions of higher learning in this or any other state in the U.S., outside the U.S. or abroad are prohibited from using the Palmetto Fellows Scholarship in programs that promote financial aid incentives or packages. Any mention of the Palmetto Fellows Scholarship in these financial aid packages must indicate the scholarship to be separate from the University that is offering the financial aid package, and reference the Palmetto Fellows Scholarship as a separate financial aid award, provided to the student by the State of South Carolina.

62-305. Allocation of Program Funds.

A. Funds made available for higher education grants and scholarships under Chapter 143 of Title 59 of the 1976 Code, as amended under Act 458, South Carolina Children First: Resources for Scholarship and Tuition Act of 1996, shall be included in the annual appropriation to the Commission on Higher Education. Fifty percent of the appropriation shall be designated for the Palmetto Fellows Scholarship Program and the remaining fifty percent shall be for the Need-based Grants Program. However, in instances where the equal division of the appropriated funds between the Palmetto Fellows Scholarship and Need-based Grants Programs exceeds the capacity to make awards in either program, the Commission on Higher Education has the authority to re-allocate the remaining funds between the two programs.

B. Under the South Carolina Education Lottery Act, a designated amount shall be allocated for Palmetto Fellows Scholarships and shall be included in the annual appropriation to the Commission on Higher Education.

C. After expending funds appropriated for Palmetto Fellows Scholarships from all other sources, there is automatically appropriated from the general fund of the State whatever amount is necessary to provide Palmetto Fellows Scholarships to all students meeting the requirements of Section 59-104-20.

D. The Palmetto Fellows Scholarship Enhancement is contingent upon the availability of funds appropriated by the General Assembly each academic year.

62-310. Definitions.

A. "Academic year" is defined as the twelve-month period of time during which a full-time student is expected to earn thirty credit hours. The period of time used to measure the academic year consists of the fall, spring and immediately succeeding summer terms.

B. "Annual credit hour requirement" is defined for the Palmetto Fellows Scholarship as a minimum of thirty (30) credit hours taken and earned at the end of each academic year based on the date of initial college enrollment. Credit hours cannot include remedial, continuing education, exempted credit hours (such as AP, CLEP, IB, etc.), credit hours earned before high school graduation (dual enrollment) and credit hours earned the summer term immediately following high school graduation. Credit hours earned before high school graduation,

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including Advanced Placement (AP) credit hours, International Baccalaureate (IB) credit hours, exempted credit hours as well as credit hours earned on active duty, must be placed on the student's official college transcript by the institution at which they are earned, and be counted toward the annual credit hour requirement for the purposes of the Palmetto Fellows Scholarship Enhancement. Eligible Palmetto Fellows may prorate their award amount for the term of graduation (see section 62-330.B.).

C. "Approved five-year bachelor's degree program" is defined as a five-year bachelor's program that is defined and approved by the Commission on Higher Education to receive the Palmetto Fellows Scholarship for a maximum of ten terms and the Scholarship Enhancement for a maximum of eight terms at the same eligible independent or public institution in order to complete the requirements for a bachelor's degree. An approved five-year bachelor's degree program does not include institutional and cooperative "3 plus 2" programs.

D. "Bachelor's degree program" is defined as an undergraduate program of study leading to the first bachelor's degree as defined by the U.S. Department of Education.

E. "CIP (Classification of Instructional Program) Code" is defined as the U.S. Department of Education's standard for federal surveys and state reporting for institutional data (majors, minors, options and courses). For the purpose of receiving the Palmetto Fellows Scholarship Enhancement, CIP Codes have been approved by the Commission on Higher Education for eligible degree programs in the fields of mathematics and science.

F. "Continuing education coursework" is defined as postsecondary courses designed for personal development and that cannot be used as credit toward a degree.

G. "Continuously enrolled" is defined as enrollment without an interruption that would require the student to pursue a formal process of readmission to that institution. Formal petitions or applications for change of degree level shall be considered readmissions with the exception of students changing degree level within the programs cited in paragraphs L and HH of this section and students who have been granted preapproved leave status for no longer than one semester by their institution. Continuously enrolled includes summer terms, military mobilization, or students who transfer from a four-year institution only to return to a four-year institution. Students who are enrolled in internships, cooperative work programs, travel study programs, or National or International Exchange Programs that are approved by the home institution are considered continuously enrolled. Any student who has been suspended, expelled, does not attend subsequent (or consecutive semesters) that does not require a formal process of readmission to that institution, or voluntarily withdraws from a four-year institution and/or enrolls at a two-year institution during the interruption is considered to be no longer continuously enrolled. For the Fall 2020 term only, students will not be required to maintain continuous enrollment. Students who take a break in enrollment for the Fall 2020 term must meet all eligibility requirements prior to the break in enrollment in order to receive the Palmetto Fellows Scholarship upon return for the Spring 2021 term. Students who utilize the break in enrollment shall not enroll at any institution of higher education during the Fall 2020 term.

H. "Cost-of-attendance" is defined by Title IV regulations and may include tuition, fees, books, room and board, and other expenses related to transportation, disability or dependent care.

I. "Cumulative grade point average (GPA)" is defined as the cumulative institutional GPA used for graduation purposes, which includes dividing the total number of quality points earned in all courses by the total credit hours in all courses attempted at the student's home institution. The cumulative GPA must be at least a 3.0 at the home institution for graduation purposes at the end of each academic year based on the date of initial college enrollment.

J. "Date of initial college enrollment" is defined as the first time a student matriculates into a postsecondary degree-granting institution after high school graduation or completion of an approved home school program, excluding the summer term immediately prior to the student's enrollment in the first regular academic year. Students must remain continuously enrolled as any break in enrollment (excluding summer) will count toward

the student's terms of eligibility with the exception of eligible students who wish to break enrollment for the Fall 2020 term only. Students who utilize the break in enrollment, shall not enroll in any institution of higher education during the Fall 2020 term.

K. For the purposes of the Scholarship Enhancement, "declared major" is defined as an eligible degree program in which a student is enrolled as a full-time, degree-seeking student. The student must meet all requirements as stipulated by the policies established by the institution and the academic department the student is enrolled in a declared major in an eligible degree program. Students cannot take courses related to a specific program without meeting institutional and departmental policies and be considered enrolled in a declared major. Students must be enrolled in a declared major in an eligible degree program that is approved and assigned a CIP code by the Commission. Eligible degree programs are those listed as such on the Commission's Web site. Students who change their declared major from an ineligible degree program to an eligible degree program within the same academic year shall not receive the Palmetto Fellows Scholarship Enhancement for that academic year. Additionally, students who change their declared major from an eligible degree program to an ineligible degree program within the same academic year will not lose eligibility until the next academic year.

L. "Degree-seeking student" is defined as a student enrolled full-time in a program of study that leads to the first bachelor's degree, first approved five-year bachelor's degree or a program of study that is structured so as not to require a bachelor's degree at an eligible independent or public institution. Students must maintain their undergraduate status in order to receive the Palmetto Fellows Scholarship and the Scholarship Enhancement each academic year, with the exception of students enrolled in the following programs: 1) Master of Science in Physician Assistant Studies at the Medical University of South Carolina; 2) Doctor of Pharmacy at the Medical University of South Carolina; 3) Doctor of Pharmacy at the University of South Carolina; and 4) Doctor of Pharmacy at Presbyterian College.

M. "Eligible degree program" is defined for the purposes of the Palmetto Fellows Scholarship Enhancement as a degree program in mathematics or science as approved by the SC Commission on Higher Education. These programs include science or mathematics disciplines, computer science or informational technology, engineering, health care and health care related disciplines (including nursing, pre-medicine and pre-dentistry) as defined by the Commission on Higher Education. Enrollment in a minor does not meet the requirements of an eligible degree program for the Palmetto Fellows Scholarship Enhancement. Students must be enrolled in a declared major in an eligible degree program that is approved and assigned a CIP Code by the Commission. Eligible degree programs are those listed as such on the Commission's Web site.

N. "Eligible high school" is defined as a public, private, charter, virtual, Montessori, or Magnet high school located within South Carolina, an approved home school program as defined in relevant State Statute (Sections 59-65-40, 45, and 47) or a preparatory high school located outside of the State while the student is a dependent of a legal resident of South Carolina who has custody or pays child support and college expenses of the dependent high school student in accordance with Section 59-112-10. A "preparatory high school" (out-of-state) is defined as a public or private school recognized by the state in which the school is located to offer curricula through the twelfth grade and prepares students for college entrance.

O. "Early awards" is defined as a period determined by CHE to apply for the Palmetto Fellows Scholarship. Application must be made through the students' high school. This period is generally from the end of the student's junior year (3rd year in high school) through April of the student's senior year (4th year in high school).

P. "Early graduate" is defined as a student who graduates mid-year their senior year.

Q. "Eligible institution" is defined as a SC four-year public or independent bachelor's level institution.

R. "Felonies" are defined as crimes classified under State statute (Section 16-1-10) for which the punishment in federal or state law and typically requires imprisonment for more than one year.

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S. "Fifth year" is defined as the ninth or tenth ~~consecutive~~ term of undergraduate coursework in an approved five-year bachelor's program. The fifth year is based on the student's date of initial college enrollment after graduation from high school.

T. "First/freshman year" is defined as the first or second ~~consecutive~~ term of undergraduate coursework following high school graduation.

U. "For graduation purposes" is defined as any grade or credit hour that the home institution requires in accordance with their policies and procedures for graduation of the student, including electives and additional coursework.

V. "Fourth year" is defined as the seventh or eighth ~~consecutive~~ term of undergraduate coursework. The fourth year is based on the student's date of initial college enrollment after graduation from high school.

W. "Full-time student" shall mean a student who has matriculated into a program of study leading to the first bachelor's degree, first approved five-year bachelor's degree or a program of study that is structured so as not to require a bachelor's degree and leads to a graduate degree and who enrolls full-time, usually fifteen credit hours for the fall and fifteen credit hours for the spring term. In order for the student to be eligible for Scholarship disbursement, the student must be enrolled full-time at the home institution as stipulated by Title IV Regulations, except that credit hours may not include remedial coursework or continuing education coursework. Eligible Palmetto Fellows may prorate their award amount for the term of graduation (see section 62-330.B.).

X. "Gift aid" is defined as scholarships and grants that do not nor will not under any circumstance require repayment, and excludes any self-help aid such as student loans and work-study.

Y. "Home institution" is defined as the independent or public institution where the student is currently enrolled as a full-time, degree-seeking student and may be eligible for financial aid at the same institution.

Z. "Independent institutions" are defined, for the purposes of the Palmetto Fellows Scholarship and the Palmetto Fellows Scholarship Enhancement Programs, as those four-year institutions eligible to participate in the South Carolina Tuition Grants Program as defined in Chapter 113 of Title 59 of the 1976 Code, which stipulates that an "independent institution of higher learning means any independent eleemosynary junior or senior college in South Carolina whose major campus and headquarters are located within South Carolina and which is accredited by the Southern Association of Colleges and Schools; or an independent bachelor's level institution which was incorporated in its original charter in 1962, was granted a license to operate in 1997 by the Commission on Higher Education, has continued to maintain a campus in South Carolina, and is accredited by the Southern Association of Colleges and Schools. Institutions whose sole purpose is religious or theological training or the granting of professional degrees do not meet the definition of 'public or independent institutions' for purpose of this charter". Two-year independent institutions are not eligible to participate in the Palmetto Fellows Scholarship Program.

AA. "Ineligible degree program" is defined for the purposes of the Palmetto Fellows Scholarship Enhancement as any degree program that is not on the Commission's posted list of eligible degree programs.

BB. "Late awards" is defined as a period determined by CHE for high school seniors to apply for the Palmetto Fellows Scholarship. Application must be made through the students' high school. This period is generally from May through June of the academic year.

CC. "Lawful Presence" is defined as individuals who are US citizens, permanent residents, or non-US citizens and non-permanent residents who are legally present in the US. When verifying the lawful presence of an individual, institutional personnel shall not attempt to independently verify the immigration status of any alien, but shall verify any alien's immigration status with the federal government pursuant to 8 USC Section 1373(c).

Only those individuals whose lawful presence in the US has been verified prior to initial college enrollment may receive the Palmetto Fellows Scholarship and Palmetto Fellows Scholarship Enhancement.

DD. "Military mobilization" is defined as a situation in which the U.S. Department of Defense orders service members to active duty away from their normal duty assignment during a time of war or national emergency. Service members include: 1) active duty and reserve members in the Army, Navy, Air Force, Marine Corps and Coast Guard, and; 2) members of the Army and Air National Guard.

EE. "Misdemeanor offenses" are defined as crimes classified under State statute (Section 16-1-100), less serious than felonies, and are typically punishable by fine or imprisonment for less than one year. A complete listing is located under Title 16 of State statute. Examples of alcohol and/or drug-related misdemeanor offenses in South Carolina include, but are not limited to, possession of alcohol while under the age of 21, possession of marijuana/illegal drugs, open container, transfer of alcohol to persons under 21, providing false information as to age (fake identification), etc.

FF. "Multi-handicapped student" shall be defined as a student who, in addition to being visually or hearing impaired, has at least one additional disabling condition that qualifies the student to receive specialized postsecondary education.

GG. "Palmetto Fellow" is defined as a student awarded the Palmetto Fellows Scholarship during his/her senior year of high school and continues to meet all eligibility requirements to receive the Palmetto Fellows Scholarship. A Palmetto Fellow who is not awarded any Palmetto Fellows Scholarship funds due to the cost of attendance being met by other sources of financial aid will still be classified as a Palmetto Fellow.

HH. "Program of study that is structured so as not to require a bachelor's degree" shall be defined as a program of study that is structured so as not to require a bachelor's degree for acceptance into the program and leads to a graduate degree, which will be the student's first academic degree awarded, as defined by the U.S. Department of Education. Students are eligible for a maximum of eight terms as long as all other eligibility criteria are met and the program is approved by the Commission on Higher Education. Students must maintain their undergraduate status each academic term, with the exception of students enrolled in the following programs: 1) Master of Science in Physician Assistant Studies at the Medical University of South Carolina; 2) Doctor of Pharmacy at the Medical University of South Carolina; 3) Doctor of Pharmacy at the University of South Carolina; and 4) Doctor of Pharmacy at Presbyterian College. Students who have been awarded a bachelor's or graduate degree are not eligible for funding.

II. "Public institutions" are defined, for the purposes of the Palmetto Fellows Scholarship and the Palmetto Fellows Scholarship Enhancement Programs, as those four-year bachelor's degree-granting institutions as defined in Chapter 103 of Title 59 of the 1976 Code, which stipulates "public higher education shall mean state-supported education in the postsecondary field." Public two-year institutions and technical colleges are not eligible for participation in this Program.

JJ. "Reapplication student" is defined as a student who applied for and was offered the Palmetto Fellows Scholarship as a senior in high school, but declined the award to attend an out-of-state, four-year institution no later than the fall term one year immediately following high school graduation. If a student attends an out-of-state institution at any time during the eight eligible terms, after attending an out-of-state four-year institution, the student must return to SC, enroll in an eligible SC four-year institution, and make a request to CHE for reapplication for the Palmetto Fellows Scholarship.

KK. "Remedial coursework" shall be defined as sub-collegiate level preparatory courses in English, mathematics, reading or any other course deemed remedial by the institution where the course is taken.

LL. "Second year" is defined as the third or fourth consecutive term of full-time, undergraduate coursework. The second year is based on the student's date of initial college enrollment after graduation from high school.

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MM. “South Carolina resident” is defined as an individual who satisfies the requirements of residency in accordance with the state of South Carolina’s Statute for Tuition and Fees, Section 59-112-10, and all related guidelines and regulations promulgated by the Commission on Higher Education as determined by the institutional residency officer each academic year.

NN. “Satisfactory academic progress in a declared major” is defined for the purposes of the Scholarship Enhancement as the progress required by the institution and academic department in which the student is enrolled as a full-time, degree-seeking student. Students must meet all requirements for satisfactory academic progress toward degree completion in their declared major as established by the policies of both the institution and the declared major in which the student is enrolled to meet the requirements of satisfactory academic progress.

OO. “Substantially deviates” shall be defined, for the purposes of reviewing out-of-state preparatory high school grading scales, as being less than equivalent to the current South Carolina Uniform Grading Policy.

PP. “Transfer student” is defined, for the purposes of the Program, as a student who has changed full-time enrollment from one eligible independent or public institution to another eligible independent or public institution.

QQ. “Transient student” is defined as a student enrolled in a non-matriculated status, which means he/she is granted temporary admission to earn credit hours that will transfer back to his/her home institution toward a degree. A transient student is not eligible to receive the Palmetto Fellows Scholarship or the Scholarship Enhancement unless the student is participating in a program that is both approved and accepted as full-time transfer credit by the home institution.

RR. “Third year” is defined as the fifth or sixth ~~consecutive~~ term of undergraduate coursework. The third year is based on the student’s date of initial college enrollment after graduation from high school.

62-315. Initial Eligibility for Palmetto Fellows Scholarship.

A. In order to qualify for consideration for a Palmetto Fellows Scholarship, a student must:

1. Meet the eligibility criteria stipulated under the “Palmetto Fellows Scholarship Application” Section;
2. Be enrolled as a senior in an eligible high school;
3. Be classified as a South Carolina resident at the time of college enrollment;
4. Be a U.S. citizen or a lawful permanent resident that meets the definition of an eligible non-citizen under State Residency Statutes whose lawful presence in the US has been verified at the time of enrollment at the institution. When verifying the lawful presence of an individual, institutional personnel shall not attempt to independently verify the immigration status of any alien, but shall verify any alien’s immigration status with the federal government pursuant to 8 USC Section 1373(c). A student must be a legal permanent resident of the United States before being considered to be a South Carolina resident;
5. Be seriously considering attending, have applied, or have been accepted for admission to an eligible four-year bachelor’s degree-granting independent or public institution in South Carolina as a first-time, full-time, degree-seeking student; and
6. Certify that he/she has never been adjudicated delinquent, convicted or pled guilty or *nolo contendere* to any felonies and any second or subsequent alcohol, or drug related offenses under the laws of this or any other state or under the laws of the United States by submitting a signed affidavit each academic year to the home institution testifying to the fact, except that a high school or college student who has been adjudicated delinquent, convicted, or pled guilty or *nolo contendere* of a second or subsequent alcohol or drug related misdemeanor

offense is only ineligible the next academic year of enrollment in an eligible independent or public institution after the date of the adjudication, conviction or plea. If the adjudication, conviction, or plea occurs during the academic year after the student has already submitted a signed affidavit to the home institution, the student will continue to be eligible for the remainder of that academic year. However, the student will be ineligible the following academic year of enrollment. If a student completes a pretrial intervention program and subsequently has his/her record expunged, the conviction will not affect the student's eligibility;

7. Submit the official Palmetto Fellows Scholarship Application by the established deadline(s) and comply with all the directions contained therein.

B. The high schools shall ensure that all students meeting the eligibility criteria are given the opportunity to be included in the applicant pool.

C. A student who graduates immediately after the high school sophomore year is eligible to apply for the Palmetto Fellows Scholarship, providing that the student meets all eligibility requirements as described in the "Initial Eligibility" Section and providing that the student is entering an eligible independent or public four-year institution no later than the fall term one year immediately following high school graduation.

D. A student who graduates in December/January of the high school senior year (considered an early graduate) is eligible to apply for the Palmetto Fellows Scholarship after the completion of the junior year but prior to graduating high school, provided that the student meets all eligibility requirements as described in the "Initial Eligibility" Section and provided that the student is entering an eligible independent or public four-year institution no later than the Spring term one year immediately following high school graduation. Early graduates must be certified by the high school principal that they have met the SC graduation requirements. Students who graduate high school mid-year are unable to use rank as an eligibility criterion. The SC UGP GPA, as well as the high school graduation date, must be printed on the official final high school transcript. Students must enroll full-time continuously at a four-year institution no later than the Spring term one year immediately upon high school graduation. Early graduates who enroll mid-year (spring term) and are awarded the Palmetto Fellows Scholarship through the Early Graduation process will officially begin their initial college enrollment. In order to receive the Palmetto Fellows Scholarship the next academic year for a student who enrolls mid-year, the student must earn a minimum of fifteen credit hours and a 3.0 cumulative institutional GPA by the end of the academic year. For the Fall 2020 term only, eligible students will not be required to maintain continuous enrollment. Students who utilize the break in enrollment, shall not enroll in any institution of higher education during the Fall 2020 term.

E. Students cannot earn eligibility for the Palmetto Fellows Scholarship after high school graduation. All students must apply and be awarded during the high school senior year.

F. Students receiving the Palmetto Fellows Scholarship are not eligible for the LIFE Scholarship, SC HOPE Scholarship or Lottery Tuition Assistance within the same academic year.

G. Any student who attempts to obtain or obtains the Palmetto Fellows Scholarship through means of a willfully false statement or failure to reveal any material fact, condition or circumstances affecting eligibility will be subject to applicable civil or criminal penalties, including loss of the Palmetto Fellows Scholarship.

62-318. Eligibility for Palmetto Fellows Scholarship Enhancement.

A. To be eligible for the Palmetto Fellows Scholarship Enhancement each academic year, a student must be:

1. A Palmetto Fellow at the time the Scholarship Enhancement is disbursed;
2. Enrolled full-time, degree-seeking in a declared major in an eligible degree program;

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3. Making satisfactory academic progress toward completion of his/her declared major; and

4. Enrolled in the second year, third year, fourth year, or fifth year (if enrolled in a Commission approved five-year bachelor's degree) at an eligible four-year independent or public institution.

B. Students must successfully complete at least fourteen credit hours of instruction in mathematics or life and physical science or a combination of both at the end of the first year for the 2007 freshman class and thereafter. For the purpose of meeting the fourteen credit hour requirement at the end of the student's first year, exempted credit hours (AP, CLEP, IB, etc), credit hours earned while in high school (dual enrollment, credit hours earned during the summer session immediately prior to the student's date of initial college enrollment, Pass/Fail courses with a grade of "Pass" (only), International Baccalaureate (IB) courses and Advanced Placement (AP) courses in mathematics and life and physical sciences taken in high school in which the student scored a three or more on the advanced placement test and received college credit may be used. However, remedial coursework and continuing education coursework cannot be used to meet the fourteen credit hour requirement.

C. Students who initially enroll in college mid-year (i.e., spring term) as a first year student and meet the requirements under Section 62-318 may be eligible to receive a Palmetto Fellows Scholarship Enhancement at the beginning of the spring term of the next academic year (i.e., beginning with the third ~~consecutive~~ term of full-time enrollment based on initial date of college enrollment). A student who initially enrolls mid-year (i.e., spring term) must earn a minimum of 15 credit hours and a 3.0 cumulative institutional GPA to be awarded a Palmetto Fellows Scholarship the following academic year. A student must earn a 3.0 cumulative institutional GPA and a minimum of 30 credit hours each subsequent year of enrollment to receive a Palmetto Fellows Scholarship and Palmetto Fellows Scholarship Enhancement.

D. Any student who attempts to obtain or obtains the Palmetto Fellows Scholarship Enhancement through means of a willfully false statement or failure to reveal any material fact, condition or circumstances affecting eligibility will be subject to applicable civil or criminal penalties, including loss of the Palmetto Fellows Scholarship Enhancement.

62-320. Palmetto Fellows Scholarship Application.

A. The Commission on Higher Education will send information regarding the application process to all South Carolina high schools, home school associations and district superintendents. High schools and/or home school associations that do not receive information regarding the application process from the Commission on Higher Education by the beginning of each application process must contact the Commission for information. It is the sole responsibility of the high schools, home schools, home school associations, and district superintendents to contact CHE regarding the Palmetto Fellows Scholarship program including the application process. High school officials will identify students who meet the specified eligibility criteria by each established deadline. High school officials must submit applications (both electronic and paper documentation) no later than the established deadline(s) along with the appropriate signatures, official transcripts and test score verification to the Commission on Higher Education. High school officials must certify each eligible applicant's signature form. Students who are enrolled at out-of-state high schools are personally responsible for contacting the Commission on Higher Education about the application process and must adhere to the same established deadline(s).

B. The high schools and home school associations must submit a list to the Commission on Higher Education indicating the names of all students who meet the eligibility criteria at their high school. The list should indicate whether the student is submitting a completed application or declining the opportunity to apply. If the student declines the opportunity to apply, the high school will submit a form for each of these students, signed by both the student and the parent/guardian and indicating the reason(s) for not submitting an application. Students who decline to apply for the Scholarship forfeit any future eligibility under this Program.

C. Applications for early awards must be submitted to the Commission on Higher Education for the Palmetto Fellows Scholarship by the date established each academic year. Students must meet one of the following set of academic criteria in order to be eligible to apply for the early awards (students cannot use the early awards criteria to apply during the late awards):

1. Score at least 1200 on the SAT or 27 on the ACT through the March test administration of the senior year; earn a minimum 3.50 cumulative GPA on the current SC Uniform Grading Policy (UGP) at the end of the junior year; and rank in the top six percent of the class at the end of either the sophomore or the junior year; or

2. The alternate criteria of a score at least 1400 on the SAT or 32 on the ACT through the March test administration of the senior year and earn a minimum 4.00 cumulative GPA on the UGP at the end of the junior year, without regard to class rank.

3. High schools or home school associations that do not rank as an official policy; or high schools whose grading policy deviates from the current SC Uniform Grading Policy and do not convert the graduating class grades to the current SC UGP to determine class rank, must use the alternate criteria of meeting the academic requirements for the Palmetto Fellow Scholarship.

4. High schools or home school associations shall not use ranking for the sole purpose of obtaining eligibility for the state scholarships.

D. Applications for late awards must be submitted to the Commission on Higher Education for the Palmetto Fellows Scholarship by the date established in June each academic year. Students must meet one of the following set of academic criteria in order to be eligible to apply for the late awards:

1. Score at least 1200 on the SAT or 27 on the ACT through the ~~June~~ July test administration of the senior year; earn a minimum 3.50 cumulative GPA on the UGP at the end of the senior year; and rank in the top six percent of the class at the end of the sophomore, junior or senior year; or

2. Score at least 1400 on the SAT or 32 on the ACT through the ~~June~~ July test administration of the senior year and earn a minimum 4.00 cumulative GPA on the UGP at the end of the senior year, without regard to class rank.

3. High schools or home school associations that do not rank as a policy; or high schools whose grading policy deviates from the current SC Uniform Grading Policy and that do not convert the graduating class grades to the current SC UGP to determine class rank, must use the alternate criteria of meeting the academic requirements for the Palmetto Fellow Scholarship.

4. High schools or home school associations shall not use ranking for the sole purpose of obtaining eligibility for the state scholarships.

E. Students must have official verification that they earned the requisite score on the SAT or an equivalent ACT score. In order to determine the minimum composite score for the SAT, students must use the highest Math score combined with the highest Evidence-Based Reading and Writing score. However, students cannot use the Essay subsection score to meet the minimum SAT score requirement. In order to determine the minimum composite score for the ACT, students must use the highest composite score based upon one test administration.

F. Grade point averages must be based on the current SC Uniform Grading Policy, reported with at least two decimal places, and may not be rounded up. The SC UGP GPA and class rank (if school/association officially ranks as a policy) must be printed on an official final end of year high school transcript, which must also include a uniform date of calculation as determined by the Commission on Higher Education. The graduation date must also be printed on the final end of senior year high school transcript.

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G. Class rank must be based on the SC Uniform Grading Policy using diploma candidates only. Class rank is determined at the end of the sophomore, junior and senior years (not the beginning of the next school year) before including any summer school coursework or including any students who transfer into your high school after the school year ended in May/June. Students cannot be removed from the class because they did not meet the eligibility criteria to apply, declined to apply, are not residents of the State, do not meet citizenship requirements, plan to attend college out-of-state, etc. The class rank information must include all students who attended your high school that school year. The rank policy and rank policy information must be available to parents, students, colleges, and universities, and the Commission on Higher Education in publication form to include a school's website, student/parent handbook, and/or school profile. This language must include the ranking policy in place at the school/association. The ranking policy should be consistent in all places where the rank policy is published and is the same information disseminated to parents, students, colleges/universities, and the Commission. The SC UGP GPA and class rank (if school/association officially ranks as a policy) must be printed on an official final end of year high school transcript, which must also include a uniform date of calculation as determined by the Commission on Higher Education. The graduation date must also be printed on the final end of senior year high school transcript.

H. The number of students included in the top six percent of the class will be the next whole number if the top six percent is not already a whole number. For example, a class size of 185 students would include the top twelve students since 11.1 rounds up to twelve. For those high schools that officially rank as a policy (see section 62-320.G.) with fewer than twenty students in the class, the top two students (students ranked as number one and two) shall be considered for the Scholarship regardless of whether they rank in the top six percent of the class. These students must meet all other eligibility criteria.

I. In order to apply for the Palmetto Fellows Scholarship using rank as one of the eligibility criteria, home school students must be a member of an approved home school program (as defined in relevant State Statute) that provides an official class rank for their members. All high schools (see section 62-310.N.) and home school associations must submit a rank report on official school/association letterhead that includes the class rank and GPA based on the current SC Uniform Grading Policy for all students in the applicant's class. If a student is unable to obtain rank verification, he/she may also be eligible to apply using the alternative criteria of scoring at least 1400 on the SAT (or 32 on the ACT) and earning a minimum 4.00 cumulative GPA on the SC UGP, without regard to class rank. These students must meet all other eligibility criteria.

J. For schools or home school associations that do not rank as an official policy, students must use the alternate criteria to meet eligibility requirements for the Palmetto Fellows Scholarship.

K. For the purposes of meeting the rank criterion, the existing high school rank of a South Carolina resident attending an out-of-state high school may be used, provided it is calculated pursuant to a state-approved, standardized grading scale at the respective out-of-state high school. If the Commission on Higher Education determines that a state-approved standardized grading scale substantially deviates from the S.C. Uniform Grading Scale, the state-approved, standardized grading scale shall not be used to meet the eligibility requirements for the Palmetto Fellows Scholarship. The school counselor from the out-of-state preparatory school also has the option of converting the cumulative GPAs of all students in the applicant's class to the current SC UGP to determine if the student ranks within the top six percent of the class and must provide a ranking report that identifies all students in the applicant's class and their respective GPA's based on the SC UGP. When converting scores to the SC UGP, weighting must adhere to the SC UGP (i.e. honors no more than .50 and AP/IB no more than 1.0). In addition, scores/grades must correspond to the SC UGP. For example, if a student earned a 90 in an honors class, the conversion of the scores/grades must be equivalent to the points assigned according to the current SC UGP. To be considered equivalent, the out-of-state school's grading scale must adhere to the following minimum requirements:

1. Must include all courses carrying Carnegie units, including units earned at the middle school and high school level;

2. To be equivalent to an “A” letter grade, the numerical average must be ≥ 90 ; to be equivalent to a “B” letter grade the numerical average must be between 80 and 89; to be equivalent to a “C” letter grade the numerical average must be between 70 and 79; to be equivalent to a “D” letter grade the numerical average must be between 60 and 69; and to be equivalent to a “F” letter grade the numerical average must be between 51 and 59 (if a course with a numerical average of < 51 is considered passing by the high school the student earned the grade, then a 65 numerical average should be given);

3. Cannot add more than one half (.50) additional quality point for honors courses; cannot add more than one additional quality point for dual enrollment (DE) courses, Advanced Placement (AP) courses, and standard level International Baccalaureate (IB) courses; and, cannot add more than two additional quality points for higher level IB courses;

4. Must classify all other courses as College Preparatory if they are not already classified as honors, DE, AP or IB. For a class to be classified as honors, the course must be in English, mathematics, science or social studies or be the third/fourth level for all other content areas; and

5. If no numerical average is available, all letter grades must be converted to the equivalent numerical average based on the following: all “A” letter grades must be converted to a 95 numerical average, all “B” letter grades must be converted to a 85 numerical average, all “C” letter grades must be converted to a 75 numerical average, all “D” letter grades must be converted to a 65 numerical average, and all “F” letter grades must be converted to a 50 numerical average.

L. Students who attend out-of-state preparatory high school may also be eligible to apply by using the alternative criteria of scoring at least 1400 on the SAT (or 32 on the ACT) and earning a minimum 4.00 cumulative GPA on the current SC Uniform Grading Policy. The student’s school counselor must convert the student’s grades to the UGP to determine if the student meets the GPA requirement. These students must meet all other eligibility criteria, including South Carolina residency requirements.

M. Students submitted for the late award will need to make arrangements for tuition and fee payments as a student will not be notified of their PFS status in enough time to meet any institutionally established payment deadlines.

62-325. Palmetto Fellows Scholarship Selection Process.

A. The Commission on Higher Education will notify students of their selection as a Palmetto Fellow along with the terms and conditions of the award.

B. Students who have met the academic requirements of the Scholarship must return a form to the Commission that designates an eligible four-year independent or public institution in which they plan to enroll by the date established by the Commission on Higher Education. The Palmetto Fellows Scholarship will only be awarded to those students who have a lawful presence in the United States and have been identified as a SC resident at the time of initial college enrollment.

C. Visually impaired, hearing impaired or multi-handicapped students who qualify for the Scholarship may use the Palmetto Fellows Scholarship to attend a four-year out-of-state institution that specializes in educating students with their impairment upon receiving prior approval from the Commission on Higher Education. The Commission on Higher Education shall make the final decision whether an out-of-state institution specializes in the postsecondary education of visually impaired, hearing impaired or multi-handicapped students.

D. The Commission on Higher Education shall ensure that there is equitable minority participation in the Program.

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62-330. Policies and Procedures for Awarding the Palmetto Fellows Scholarship and the Palmetto Fellows Scholarship Enhancement.

A. The institution will identify award amounts, which cannot exceed:

1. \$6,700 the first/freshman year and \$7,500 for the second year, third year, fourth year and fifth year (if applicable) for the Palmetto Fellows Scholarship; Eligible Palmetto Fellows may prorate their award amount for the term of graduation (See Section 62-330.B).

2. \$2,500 for the second year, third year, fourth year and fifth year (if applicable) year for the Palmetto Fellows Scholarship Enhancement. Eligible Palmetto Fellows may prorate their award amount for the term of graduation (See Section 62-330.B).

3. For mid-year initial college enrollment (i.e. a student who starts college in the spring term), a student may receive a maximum of \$3,350 for the spring term. Beginning the second academic year (i.e. the fall term) a student may receive up to \$7,500 for the second year, third year, fourth year and fifth academic year (if applicable) for the Palmetto Fellows Scholarship; Eligible Palmetto Fellows may prorate their award amount for the term of graduation.

B. Half shall be awarded during the fall term and half during the spring term. Palmetto Fellows Scholarships and Palmetto Fellows Scholarship Enhancements are to be used only toward payment for cost-of-attendance as established by Title IV Regulations with modifications set forth in D below for the academic year the award is made at the designated independent or public institution. The maximum amount awarded shall not exceed the cost-of-attendance as established by Title IV Regulations for any academic year. During the seventh or eighth term of attendance, the institution may prorate the Palmetto Fellow Scholarship and the Palmetto Fellows Scholarship Enhancement award amount, for the number of credit hours attempted for the current term of attendance, which must be the term of graduation for the student. Proration will be based on 12 credit hours.

C. Students who change their major from an ineligible degree program to an eligible degree program during the same academic year cannot be awarded the Palmetto Fellows Scholarship Enhancement until the next academic year. Additionally, students who change their major from an eligible degree program to an ineligible degree program during the same academic year will retain their Palmetto Fellows Scholarship Enhancement eligibility for the remainder of the current academic year.

D. Charges for room and board are to be limited as follows:

1. Room charges shall not exceed the average cost of on-campus residential housing; and

2. Board charges shall not exceed the cost of the least expensive campus meal plan that includes 21 meals per week.

E. In determining the amount awarded for the Palmetto Fellows Scholarship and the Palmetto Fellows Scholarship Enhancement, all other sources of gift aid, including federal, State, private and institutional funds, must be applied to the unmet cost-of-attendance before calculating the Scholarship and Enhancement amounts and making the award. Adjustments to the financial aid package will be made to the Palmetto Fellows Scholarship and the Palmetto Fellows Scholarship Enhancement in accordance with prescribed Title IV regulations in order to prevent an over-award.

F. Although a student may be named a Palmetto Fellow, the student may not receive a monetary award, if the award when combined with all other sources of gift aid would cause the student to receive financial assistance in excess of the student's cost-of-attendance as defined by Title IV regulations and the guidelines contained herein.

G. Eligible four-year independent and public institutions will notify students of their award along with the terms and conditions.

H. Effective Fall 2008, Section 59-101-430 (A), Chapter 101, Title 59 of the 1976 Code states that unlawful aliens are prohibited from attending SC Public institutions of higher learning. This does apply to students who are currently enrolled, as well as new enrollees. In accordance of this law, institutions must institute a process that verifies an individual's lawful presence in the United States. This process must verify any alien's immigration status with the federal government. Students receiving the Palmetto Fellows Scholarship and the Palmetto Fellows Scholarship Enhancement must be verified. Any student that is not verified and documented by the institution will not receive the Scholarship.

I. All eligible independent and public institutions that participate in the program must verify the lawful presence in the US of any student who receives a Palmetto Fellows Scholarship and the Palmetto Fellows Scholarship Enhancement prior to awarding the Scholarship to the student. When verifying the lawful presence of an individual, institutional personnel shall not attempt to independently verify the immigration status of any alien, but shall verify any alien's immigration status with the federal government pursuant to 8 USC Section 1373(c).

J. The institution must retain annual paper or electronic documentation for each award to include at a minimum:

1. Institutional Student Information Record (ISIR) or affidavit documenting that the student is not in default or does not owe a refund on any state or federal financial aid

2. Affidavit documenting that the student has never been convicted of any felonies and has not been convicted of any second or subsequent alcohol/drug-related misdemeanor offense within the past academic year as stated under "Initial Eligibility" and "Duration and Renewal of Awards" Sections

3. Award notification

4. Institutional disbursements to student

5. Verification student is not in default and does not owe a refund or repayment

6. Student's residency status and citizenship status

7. Enrollment status and degree-seeking status

8. Verification of cumulative GPA and annual credit hours for renewal purposes

9. Verification from the institutional Disability Services Provider of student's disability and approval of reduced course-load requirement (if appropriate)

10. Military mobilization orders (if appropriate)

11. Verification student met fourteen credit hour requirement at the end of the first year of college enrollment for the 2007-08 freshman class and thereafter (Palmetto Fellows Scholarship Enhancement purposes only)

12. Verification from academic department of enrollment in a declared major in an eligible degree program (Palmetto Fellows Scholarship Enhancement purposes only).

13. Verification from the institution that lawful presence in the US, and has been verified.

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K. It is the institution's responsibility to ensure that only eligible students receive the Palmetto Fellows Scholarship and the Palmetto Fellows Scholarship Enhancement.

L. The student shall be required to provide a state recognized unique identifier in order for the institution to award, disburse, and/or transfer the student's state scholarship and/or grant to an eligible institution.

62-335. Duration and Renewal of Awards.

A. The Palmetto Fellows Scholarship and Palmetto Fellows Scholarship Enhancement where applicable shall be initially awarded for one academic year. The institution shall adjust the amount of the Scholarship and Enhancement awards during the academic year in the event of a change in the student's eligibility.

B. Students selected as Palmetto Fellows must enter an eligible four-year independent or public institution no later than the fall term one year immediately following high school graduation. Students must be continuously enrolled at an eligible four-year institution, with the exception of eligible students who wish to break enrollment for the Fall 2020 term only. Students with a break in continuous full-time enrollment at a four-year institution or enrolling as a degree-seeking student at a two-year institution will forfeit the scholarship. Students who utilize the break in enrollment, shall not enroll in any institution of higher education during the Fall 2020 term.

C. A Palmetto Fellows Scholarship may be renewed annually for no more than a total of eight terms (based on the date of initial college enrollment) toward the first bachelor's degree or a program of study that is structured so as not to require a bachelor's degree and leads to a graduate degree or for no more than a total of ten terms (based on the date of initial college enrollment) toward the first approved five-year bachelor's degree. The Palmetto Fellows Scholarship Enhancement may not be awarded for no more than a total of six terms (based on the date of initial college enrollment) toward the first bachelor's degree or a program of study that is structured so as not to require a bachelor's degree and leads to a graduate degree or for no more than a total of eight terms (based on the date of initial college enrollment) toward the first approved five-year bachelor's degree. Students who have already been awarded their first bachelor or graduate degree are not eligible to receive the Palmetto Fellows Scholarship or the Palmetto Fellows Scholarship Enhancement. During the seventh or eighth term of attendance, the institution may prorate the Palmetto Fellow Scholarship and the Palmetto Fellows Scholarship Enhancement award amount, for the number of credit hours attempted for the current term of attendance, which must be the term of graduation for the student. Proration will be based on 12 credit hours (see section 62-330.B).

D. The institution is responsible for obtaining institutional certification of each recipient's cumulative grade point average and annual credit hours for the purposes of determining eligibility for award renewal. For the Palmetto Fellows Scholarship Enhancement, the institution must also obtain verification from the academic department of enrollment in a declared major in an eligible degree program.

E. By the end of the spring term each academic year, the institution must notify all Palmetto Fellows who have not met the continued eligibility requirements for the next academic year. The notification should include information regarding the student's ability to attend summer school in order to meet the continued eligibility requirements.

F. The eligible four-year independent or public institution is responsible for reporting to the Commission on Higher Education credit hours earned at the home institution only. Transfer credit hours cannot be reported by the home institution.

G. In order to retain eligibility for the Palmetto Fellows Scholarship after the initial year, the student must meet the following continued eligibility requirements:

1. Enroll and be continuously enrolled at an eligible four-year public or independent institution as a full-time, degree-seeking student at the time of Scholarship disbursement, with the exception of eligible students

who wish to break enrollment for the Fall 2020 term only. Students who utilize the break in enrollment, shall not enroll in any institution of higher education during the Fall 2020 term;

2. Earn at least a 3.0 cumulative GPA at the home institution for graduation purposes by the end of each academic year;

3. Earn a minimum of thirty credit hours for graduation purposes by the end of each academic year. Exempted credit hours (such as AP, CLEP, etc.), credit hours earned before high school graduation, and credit hours earned the summer term immediately following high school graduation cannot be used to meet the annual credit hour requirement;

4. Certify each academic year that he/she has not defaulted and does not owe a refund or repayment on any federal or state financial aid. If a student has an Institutional Student Information Record (ISIR) or its equivalent on file, the ISIR information will be used to verify default status or refund/repayment owed. Students who have not completed the Free Application for Federal Student Aid (FAFSA) must have an affidavit on file to verify that he/she is not in default and does not owe a refund or repayment on any federal or state financial aid, including the state grants/scholarships, Pell Grant, Supplemental Educational Opportunity Grant, Federal Perkins or Stafford Loan; and

5. Certify each academic year that he/she has never been adjudicated delinquent, convicted or pled guilty or *nolo contendere* to any felonies and any second or subsequent alcohol/drug-related misdemeanor offenses under the laws of this or any other state or under the laws of the United States by submitting a signed affidavit to the home institution. However, a high school or college student who has been adjudicated delinquent, convicted, or pled guilty or *nolo contendere* of a second or subsequent alcohol or drug-related misdemeanor offense is only ineligible for the next academic year of enrollment at an eligible independent or public institution after the date of the adjudication, conviction or plea. If the adjudication, conviction or plea occurs during the academic year after the student has already submitted a signed affidavit to the institution, the student will continue to be eligible for the remainder of the academic year. However, the student will be ineligible for the Scholarship for the following academic year of enrollment. If a student completes a pretrial intervention program and his/her record is subsequently expunged, the charge will not affect Scholarship eligibility.

H. In order to retain eligibility for the Palmetto Fellows Scholarship Enhancement, a student must:

1. Be a Palmetto Fellow at the time the Scholarship Enhancement is disbursed;

2. Be enrolled and continuously enrolled at an eligible four-year public or independent institution as a full-time, degree-seeking student in a declared major in an eligible degree program, with the exception of eligible students who wish to break enrollment for the Fall 2020 term only. Students who utilize the break in enrollment, shall not enroll in any institution of higher education during the Fall 2020 term;

3. Be making satisfactory academic progress toward completion of his/her declared major;

4. Be enrolled in the second year, third year, fourth year or fifth year (if enrolled in a Commission approved five-year bachelor's degree) at an eligible four-year independent or public institution; and

5. Successfully complete at least fourteen credit hours of instruction in mathematics or life and physical science or a combination of both at the end of the first year for the 2007 freshman class and thereafter. For the purpose of meeting the fourteen credit hour requirement at the end of the student's first year, exempted credit hours (AP, CLEP, IB, etc), credit hours earned while in high school (dual enrollment), and credit hours earned during the summer session immediately prior to the student's date of initial college enrollment may be used. However, remedial coursework and continuing education coursework cannot be used to meet the fourteen credit hour requirement. Palmetto Fellows who were already enrolled in at least their second year in the 2007-2008

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academic year only are not required to meet the fourteen credit hour requirement at the end of their first/freshman year.

I. Any student who attempts to obtain or obtains a Palmetto Fellows Scholarship or Palmetto Fellows Scholarship Enhancement through means of a willfully false statement or failure to reveal any material fact, condition, or circumstances affecting eligibility will be subject to applicable civil or criminal penalties, including loss of the Palmetto Fellows Scholarship and Palmetto Fellows Scholarship Enhancement.

62-340. Transfer of or Reapplication for the Palmetto Fellows Scholarship and the Palmetto Fellows Scholarship Enhancement.

A. Palmetto Fellows enrolled at an eligible four-year independent or public institution may transfer to another four-year eligible independent or public institution in South Carolina upon obtaining prior approval from the Commission on Higher Education, by submitting a transfer form, which is available on the Commission's Web site.

B. A student who applied for and was offered the Palmetto Fellows Scholarship as a senior in high school, but declined the award to attend an out-of-state four-year institution no later than the fall term one year immediately following high school graduation or a student who attends an out-of-state institution at any time during the eight eligible terms, must reapply if they transfer to an eligible four-year independent or public institution in South Carolina. The reapplication form is available on the Commission's Web site.

C. Transfer students and reapplication students are only eligible to receive the Palmetto Fellows Scholarship and the Palmetto Fellows Scholarship Enhancement for the remaining terms of eligibility (based on the date of initial college enrollment).

D. Transfer students and reapplication students must comply with all standards for continued eligibility as defined under the "Duration and Renewal of Awards" Section in order for their award to be eligible for transfer.

E. The eligible four-year independent or public institution is responsible for reviewing all Palmetto Fellows transferring to their institution to determine whether the students are eligible for the Palmetto Fellows Scholarship and Palmetto Fellows Scholarship Enhancement.

F. The eligible four-year independent or public institution is responsible for reporting to the Commission on Higher Education credit hours earned at their institution only. Transfer credit hours cannot be reported by the home institution.

62-345. Students with Disabilities.

A. Palmetto Fellows who qualify under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 must meet all eligibility requirements as defined in the "Initial Eligibility" Section, except for the full-time enrollment requirement, in order to be eligible to receive funding. Students must comply with all institutional policies and procedures in accordance with ADA and Section 504 of the Rehabilitation Act of 1973.

B. For renewal, Palmetto Fellows who qualify under ADA and Section 504 of the Rehabilitation Act of 1973 must meet all renewal requirements as defined in the "Duration and Renewal of Awards" Section, except for a student not meeting the annual credit hour requirement who is approved by the Disability Services Provider at the home institution to be enrolled in less than full-time status or less than the required annual credit hours for that academic year. Each academic year for award renewal, students must earn the required number of hours approved by the institutional Disability Services Provider at the home institution and earn a minimum 3.0 cumulative grade point average at the home institution for graduation purposes. Students must comply with all institutional policies and procedures in accordance with ADA and Section 504 of the Rehabilitation Act of 1973.

C. The institutional Disability Services Provider must provide written documentation to the Office of Financial Aid prior to each academic year verifying that the student is approved to be enrolled in less than full-time status or less than the required annual credit hours. It is the responsibility of transfer students and reapplication students to provide written documentation from the previous institutional Disability Services Provider.

D. Palmetto Fellows who qualify under ADA and Section 504 of the Rehabilitation Act of 1973 are eligible to receive up to the maximum number of available terms and available funds.

62-350. Enrollment in Internships, Cooperative Work Programs, Travel Study Programs, or National or International Student Exchange Programs.

A. Students enrolled in internships, cooperative work programs, travel study programs, or National or International Student Exchange Programs that are approved by the home institution and that the home institution accepts as full-time transfer credit are eligible to receive Palmetto Fellows Scholarship and Palmetto Fellow Scholarship Enhancement funds during the period in which the student is enrolled in such programs. Students will be required to meet the continued eligibility requirements.

B. Eligible students may use the appropriated portion of the Palmetto Fellows Scholarship and the Palmetto Fellows Scholarship Enhancement funds for internships, cooperative work programs, travel study programs, or National or International Student Exchange Programs that are approved by the home institution and that the home institution accepts as full-time transfer credit. Palmetto Fellows Scholarship and Palmetto Fellows Scholarship Enhancement funds must be paid directly to the student's account at the home institution. The amount awarded cannot exceed the cost-of-attendance at the home institution or the cost-of-attendance at the host institution, whichever is less. The Commission on Higher Education will not transfer funds to the institutions where students will participate in internships, cooperative work programs, travel study programs, or National or International Student Exchange Programs. The home institution is responsible for funds according to the "Program Administration and Audits" Section.

C. Students who enroll in one academic term at the home institution and also enroll in an internship, cooperative work program, travel study program, or National or International Student Exchange Program that are approved by the home institution and that do not award full-time transfer credit during the same academic year must earn at least fifteen credit hours and a minimum 3.0 cumulative grade point average at the home institution for graduation purposes by the end of the academic year to be eligible for renewal the next academic year. The student may continue to be eligible for up to the maximum terms of eligibility based on the date of initial college enrollment (provided the student meets the continued eligibility requirements).

D. For students enrolling in an internship, cooperative work program, travel study program, or National or International Student Exchange Program that is approved by the home institution but does not award full-time transfer credit for the entire academic year, renewal for the next academic year will be based on the prior year's eligibility. The student may continue to be eligible for up to the maximum terms of eligibility based on the date of initial college enrollment (provided the student meets the continued eligibility requirements).

E. Students enrolling in an internship, a cooperative work program, a travel study program, or National or International Student Exchange Program that are approved by the home institution during the academic year and did not use their entire eligibility for the Palmetto Fellows Scholarship or the Palmetto Fellows Scholarship Enhancement funds during this period shall be allowed to receive one term of Palmetto Fellows Scholarship and Palmetto Fellows Scholarship Enhancement funds during the succeeding summer or at the end of the maximum terms of eligibility based on the date of initial college enrollment (provided the student meets the continued eligibility requirements). In order to receive the Palmetto Fellows Scholarship and the Palmetto Fellows Scholarship Enhancement funds for the succeeding summer term, students must enroll in twelve credit hours at the home institution. In order to maintain eligibility for the next academic year for students who only attend summer school, the student must earn at least twelve credit hours by the end of the academic year. For students

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who enroll in summer school and one other term of the academic year, the student must earn a total of at least 27 credit hours by the end of the academic year. The student must meet all continued eligibility requirements, except for the completion of the annual credit hour requirement for the academic year.

F. The home institution will be responsible for obtaining official certification of the student's cumulative grade point average and annual credit hours earned for purposes of determining eligibility for Scholarship and Enhancement renewal for the next academic year. For purposes of Enhancement eligibility, the home institution must also obtain certification from the academic department of enrollment in a declared major in an eligible degree program.

62-351. Military Mobilization.

A. Service members who are enrolled in college and are affected by military mobilizations will not be penalized for the term they are required to withdraw after the full refund period based on the institutional policies and procedures. Institutions are strongly encouraged to provide a full refund of required tuition, fees and other institutional charges or to provide a credit in a comparable amount against future charges for students who are forced to withdraw as a result of military mobilization. Additionally, the term(s) that the service member is mobilized will not count against the maximum terms of eligibility. The service member shall be allowed to receive the unused term(s) while mobilized during the succeeding summer term or at the end of the maximum terms of eligibility (provided the service member meets continued eligibility requirements). The service member must re-enroll in an eligible independent or public institution within twelve months upon their demobilization and provide official documentation to verify military deployment to the institutional Financial Aid Office upon re-enrollment. Reinstatement will be based upon the service member's eligibility at the time he/she was mobilized. If the service member re-enrolls after the twelve month period, the service member must submit an Appeal Application to the Commission on Higher Education by the established deadline in order to be considered for reinstatement.

B. Service members who are enrolled in college and are mobilized for a minimum of one academic year may be eligible the next academic year, if they met the continued eligibility requirements at the end of the last academic year of attendance. Service members may continue to be eligible for up to the maximum terms of eligibility based on the date of initial college enrollment (provided the service member meets the continued eligibility requirements).

C. Service members who are enrolled in college and are mobilized for one academic term must complete at least fifteen credit hours and a minimum 3.0 cumulative grade point average at the home institution for graduation purposes by the end of the academic year to be eligible for renewal for the next academic year. Service members may continue to be eligible for up to the maximum terms of eligibility based on the date of initial college enrollment (provided the service member meets the continued eligibility requirements).

D. In order to receive the Palmetto Fellows Scholarship and Palmetto Fellows Scholarship Enhancement for summer school for any unused term(s), the service member must enroll in twelve credit hours during the succeeding summer term at the home institution. For service members who enroll in summer school and one other term of the academic year, the service member must earn a total of at least twenty-seven credit hours by the end of the academic year. In order to maintain eligibility for the next academic year for service members who only attend summer school, the member must earn at least twelve credit hours by the end of the academic year. The service member must meet all continued eligibility requirements, except for the completion of the annual credit hour requirement for the academic year.

E. The home institution will be responsible for obtaining verification of military mobilization status, cumulative grade point average and annual credit hours for the purpose of determining eligibility to renew the Palmetto Fellows Scholarship for the next academic year. For purposes of the Palmetto Fellows Scholarship Enhancement, the home institution must also obtain certification from the academic department of enrollment in a declared major in an eligible degree program.

62-355. Appeals Procedures.

A. The Commission on Higher Education shall define the procedures for scholarship appeals.

B. A student who does not meet the continued eligibility criteria for renewal of the Palmetto Fellows Scholarship forfeits continued participation in the Program and may request an appeal based on extenuating circumstances.

C. A student is allowed to submit only one appeal each academic year.

D. A completed appeal's application must be filed with the Commission on Higher Education by the established deadline of the academic year the scholarship is requested. The student must provide a completed application for appeal, a letter requesting an appeal describing the extenuating circumstance, official transcripts from all prior institutions, and any other supporting documentation to substantiate the basis for the appeal. It is the responsibility of the student to ensure that all documents necessary to file an appeal are received at the Commission by the established deadline. Commission staff will not contact the student regarding missing or incomplete appeals documentation. Failure to submit a completed appeal's application by the required deadline(s) will result in forfeiture of the scholarship.

E. A student who fails to submit an appeal by the required deadline will result in forfeiture of the award.

F. The Palmetto Fellows Scholarship shall be suspended during the appeal period, but will be awarded retroactively if the appeal is granted.

G. Students cannot appeal solely on the loss of the Palmetto Fellows Scholarship Enhancement.

H. The Appeals Committee's decision is final.

62-360. Institutional Disbursement of Funds.

A. The institution will identify award amounts, which cannot exceed:

1. \$6,700 the first/freshman year and \$7,500 for the second year, third year, fourth year and fifth year (if applicable) for the Palmetto Fellows Scholarship; Eligible Palmetto Fellows may prorate their award amount for the term of graduation (see section 62-330.B.).

2. \$2,500 for the second year, third year, fourth year and fifth year (if applicable) for the Palmetto Fellows Scholarship Enhancement. Eligible Palmetto Fellows may prorate their award amount for the term of graduation (see section 62-330.B.).

3. For mid-year initial college enrollment (i.e. a student who starts college in the spring term), a student may receive a maximum of \$3,350 for the spring term. Beginning the second academic year (i.e. the fall term) a student may receive up to \$7,500 for the second year, third year, fourth year and fifth year (if applicable) for the Palmetto Fellows Scholarship; Eligible Palmetto Fellows may prorate their award amount for the term of graduation (see section 62-330.B.).

B. Half shall be awarded during the fall term and half during the spring term. Funds cannot be disbursed during the summer or any interim sessions except for disbursements made in accordance with the requirements of the "Enrollment in Internships, Cooperative Work Programs, Travel Study Programs, or National or International Student Exchange Programs" or "Military Mobilization" Sections. Palmetto Fellows may not be funded for more than a total of eight terms of study toward the first bachelor's degree or a program of study that is structured so as not to require a bachelor's degree and leads to a graduate degree or for more than a total of ten terms of study toward the first approved five-year degree. Palmetto Fellows Scholarship Enhancements may

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not be funded for more than a total of six terms toward the first bachelor's degree or a program of study that is structured so as not to require a bachelor's degree or for no more than a total of eight terms toward the first-approved bachelor's degree.

C. The Palmetto Fellows Scholarship and the Palmetto Fellows Scholarship Enhancement cannot be applied to remedial coursework, continuing education coursework, a second bachelor's degree or to graduate coursework, unless the graduate coursework is required as part of a program of study that is structured so as not to require a bachelor's degree and leads to a graduate degree as defined in the "Definitions" Section or the student is enrolled in one of the following programs: 1) Master of Science in Physician Assistant Studies at the Medical University of South Carolina; 2) Doctor of Pharmacy at the Medical University of South Carolina; 3) Doctor of Pharmacy at the University of South Carolina and 4) Doctor of Pharmacy at Presbyterian College. In the event of early graduation, the award is discontinued.

D. Students who change their major from an ineligible degree program to an eligible degree program during the same academic year cannot be awarded the Palmetto Fellows Scholarship Enhancement until the next academic year. Additionally, students who change their major from an eligible degree program to an ineligible degree program during the same academic year will retain their Palmetto Fellows Scholarship Enhancement eligibility for the remainder of the current academic year.

E. The institution shall provide each Palmetto Fellow with an award notification for each academic year, which will contain the terms and conditions of the Scholarship and other financial aid awarded. Students will be notified of adjustments in financial aid due to changes in eligibility and/or over-award issues. The Commission on Higher Education, for documentation purposes, requires that each institution obtain verification of acceptance of the Palmetto Fellows Scholarship and the Palmetto Fellows Scholarship Enhancement and terms for the awards.

F. After the last day to register for each term of the academic year, the institution will verify enrollment of each recipient as a South Carolina resident who is a full-time degree-seeking student.

G. The institution must submit a request for funds and/or return of funds by the established deadline each term. The Commission will disburse funds to eligible independent and public institutions to be placed in each eligible student's account. In addition, a listing of eligible recipients by identification number with the award amounts must be sent to the Commission on Higher Education by the established deadline each term. At this time, any unused funds must be returned to the Commission immediately.

H. The Commission will disburse awards to the eligible four-year independent and public institutions to be placed in each eligible student's account.

I. The student shall be required to provide a state recognized unique identifier in order for the institution to award, disburse, and/or transfer the student's state scholarship and/or grant to an eligible institution.

62-365. Refunds and Repayments.

A. In the event a student who has been awarded the Palmetto Fellows Scholarship and Palmetto Fellows Scholarship Enhancement withdraws, is suspended from the institution, or drops below full-time status during any regular term of the academic year, institutions must reimburse the Program for the amount of the Palmetto Fellows Scholarship and Palmetto Fellows Scholarship Enhancement for the term in question pursuant to refund policies of the institution. Collection is the responsibility of the institution.

B. In the event a student withdraws or drops below full-time status after the institution's refund period and therefore must pay tuition and fees for full-time enrollment, the award may be retained by the student pursuant to the refund policies of the institution.

C. In the event a student who has been awarded the Palmetto Fellows Scholarship and the Palmetto Fellows Scholarship Enhancement and has been identified as not being a SC resident at any time, the institution must reimburse funds to CHE for the time period the student was no longer a SC resident.

62-370. Program Administration and Audits.

A. The South Carolina Commission on Higher Education shall be responsible for the oversight of functions (e.g., guidelines, policies, rules, regulations) relative to this Program with the eligible independent and public institutions. The Commission on Higher Education shall be responsible for the allocation of funds, promulgation of guidelines and regulation governing the Program, any audits, or other oversight as may be deemed necessary to monitor the expenditure of funds.

B. According to the Audit Policies and Procedures for Scholarship and Grant Programs Manual, all eligible independent and public institutions must abide by all Program policies, rules and regulations. Institutions also agree to maintain and provide all pertinent information, records, reports or any information as may be required or requested by the Commission on Higher Education or the General Assembly to ensure proper administration of the Program.

C. The Chief Executive Officer at each eligible independent and public institution shall identify to the Commission on Higher Education an institutional representative who is responsible for the operation of the Program on the campus and will serve as the contact person for the Program. The institutional representative will act as the student's fiscal agent to receive and deliver funds for use under the Program.

D. All eligible independent and public institutions that participate in the program must verify the lawful presence in the US of any student who receives a Palmetto Fellows Scholarship and Palmetto Fellows Scholarship Enhancement prior to awarding the Scholarship to the student. When verifying the lawful presence of an individual, institutional personnel shall not attempt to independently verify the immigration status of any alien, but shall verify any alien's immigration status with the federal government pursuant to 8 USC Section 1373(c).

E. The participating institution shall identify to the Commission on Higher Education an institutional representative who will be responsible for determining residency and lawful presence classification for the purposes of awarding the Palmetto Fellows Scholarship.

F. Independent and public institutions of higher learning in this, or any other state in the U.S., are prohibited from using the Palmetto Fellows Scholarship in programs that promote financial aid incentives or packages. Any mention of the Palmetto Fellows Scholarship in these financial aid packages must indicate the scholarship to be separate from the University that is offering the financial aid package, and reference the Palmetto Fellows Scholarship as a separate financial aid award, provided to the student by the State of South Carolina.

62-375. Suspension or Termination of Institutional Participation.

A. The Commission on Higher Education may review institutional administrative practices to determine compliance with pertinent statutes, guidelines, rules or regulations. If such a review determines that an institution has failed to comply with Program statutes, guidelines, rules or regulations, the Commission on Higher Education may suspend, terminate, or place certain conditions upon the institution's continued participation in the Program and require reimbursement to the Program for any funds lost or improperly awarded.

B. Upon receipt of evidence that an institution has failed to comply, the Commission on Higher Education shall notify the institution in writing of the nature of such allegations and conduct an audit.

C. If an audit indicates that a violation(s) may have occurred or are occurring at any eligible independent or public institution, the Commission on Higher Education shall secure immediate reimbursement from the

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institution in the event that any funds were expended out of compliance with the provisions of the Act, any relevant statutes, guidelines, rules, and regulations.

Fiscal Impact Statement:

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

Statement of Rationale:

Revisions to the existing regulation for the Palmetto Fellow Scholarship Program and Palmetto Fellows Scholarship Enhancement are being considered to clarify the policies and procedures for administering the program and to update the information to allow a change in the Palmetto Fellows application process. In doing so, several definitions are updated, high school class ranking policies and transcripts requirements are clarified, and language was modified to reflect the current S.C. Uniform Grading Scale and Scholastic Aptitude Test (SAT) information. Additional changes were made to allow a Palmetto Fellow recipient to prorate their award during their final term of college enrollment. Lastly, to promote consistency among the state scholarship programs, there are additional changes being proposed to allow a Palmetto Fellow recipient to enroll at an eligible institution up to one year after high school graduation.

Filed: May 18, 2020 10:53am

Document No. 4968
COMMISSION ON HIGHER EDUCATION
CHAPTER 62
Statutory Authority: 1976 Code Section 59-112-100

62-110 through 62-132. Student Loan Corporation.

Emergency Situation:

R.62-110 through 62-132 of Chapter 62 Student Loan Corporation SC Teachers Loan Program Regulations is being amended in response to the COVID-19 pandemic to allow a temporary waiver of Section 62-120(A)(6) of the SC Teachers Loan Program Regulation that references late Spring SAT and ACT examinations for 2020-21 Academic Year. In the proposed amendment, the regulation is being revised to address the cancellation of the Spring SAT and ACT test administrations and temporarily omit the requirements for entry into the program.

Text:

ARTICLE II
STUDENT LOAN CORPORATION

(Statutory Authority: Act 512 Part 2 Section 9 Division 2 Subdivision C Subpart 1 (6), Acts of Joint Resolutions of South Carolina 1984)

SUBARTICLE A
GENERAL INTRODUCTION

62-110. Introduction.

The South Carolina Student Loan Corporation, hereinafter called the Corporation, is an eligible lender under the South Carolina Student Loan Program (FFELP) as administered by the State Education Assistance Authority, hereinafter called the Authority, and has been designated pursuant to the South Carolina Education Improvement

Act of 1984 to administer a loan program for State residents who wish to become certified teachers in the State in areas of critical need. All loans made under this program shall be subject to the regulations contained herein. Loans shall be made available without regard to race, sex, color, national origin, age or marital status.

SUBARTICLE B
GENERAL REGULATIONS RELATING TO BORROWERS

62-120. Borrower Eligibility.

A. To be eligible to receive a loan under the Teachers Loan Program a student shall:

- (1) Be a citizen or permanent resident of the United States; and
- (2) Be a bona fide resident of South Carolina, as defined in applicable State statutes governing the determination of residency for tuition and fee purposes at public colleges and universities within this State; and
- (3) Have been accepted for enrollment, or enrolled in good standing in an eligible institution as defined in the Regulations of the Authority and further defined as follows:

(a) For institutions located in South Carolina, those:

(i) Which offer baccalaureate or higher degree programs which are approved for initial teacher certification by the State Board of Education (Board); or

(ii) Whose highest offering is the Associate of Arts or Associate of Science Degrees which are designed for transfer to baccalaureate programs including those in teacher education, and which are eleemosynary institutions accredited by the Commission on Colleges of the Southern Association of Colleges and Schools;

(b) For institutions located out of the State, those institutions which are regionally accredited and which offer baccalaureate or higher degree programs which are approved for initial teacher certification by the appropriate credentialing agency in that State; and

(4) Be enrolled on at least a half-time basis; and

(5) Indicate a desire and intent to teach in South Carolina in an area of critical need as defined by the Board annually; and

(6) If an undergraduate student who has completed one year (two semesters or the equivalent) of collegiate work and who is attending a South Carolina institution, has taken and passed a "Basic Skills Test" as required by the Board for entrance into a program of teacher education; ~~or if an undergraduate who has not completed one year of collegiate work did achieve a score equal to or greater than the mean score achieved by all examinees in South Carolina taking the SAT or ACT in the year of graduation from high school or in the most recent year for which such figures are available;~~ and

(7) If an undergraduate student or a first-time graduate student, have attained a cumulative grade point ratio of at least 2.75 GPR (on a 4.0 scale) in collegiate work; or if an undergraduate who has not completed one semester of college work have graduated in the top 40% of his high school class or have received a high school diploma through completion of adult education courses or passing the GED; and an undergraduate student, be formally admitted to an undergraduate teacher education program or if the student is not yet formally admitted to such a program the Department of Education, or its equivalent, at an eligible institution must certify that the student has expressed an intent and desire to enter the field of teaching, and is enrolled in a teacher education program at a time required by the institution; and

(8) If a continuing graduate student, have maintained a 3.5 GPR (on a 4.0 scale) on graduate work; and

(9) If a graduate student, have not previously been certified to teach, but entering a program for the specific purpose of becoming certified; or, if previously certified in a non-critical area, entering a program for the specific purpose of becoming certified to teach in a subject area which is defined by the Board as an area of critical need; and

(10) Be eligible in all other respects as may subsequently be required by the Corporation.

B. To be eligible to receive a loan up to the amount designated for individuals changing careers a student shall:

(1) Meet the eligibility requirements of 62-120(A). Students who have previously earned a baccalaureate degree will not be required to meet the academic standards specified in 62-120(A)(6), (7) and (9) during the initial year of teacher training. All applicable academic requirements must be met for all subsequent years; and

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(2) Possess a baccalaureate degree or at the time of initial application be employed as an instructional assistant in the South Carolina public school system; and

(3) Have completed a baccalaureate degree a minimum of three years prior to the beginning of the teacher training (instructional assistants are exempt from this requirement); and

(4) Have been employed on a full time basis for minimum of three years, or the equivalent in part time employment, prior to the beginning of the teacher training; and

(5) Are not receiving any other funds through this program for the same period of teacher training.

C. To be eligible to receive a loan up to the amount designated for individuals participating in the Critical Needs Certification Program a student must be enrolled in the Critical Needs Certification Program as certified by the Board.

SUBARTICLE C

GENERAL REGULATIONS RELATING TO LOAN MAXIMUMS, ADMINISTRATION AND REPAYMENT

62-130. Loan Maximums.

A. The maximum amount an eligible student may borrow under this program, is established by the South Carolina Commission on Higher Education, hereinafter called the Commission.

B. The maximum amount a borrower meeting the eligibility criteria in 62-120(B) may borrow shall not be limited by any definition used by the institution in determining the eligibility for financial aid and receipt of these funds shall not affect any federal, state or private assistance which the student may be eligible to receive.

62-131. Loan Administration.

A. All loans shall be secured by a Promissory Note. Loan shall bear interest from the date of disbursement of funds to the borrower at the rate as may be specified by the Commission.

B. The proceeds of a loan shall normally be disbursed by academic registration period, but not sooner than required by the student to meet his educational expenses. A check made co-payable to the borrower and to the institution will be forwarded to the institution for distribution to the borrower; provided, however, that in situations in which it is not feasible to issue the check co-payable, the check will be made payable to the borrower alone and forwarded to the institution. Nothing in this section shall preclude loan funds being transferred to the institution by electronic means.

(1) Borrowers participating in the Critical Needs Certification Program will receive a single disbursement annually. A check will be made payable to the borrower and forwarded directly to that borrower.

C. The student and institution shall agree to return to the Corporation any refunds applicable to these loans to which the student is entitled due to withdrawal of the student from the institution.

62-132. Repayment.

A. A student who receives loans under this program shall be eligible to have the greater of 20% or three thousand dollars of the loan(s) cancelled for each full year, or the greater of 10% or one thousand five hundred dollars for each complete term of teaching experience as defined by the Board in the State in an area of critical need, up to a maximum of 100% of the amount of the loan(s) plus the interest thereon. There shall be no cancellation for partial terms.

(1) Upon employment in an eligible subject area, as defined by the Board at the time of loan application or subsequently, the borrower will be entitled to cancellation of all loans received under this program that are outstanding at the time of employment.

(2) Upon employment in a geographic area of critical need, the borrower will be entitled to cancellation of all loans received under this program even if such geographic area is subsequently no longer defined by the Board as one of critical need. If a borrower changes employment from one geographic area to another, cancellation of loans received under this program will be provided only if the geographic area to which the borrower is moving is defined as an area of critical need at that time. Defined Geographic areas of critical need will be provided to the borrower at the time the borrower begins to seek employment.

B. Borrowers who simultaneously meet the requirements described in A(1) and A(2) above shall be eligible to have the greater of 33 1/3% or five thousand dollars of the loan(s) cancelled for each full year, or the greater

of 16 2/3% or two thousand five hundred dollars for each complete term, of teaching experience as defined by the Board, up to the maximum of 100% of the amount of the loan(s) plus the interest thereon. There shall be no cancellation for partial terms.

C. If a borrower does not meet the requirements for cancellation as specified in paragraph A above, the borrower must begin repayment of the loan(s) received under this program in accordance with the Regulations of the Corporation and subject to the terms of the Promissory Note(s), unless otherwise agreed to by the Corporation and the borrower. If a borrower does not initially meet the requirements for cancellations as set forth in paragraph A above, but subsequently does so, there will be no refund or credit provided for any amount paid; provided, however, any unpaid balance at the time the borrower begins teaching in an area of critical need will be eligible for cancellation subject to the regulations contained herein.

(1) Repayment of principal amount of a loan made under this program together with the interest, shall be made in monthly installments beginning six (6) months, after the date on which the borrower ceases to carry at least one-half the normal full-time academic work load at an eligible institution as defined by the Corporation or for borrowers participating in the Critical Needs Certification Program immediately upon disbursement of the loan funds. The monthly installment shall be at a rate which will repay the loan in not less than five (5) years nor more than ten (10) years from the beginning of the repayment period, unless the Corporation, at the request of the borrower, specifically provides a prepayment schedule that will repay the loan during a period of less than five (5) years. Unless specifically authorized by the Corporation, the monthly installment shall be at a rate of not less than \$50 per month. A borrower may accelerate repayment of the loan, in whole or in part, without penalty. Repayment of the loan is not required when the borrower is eligible for cancellation under 62-132 (A) of these regulations.

(2) In the event a borrower dies, the obligation to make any further repayment shall be cancelled upon receipt of a Certification of Death, (or upon receipt of such other evidence approved by the Corporation.) In the event a borrower becomes totally and permanently disabled, the obligation to make any further repayment shall be cancelled upon receipt of certification by a licensed physician.

(3) The Corporation shall have authority to assess a late charge for failure of the borrower to pay all or part of an installment within ten (10) days after its due date. The amount of such charge may not exceed six cents (.06) for each dollar of each installment due.

(4) The Corporation shall have the authority to collect from the borrower reasonable attorney's fees and other costs and charges necessary for the collection of any amount not paid when due.

(5) Nothing in this section shall preclude any forbearance for the benefit of the borrower which may be agreed upon by the parties to the loan and approved by the Corporation

D. The Corporation shall develop and maintain such procedures, subject to the approval of the Commission, as may be necessary to carry out applicable provisions of Act 512, Acts of Joint Resolutions of South Carolina, 1984 (Educational Improvement Act), as amended, and as may be required to exercise reasonable care and diligence in the making and collection of loans.

Fiscal Impact Statement:

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

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Document No. 4904

OFFICE OF THE ATTORNEY GENERAL

CHAPTER 13

Statutory Authority: 1976 Code Sections 35-1-101 et seq.

13-604. Procedures for Administrative Hearings before the Securities Commissioner.

Synopsis:

The Office of the Attorney General proposes to promulgate a regulation relating to administrative hearings held before the Securities Commissioner pursuant to the South Carolina Uniform Securities Act of 2005. The Notice of Drafting regarding this regulation was published on July 26, 2019, in the *State Register*.

Instructions:

The Regulation should be placed in Chapter 13 of the South Carolina Code of Regulations. The Regulation should be placed directly following S.C. Code of Regulations Reg. 13-603 and just before Article 3, Tobacco Enforcement.

Text:

13-604. Procedures for Administrative Hearings before the Securities Commissioner.

A. This regulation shall apply to Administrative Hearings held pursuant to Sections 35-1-306, 35-1-412, and 35-1-604.

B. To the extent that they do not conflict with the definitions set forth in Section 35-1-102, the terms below have the following meanings:

(1) "Administrative Hearing" means a proceeding before the Hearing Officer under the South Carolina Uniform Securities Act of 2005.

(2) "Administrative Order" means an order issued under Sections 35-1-306, 35-1-412, and 35-1-604 of the South Carolina Uniform Securities Act of 2005 that may lead to an Administrative Hearing.

(3) "Division" means the Securities Division of the South Carolina Attorney General's Office.

(4) "Hearing Officer" means either the Securities Commissioner or the person designated in accordance with this regulation by the Securities Commissioner to preside over an Administrative Hearing.

(5) "Party" means a Respondent in the proceeding and the Division.

(6) "Respondent" means a person against whom an Administrative Order is issued under the South Carolina Uniform Securities Act of 2005.

C. Time and Place of Filings.

(1) After the request for a hearing has been filed with the Division, all filings must be made with the Hearing Officer assigned to the case and shall contain the file number assigned to the case by the Division.

(2) After a Hearing Officer has been assigned, a pleading, motion, or other paper, is considered filed when it is received by the Hearing Officer.

(3) Unless otherwise specifically provided by law or this regulation, computation of any time period prescribed by this regulation or by an order of the Securities Commissioner begins with the first day following the act or event that initiates the time period. The last day of the time period so computed is included unless it is a Saturday, Sunday, State holiday, or any other day on which the Division is closed, in which event the period runs until the end of the next business day.

(4) If a notice or other filing is served by mail or e-mail and the Party served is entitled or required to take some action within a prescribed time period after service:

(a) The date of mailing is the date of service; and

(b) Three days are added to the prescribed time period.

D. Content of Documents.

(1) A pleading or other paper filed by a Party with the Hearing Officer shall contain a caption that sets forth:

- (a) The name of the first listed Respondent;
- (b) The file number assigned to the case by the Division; and
- (c) A brief descriptive title of the pleading.

(2) A pleading or other paper filed with the Hearing Officer shall:

- (a) Be signed by the Party or, if represented, by the Party's attorney; and
- (b) Contain the business address and telephone number of the person by whom it is signed.

(3) The original of any pleading or other paper shall be filed with the Hearing Officer, and a copy shall be served upon each Party or Party's attorney of record. A certificate of service attesting to the date and manner of service shall be filed with the pleading.

E. Initiation of Administrative Hearing.

(1) The Division shall promptly serve a copy of an Administrative Order upon each Respondent named in the order. Service may be made by personal service or by registered or certified mail.

(2) In addition to any contents required by statute, an Administrative Order shall advise the Respondent of the

- (a) Respondent's right to a hearing;
- (b) Time period within which the Respondent must request a hearing;
- (c) Respondent's obligation to file an answer; and
- (d) Effect of a failure to file an answer and to request a hearing.

F. Answers.

(1) A Respondent shall file with the Division a written answer to an Administrative Order within 30 days of service of the order. The Parties may agree to extend the time for filing the answer.

(2) The answer shall admit or deny each factual allegation in the Administrative Order and shall set forth affirmative defenses, if any. A Respondent without knowledge or information sufficient to form a belief as to the truth of an allegation shall so state.

(3) The answer shall indicate whether the Respondent requests a hearing concerning the Administrative Order.

(4) If a Respondent fails to file a timely answer, the Administrative Order becomes final as to that Respondent by operation of law.

G. Delegation of Hearing Authority.

(1) The Securities Commissioner may delegate his or her authority to preside over an Administrative Hearing in accordance with Section 35-1-601(a).

(2) The Securities Commissioner shall indicate in an order delegating his or her authority whether the Hearing Officer is to issue proposed or final findings of fact, proposed or final conclusions of law, and a proposed or final decision. The Securities Commissioner shall serve the order delegating his or her authority on all Parties and the Hearing Officer.

(3) The Securities Commissioner may revoke all or part of a delegation as a Hearing Officer.

(4) Procedures for Revocation.

(a) The Securities Commissioner may revoke a delegation as Hearing Officer at any time before a ruling on a substantive issue by the Hearing Officer or the taking of oral testimony from the first witness, whichever is earlier.

(b) The Securities Commissioner shall issue a written order of revocation that states the reason for the revocation and specifies whether all or part of the delegation has been revoked. If only part of the delegation has been revoked, the Securities Commissioner shall specify the portions of the Administrative Hearing for which the delegation has been revoked.

(c) The Securities Commissioner shall serve the order of revocation on all Parties and the Hearing Officer.

(d) A decision issued by the Securities Commissioner shall reflect the revocation of delegation, and a copy of the revocation order shall be included as part of the record.

(5) The Securities Commissioner may withdraw all or part of a delegation as Hearing Officer over an Administrative Hearing as to a Respondent at any time with the consent of that Respondent and the Division.

H. Notice of Hearing.

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(1) If a Respondent requests a hearing, or if the Securities Commissioner otherwise determines that a hearing concerning an Administrative Order is appropriate, the Hearing Officer shall give the Parties reasonable advance written notice of the hearing.

(2) The notice of the hearing shall include:

- (a) The date, time, place and nature of the hearing;
- (b) The legal basis for the hearing;
- (c) A brief statement of the issues;
- (d) A summary of the rights and restrictions concerning representation set forth in section I below;
- (e) A statement that each Respondent may present evidence and may cross-examine witnesses;
- (f) A statement that each Respondent may request the issuance of subpoenas in accordance with section

L of this regulation;

(g) A copy of the hearing procedures set forth in this regulation;

(h) A statement that failure by a Respondent to appear at the hearing may result in adverse action against that Respondent; and

(i) A statement that the Parties may agree to the evidence and that a Respondent may waive the right to appear at the hearing.

(3) If a Respondent named in an Administrative Order issued pursuant to the South Carolina Uniform Securities Act of 2005 submits a written request for a hearing, the Hearing Officer shall, within 15 days after receipt of the request, set a date for a hearing.

I. Representation.

(1) A Party has the right to participate pro se or to be represented by an attorney admitted to practice in this State, either permanently or pro hac vice. No one shall be permitted to represent a Party where such representation would constitute the unauthorized practice of law. A Party proceeding without legal representation shall remain fully responsible for compliance with these rules.

(2) An attorney authorized to represent a Party must file a notice of appearance with the Hearing Officer within ten days of being retained or authorized to represent the Party. The notice shall include the attorney's name, address, email address, and telephone number, and the name of the Party represented.

(3) An attorney must file a written motion to withdraw from representation of a Party.

J. If separate proceedings involve a common question of law or fact, the Hearing Officer may consolidate the proceedings in whole or in part.

K. Discovery.

(1) In general, and unless otherwise stated in this rule, discovery shall be conducted according to the procedures in Rules 26 through 37 of the South Carolina Rules of Civil Procedure (SCRCP), except that only the standard interrogatories provided by SCRCP 33(b), as applicable to the pending Administrative Hearing, are permitted; there shall be no more than three depositions per Party under Rule 30, SCRCP; and no more than ten requests to admit per Party, including subparts under Rule 36, SCRCP. Unless otherwise provided by law, all discovery requests shall be completed not later than 10 days before the date set for the hearing.

(2) Upon a motion by a Party or the Hearing Officer, discovery may be expanded or curtailed further for good cause shown.

L. Subpoenas.

(1) Upon the request of any Party, the Hearing Officer may issue subpoenas requiring the attendance and testimony of witnesses and the production of documents and tangible items in the possession or under the control of the witness.

(2) An application for issuance of a subpoena shall be made in writing to the Hearing Officer and shall state:

(a) The name and address of the person to be subpoenaed;

(b) If production of documents or tangible items is sought, a particular description of the documents or tangible items sought; and

(c) The name, address, and telephone number of the Party requesting the subpoena.

(3) A subpoena may be served by personal service or by registered or certified mail. The Party requesting the subpoena shall be responsible for, and bear the cost of, service.

(4) A Party shall promptly file a return of service with the Hearing Officer including an affidavit by the person making personal service or, if the subpoena was served by mail, the return receipt.

(5) A person who has been served with a subpoena may object to the subpoena by filing a motion to quash with the Hearing Officer within 10 days of service of the subpoena or by the date of the hearing, whichever is earlier. The subpoena may be quashed if it:

- (a) Fails to allow reasonable time to comply;
- (b) Requires excessive travel by a person who is not a Party;
- (c) Requires disclosure of privileged or otherwise protected matter and no exception or waiver applies;

or

- (d) Subjects a person to undue burden.

(6) The Hearing Officer may decline to enforce a subpoena that is arbitrary, capricious, or oppressive.

(7) If a person under subpoena fails to appear as required by the subpoena, or fails to produce the documents or tangible items set forth in the subpoena:

- (a) A Party may apply to the Hearing Officer for enforcement of the subpoena;

(b) An application to the Hearing Officer for enforcement of a subpoena shall be made immediately upon the failure to comply with the subpoena or within such other time period as the Hearing Officer may set; and

(c) Upon a timely request by a Party for enforcement of a subpoena, the Hearing Officer may apply to the Richland County Court of Common Pleas to enforce the subpoena.

M. Prehearing Conferences.

(1) The Hearing Officer may hold a scheduling conference with the Parties, in person or by telephone, to determine:

- (a) The necessity or desirability of prehearing statements or amendments;
- (b) The simplification of issues;
- (c) The possibility of obtaining stipulations of fact and of documents to avoid unnecessary proof;
- (d) Requests for official notice;
- (e) The limitation and exchange of expert testimony;
- (f) The scheduling of discovery and any discovery disputes;
- (g) The possibility of resolving the matter through a settlement;
- (h) Any preliminary motions;
- (i) The admissibility of evidence;
- (j) The order of presentation;
- (k) The limitation of the number of witnesses;
- (l) The exchange of prepared testimony and exhibits between the Parties; and
- (m) Any other matters that will promote the orderly and prompt conduct of the hearing.

(2) The Hearing Officer shall issue an appropriate order containing the action, if any, taken at the scheduling conference, which shall be made a part of the record.

N. Failure to Appear.

(1) If a Party, after receiving notice of an Administrative Hearing, fails to appear, the Hearing Officer may proceed to hold the hearing in that Party's absence.

(2) If a Party, after receiving notice of an Administrative Hearing, fails to appear, the Hearing Officer may also hold the absent Party in default and may issue a proposed or final decision and order against the defaulted Party.

(3) Request for Reconsideration.

(a) A Party defaulted as a result of a failure to appear at a prehearing conference or hearing may file a written motion requesting reconsideration by the Hearing Officer and stating the grounds for the request.

(b) A motion for reconsideration shall be filed within 15 days after service of a default order, or such lesser time as the Hearing Officer may direct.

O. Motions Generally.

(1) Unless otherwise permitted by these regulations or by the Hearing Officer, motions shall:

(a) Be made in writing, unless otherwise permitted by the Hearing Officer during the course of an Administrative Hearing; and

(b) State concisely the question to be determined and be accompanied by any necessary supporting documentation and memoranda.

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(2) A Party shall file a motion not later than 15 days before the date of the Administrative Hearing and shall serve a copy of the motion on each Party.

(3) A response to a written motion shall be filed on the earlier of:

- (a) 10 days after receipt of the motion; or
- (b) The date of the hearing.

(4) The Hearing Officer may allow oral argument if it appears necessary to a fuller understanding of the issues presented.

(5) The filing or pendency of a motion does not alter or extend any time limit.

(6) Motions for Summary Decision.

(a) A Party may move at any time for summary decision as to any substantive issue in the case.

(b) The Hearing Officer may issue a summary decision if the Hearing Officer finds that there is no genuine issue as to any material fact, and that the moving Party is entitled to prevail as a matter of law.

P. Conduct of Hearings.

(1) Order of Proceedings.

(a) The Hearing Officer shall call the hearing to order and explain briefly the purpose and nature of the hearing.

(b) The Hearing Officer may allow the Parties to present preliminary matters.

(c) The Parties may make opening statements.

(d) The Hearing Officer shall state the order of presentation of evidence.

(e) Each witness shall be sworn or put under affirmation to tell the truth. In the discretion of the Hearing Officer, witnesses may be sequestered during the hearing.

(f) The Parties may present closing summations and argument.

(2) During the Administrative Hearing, the Hearing Officer:

(a) Shall administer the oath or affirmation to each witness;

(b) Shall rule on the admissibility of evidence;

(c) Shall maintain order and take such action as necessary to avoid delay in the conduct of the hearing; and

(d) May question any witness as to any matter that the Hearing Officer considers relevant and material to the proceeding.

(3) On a genuine issue relevant to the determination of an Administrative Hearing, each Party may:

(a) Call witnesses;

(b) Offer evidence;

(c) Cross-examine any witness called by another Party; and

(d) Make opening and closing statements.

(4) Waiver of Right to Appear at Administrative Hearing.

(a) A Party may waive the right to appear personally at the hearing.

(b) A waiver shall be in writing and filed with the Hearing Officer.

(c) A waiver may be withdrawn by a Party by written notice filed with the Hearing Officer not later than seven days before the scheduled hearing.

(d) A Party who has filed a timely written waiver may not be held in default for failing to appear at the hearing.

Q. Submission of Case on Documentary Record. The Hearing Officer may elect not to hold a hearing if all Parties agree to submit the case on the documentary record and waive their right to appear.

R. Burden of Proof. The Party asserting the affirmative of an issue shall bear the burden of proof.

S. Evidence.

(1) Evidence shall be admitted in accordance with the South Carolina Rules of Evidence.

(2) Parties may, by stipulation, agree on any facts relevant to the proceedings. The facts stipulated shall be considered proven for purposes of the proceedings.

(3) Official Notice.

(a) The Hearing Officer may take official notice of a fact that is judicially noticeable or that is within the specialized knowledge of the Division.

(b) Before taking official notice of a fact, the Hearing Officer shall:

- (1) Notify each Party before or during the hearing; and

(2) Give each Party an opportunity to contest the fact.

T. Examination of Witnesses.

- (1) Witnesses shall testify under oath or affirmation.
- (2) A Party may conduct direct examination or cross-examination without strict adherence to formal rules of evidence in order to obtain a full and fair disclosure of facts relevant to matters in issue.
- (3) If the Hearing Officer determines that a witness is hostile or unresponsive, the Hearing Officer may authorize the Party calling the witness to proceed as if the witness were under cross-examination.

U. Ex Parte Communications.

- (1) Except as provided in subsection U(2) below, while an Administrative Hearing is pending, the Hearing Officer may not communicate ex parte regarding the merits of any issue in the case with:
 - (a) A Respondent or an attorney for a Respondent;
 - (b) Division staff or counsel involved in the investigation or presentation of the case; or
 - (c) Any other Hearing Officer who presided at an earlier stage of the case.
- (2) The Hearing Officer may communicate regarding the merits of any issue in the case with the Division's staff or counsel who have not otherwise participated in the investigation or presentation of the case.
- (3) Ex parte communications received in violation of this regulation shall be disclosed to all Parties.

V. Proposed and Final Decisions.

(1) The Securities Commissioner, or Hearing Officer when the authority to issue a final decision has been delegated, shall prepare written findings of fact and conclusions of law, and shall promptly issue a final decision after the conclusion of any hearing held before the Securities Commissioner or Hearing Officer with such authority. The final decision shall include rulings on any proposed findings of fact and conclusions of law submitted by the Parties.

(2) When the Securities Commissioner has delegated authority to hear a case to a member of his or her staff as Hearing Officer, but has reserved the final decision-making authority, the Hearing Officer shall send a proposed decision, including proposed findings of fact and conclusions of law, to the Parties and the Securities Commissioner.

(a) Within 15 days of receipt of the proposed decision, each Party shall file with the Securities Commissioner any exceptions to the proposed decision, any supporting memorandum, and any request to present argument to the Securities Commissioner.

(b) Within 10 days of receipt of exceptions filed by an adverse Party, a Party may file a memorandum in opposition to those exceptions.

(c) The Securities Commissioner shall review the Administrative Hearing record, the proposed decision of the Hearing Officer, and any exceptions and memoranda filed by the Parties, and may permit the Parties to present arguments, if the Securities Commissioner determines it is necessary to do so. Before issuing a final decision, the Securities Commissioner may require the submission of additional information or documentation.

(d) The Securities Commissioner shall issue a final decision that may adopt, modify, or vacate the proposed findings of fact, proposed conclusions of law, or the proposed decision of the Hearing Officer. The final decision shall include rulings on any exceptions filed by the Parties.

(3) A final decision of the Securities Commissioner shall advise each Respondent that any appeal to the Richland County Court of Common Pleas shall be filed within 30 days after the entry of the order, in accordance with Section 35-1-609.

(4) The Securities Commissioner may enter a final decision as to any Respondent who fails to:

- (a) File a timely responsive answer; or
- (b) Appear for a hearing at the scheduled time and date.

(5) A final decision of the Securities Commissioner shall be in writing. A copy of the final decision shall be hand delivered or mailed, by certified or registered mail, to each Party or its attorney.

(6) In the event of fraud, mistake, inadvertence, or excusable neglect, the Securities Commissioner may correct a final decision not more than one year after the entry of the final decision.

W. Record of Proceedings.

(1) The Division shall cause all oral proceedings, including testimony, to be recorded by a stenographer or by tape recorder or other device. The recording of the proceedings, which need not be transcribed, shall be maintained in the custody of the Division. In the event of an appeal from a decision of the Securities Commissioner, the appellant shall pay the cost of transcription of the record. Other verbatim reports or

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recordings may not be made by any other person without the express written consent of the Securities Commissioner.

(2) The record of an Administrative Hearing shall include:

(a) All pleadings, motions, orders, and related papers filed with the Securities Commissioner or the Hearing Officer;

(b) All documentary and tangible evidence;

(c) A statement of matters officially noticed;

(d) Recordings and any transcripts of oral proceedings;

(e) Any findings of fact and conclusions of law proposed by each Party;

(f) Any exceptions filed by the Parties and the Securities Commissioner's rulings on those exceptions;

(g) The findings of fact, conclusions of law, and decision of the Securities Commissioner;

(h) If a case has been delegated to the Hearing Officer for a proposed decision:

(1) The order delegating authority;

(2) Any notice of revocation;

(3) The proposed decision, including proposed findings of fact and proposed conclusions of law, of the Hearing Officer; and

(4) Any additional information or documentation submitted to the Securities Commissioner by the Parties;

(i) The final order, if any, of the Securities Commissioner; and

(j) Other documents or materials placed in the record as required by law or at the discretion of the Securities Commissioner or Hearing Officer.

(3) The Division shall prepare an index of the record of proceedings.

(4) Upon compilation, the record shall be available for public inspection at the Division during normal business hours unless the contents are otherwise protected by law.

(5) The Division, upon request of a Party, shall arrange for a copy of the record to be made, if the requesting Party pays in advance to the Division the Division's estimate of the reasonable costs of making the copy. The copy shall be certified by the Securities Commissioner, if requested.

X. At any time after initiation of an Administrative Hearing, with the approval of the Securities Commissioner, the Parties may resolve an Administrative Hearing without a final decision by stipulation, settlement, or consent order.

Y. Severability Clause. The provisions of this regulation are severable. If any part of this regulation is declared invalid or unconstitutional, that declaration shall not affect the parts which remain. Notwithstanding any invalidation, the remaining parts shall nonetheless continue to provide a workable and predictable procedure for conducting Administrative Hearings held pursuant to Sections 35-1-306, 35-1-412, and 35-1-604.

Fiscal Impact Statement:

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

Statement of Rationale:

The Attorney General, as Securities Commissioner, oversees and enforces the provisions of the South Carolina Uniform Securities Act of 2005. Pursuant to the Act, the Securities Commissioner is authorized to conduct administrative hearings, should one be requested, after the issuance of an administrative order. This regulation would clearly disclose to the parties of such an administrative hearing what procedures are to be followed.

Document No. 4912

OFFICE OF THE ATTORNEY GENERAL**CHAPTER 13**

Statutory Authority: 1976 Code Sections 35-1-101 et seq.

- 13-206. Intrastate Offering Exemption.
- 13-207. Fairness Hearings under Section 35-1-202(9).
- 13-308. Required Filings for Federal Covered Securities Under Regulation D Rule 506 of the Securities Act of 1933.
- 13-309. Offerings Made Under Tier 2 of Federal Regulation A.
- 13-413. Investment Adviser Information Security and Privacy.
- 13-414. Business Continuity and Succession Planning.
- 13-502. Dishonest or Unethical Practices by Investment Advisers, Investment Adviser Representatives and Federal Covered Advisers.
- 13-603. Consents to Service of Process.

Synopsis:

The Office of the Attorney General proposes to amend certain current regulations and promulgate additional regulations to implement the South Carolina Uniform Securities Act of 2005 and to reflect recent developments in securities regulation. The Notice of Drafting regarding these regulations was published on August 23, 2019, in the *State Register*.

Instructions:

The following sections of Chapter 13 are to be modified and added as provided below. All other sections of Chapter 13 not mentioned below are to remain unchanged.

Text:

- 13-206. Intrastate Offering Exemption.

A. The offer or sale of a security by an issuer, conducted solely in this state to residents of this state, shall be exempt from the requirements of Sections 35-1-301 through 35-1-306 and 35-1-504 of the Act, if the offer or sale is conducted in accordance with each of the following requirements:

- (1) The issuer of the security shall be a for-profit business entity formed under the laws of the state of South Carolina and registered with the Secretary of State.
- (2) The transaction shall meet the requirements of the federal exemption for intrastate offerings in either:
 - (a) Section 3(a)(11) of the Securities Act of 1933 (15 U.S.C. Section 77c(a)(11)), and SEC Rule 147 (17 C.F.R. 230.147); or
 - (b) Rule 147A (17 C.F.R. 230.147).
- (3) The sum of all cash and other consideration to be received for all sales of the security in reliance upon this exemption shall not exceed one million (\$1,000,000) dollars, less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance upon this exemption.
- (4) The issuer shall not accept more than five thousand (\$5,000) dollars from any single purchaser unless the purchaser is an accredited investor as defined by Rule 501 of SEC Regulation D (17 C.F.R. 230.501).
- (5) The issuer must reasonably believe that all purchasers of securities are purchasing for investment purposes.
- (6) A commission or other remuneration shall not be paid or given, directly or indirectly, for any person's participation in the offer or sale of securities unless the person is registered as a broker-dealer or agent under the Act.

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(7) All funds received from investors shall be deposited into a bank or depository institution authorized to do business in South Carolina, and all of the funds shall be used in accordance with representations made to investors.

(8) Not less than five days prior to the use of any general solicitation, or within fifteen days after the first sale of the security pursuant to this exemption (provided no general solicitation has been used prior to such sale), whichever occurs first, the issuer shall provide a notice to the Securities Commissioner in writing. The notice shall specify that the issuer is conducting an offering in reliance upon this exemption and shall contain the names and addresses of the following persons:

- (a) The issuer;
- (b) Officers, directors, and any control person of the issuer;
- (c) All persons who will be involved in the offer or sale of securities on behalf of the issuer; and
- (d) The bank or other depository institution in which investor funds will be deposited.

(9) The issuer shall not be, either before or as a result of the offering, an investment company as defined in Section 3 of the Investment Company Act of 1940 (15 U.S.C. Section 80a-3), or subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78m and 78o(d)).

(10) The issuer shall inform all purchasers that the securities have not been registered under the Act and that the securities are subject to the limitation on resales contained in either:

- (a) Subsection (e) of SEC Rule 147 (17 C.F.R. 230.147(e)), in the manner described in subsection (f) of SEC Rule 147 (17 C.F.R. 230.147(f)); or
- (b) Subsection (e) of SEC Rule 147A, (17 C.F.R. 230.147A(e)), in the manner described in subsection (f) of SEC Rule 147A (17 C.F.R. 230.147A(f)).

(11) This exemption shall not be used in conjunction with any other exemption under these Rules or the Act, except for offers and sales to officers, directors, partners, or similar controlling persons of the issuer. Sales to such controlling persons shall not count toward the limitation in subsection A(3) above.

(12) Disqualifications. This exemption shall not be available if the issuer, or any of its officers, controlling persons, or promoters is subject to a disqualifying event specified in Subsection (d) of Rule 506 of SEC Regulation D (17 C.F.R. 230.506(d)).

(13) Nothing in this exemption is intended to relieve or should be construed as in any way relieving the issuers or persons acting on behalf of issuers from the anti-fraud provisions of the Act.

(14) Every notice of exemption provided for in Subsection A(8) above is effective for one year from the date of its filing with the Securities Commissioner and shall be accompanied by a non-refundable filing fee of three hundred (\$300.00) dollars.

13-207. Fairness Hearings under Section 35-1-202(9).

A. To obtain a fairness hearing referenced in Section 35-1-202(9), an application for such hearing must be filed with the Securities Commissioner. The application for approval to issue securities or to deliver other consideration shall be made in compliance with subsections F through H below.

B. The Securities Commissioner or his designee shall serve as the Hearing Officer (the "Hearing Officer") and his or her authority under this regulation shall extend to the issuance or the delivery of securities or other consideration:

- (1) By any entity organized under the laws of this State; or
- (2) In any transaction that is subject to the registration or qualification requirements of Sections 35-1-301 through 35-1-306 and 35-1-504, or that would be so subject except for the availability of an exemption under Section 35-1-202, or by reason that the security is a federal covered security.

C. The provisions of this regulation shall be permissive only and no request for approval, failure to request approval, withdrawal of a request for approval, or denial of approval by the Hearing Officer shall affect the availability of any exemption from the registration or qualification other than the exemption available under Section 35-1-202(9), and shall not be admissible as evidence in any legal or administrative proceeding.

D. This regulation is intended to provide for a fairness hearing with respect to transactions which, if approved by the Hearing Officer, would be exempt from the registration requirements of the federal securities laws under Section 3(a)(10) of the Securities Act of 1933, or any section comparable thereto which may subsequently be enacted.

E. The applicant shall have the burden of proving the applicability of its claim for exemption under Section 35-1-202(9).

F. The application to issue securities or to deliver other consideration pursuant to Section 35-1-202(9), and all accompanying documents, shall be typed or printed and submitted to the Securities Commissioner in duplicate. The application shall be signed and dated by the applicant or by a person authorized to act on the applicant's behalf.

G. The application shall contain the following information:

(1) The names, state of incorporation or organization, and principal office address of any person proposing to issue securities or deliver other consideration in the proposed exchange;

(2) A brief description of the proposed transaction, including but not limited to a description of all parties to the transaction, all major lines of business engaged in by such parties, expected benefits of the transaction, a chronological description of the transaction to date, and a projected timetable and description of all events necessary to consummate the transaction;

(3) A list and a description of the securities or other consideration to be issued or delivered in the proposed exchange;

(4) A list and a description of the bona fide securities, claims or property interests for which the securities or other consideration referred to in subsection G(3) above are to be exchanged, including the name and state of incorporation or organization of the issuer of any such bona fide securities;

(5) A brief statement of the terms and conditions under which the securities or other consideration will be issued and exchanged or delivered and exchanged for the bona fide securities, claims or property interests;

(6) A list of the names, addresses and percentage interest owned of all persons to whom the securities will be issued or other consideration delivered in the exchange. If some or all of such persons are to receive the securities or other consideration by virtue of their ownership of shares of stock in a corporation, the applicant may comply with this requirement by submitting a list, which shows the shareholders of the corporation and the number of shares held by each shareholder as of a date not more than thirty (30) days prior to the filing of the application;

(7) A statement setting forth proposed findings of fact which the applicant requests that the Hearing Officer find and incorporate in the written decision with respect to the application;

(8) The date, which shall be within thirty (30) days of the date of filing of the application, on which the applicant requests that the hearing be held;

(9) A statement as to whether the applicant intends to rely on the exemption from federal securities registration provided for in Section 3(a)(10) of the Securities Act of 1933; and

(10) Any additional information which the applicant desires the Hearing Officer to consider. The Hearing Officer may require the applicant to submit other information in addition to the information required herein. The Hearing Officer may also waive or modify these requirements by allowing the applicant to submit less information than would otherwise be required.

H. The application shall be accompanied by the following documents:

(1) Any written agreement governing the proposed transaction;

(2) All press releases or other media announcements regarding the proposed transaction disseminated by any party to the proposed transaction;

(3) A copy of the notice of the hearing which the applicant will mail to all persons to whom the applicant proposes to issue securities or to deliver other consideration in the proposed transaction;

(4) An audited balance sheet for the preceding two fiscal years, or for the period of time of the corporation's existence if less than two years, prepared in accordance with generally accepted accounting principles, of any company whose securities will be issued or exchanged in the proposed transaction;

(5) An audited income statement for each of the preceding three fiscal years, or for the period of the corporation's existence if less than three years, prepared in accordance with generally accepted accounting principles, for the most recent fiscal year of any corporation whose securities will be issued or exchanged in the proposed transaction;

(6) All valuation or fairness opinions obtained by the parties to the transaction, including all materials supporting any parties' valuation of the securities or other consideration to be issued or exchanged in the proposed transaction;

(7) A consent to service of process as required by Section 35-1-611;

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(8) A non-refundable filing fee of five thousand (\$5,000.00) dollars;
(9) A written undertaking to pay, upon receipt of an invoice from the Hearing Officer, the reasonable costs incurred in conducting the fairness hearing; and

(10) Any other documents which the applicant desires the Hearing Officer to consider. The Hearing Officer may require the applicant to submit other documents in addition to the documents required herein. The Hearing Officer may also waive or modify these requirements by allowing the applicant to submit fewer documents other than those which would otherwise be required;

I. The procedure following the application shall be as follows:

(1) The Hearing Officer shall inform the applicant of any deficiencies in the application or of any additional information or documents required and may require the applicant to amend or resubmit the application prior to setting a date for the hearing;

(2) Upon the filing of a complete application, or upon any resubmitted complete application under subsection I(1) above, the Hearing Officer shall inform the applicant of the date, hour and place of the hearing, which shall be within thirty (30) days after the filing of the completed application;

(3) The applicant shall mail by United States Mail, postage prepaid, notice of such hearing to all persons to whom it is proposed to issue securities or to deliver such other consideration in such exchange, not less than ten (10) days prior to such hearing, and such notice shall be effective upon mailing. All persons to whom it is proposed to issue securities or to deliver such other consideration in such exchange have the right to appear. The applicant shall provide to the Hearing Officer, on or before the date of the hearing, a certification that the notice of hearing has been so mailed;

(4) Within ten business days after holding the hearing, the Hearing Officer shall issue his approval or a statement that his approval will not be forthcoming; and

(5) Following the conclusion of the hearing, the Hearing Officer shall transmit to the applicant an invoice for the reasonable costs incurred throughout the fairness hearing process. These costs may include, but are not limited to court reporter fees and costs, and transcript costs.

13-308. Required Filings for Federal Covered Securities Under Regulation D Rule 506 of the Securities Act of 1933.

A. With respect to a security that is a federal covered security under Section 18(b)(4)(D) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(4)(D)), or as later amended, a notice filing, including a copy of Form D, and a fee in the amount of three hundred (\$300.00) dollars must be filed with the Securities Commissioner not later than fifteen (15) days after the first sale of the security in this State.

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

C. Filings made and fees paid pursuant to this regulation shall be filed electronically with the Securities Commissioner through the Electronic Filing Depository system administered by the North American Securities Administrators Association, Inc.

D. A duly authorized person of the issuer shall affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing to EDGAR. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individual whose name is typed on the filing.

13-309. Offerings Made Under Tier 2 of Federal Regulation A.

A. Initial Filings. An issuer planning to offer and sell securities in this state in an offering exempt under Tier 2 of federal Regulation A shall submit the following at least 21 calendar days prior to the initial sale in this state:

(1) A completed Uniform Notice of Regulation A – Tier 2 Offering filing form, or copies of all documents filed with the Securities and Exchange Commission;

(2) A consent to service of process on Form U-2 if not filing on the Uniform Notice of Regulation A – Tier 2 Offering filing form; and

(3) A non-refundable filing fee of five hundred dollars.

B. Term. The notice filing is effective for twelve months from the date of the filing with this state.

C. Renewals. For each additional twelve-month period in which the same offering is continued, an issuer conducting a Tier 2 offering under federal Regulation A may renew its notice filing by filing the following on or before the expiration of the notice filing:

- (1) The Uniform Notice of Regulation A – Tier 2 Offering filing form marked “renewal” and a cover letter or other document requesting renewal; and
- (2) A non-refundable renewal fee of five hundred dollars.

13-413. Investment Adviser Information Security and Privacy.

A. Every investment adviser registered or required to be registered shall establish, implement, update, and enforce written physical security and cybersecurity policies and procedures reasonably designed to ensure the confidentiality, integrity, and availability of physical and electronic records and information. The policies and procedures must be tailored to the investment adviser’s business model, taking into account the size of the firm, type(s) of services provided, and the number of locations of the investment adviser.

B. The physical security and cybersecurity policies and procedures must:

- (1) Protect against reasonably anticipated threats or hazards to the security or integrity of client records and information;
- (2) Ensure that the investment adviser safeguards confidential client records and information; and
- (3) Protect any records and information the release of which could result in harm or inconvenience to any client.

C. The physical security and cybersecurity policies and procedures must cover at least five functions:

- (1) Identify. Develop the organizational understanding to manage information security risk to systems, assets, data, and capabilities;
- (2) Protect. Develop and implement the appropriate safeguards to ensure delivery of critical infrastructure services;
- (3) Detect. Develop and implement the appropriate activities to identify the occurrence of an information security event;
- (4) Respond. Develop and implement the appropriate activities to take action regarding a detected information security event; and
- (5) Recover. Develop and implement the appropriate activities to maintain plans for resilience and to restore any capabilities or services that were impaired due to an information security event.

D. The investment adviser must review, no less frequently than annually, and modify, as needed, these policies and procedures to ensure the adequacy of the security measures and the effectiveness of their implementation.

E. The investment adviser must deliver upon the investment adviser’s engagement by a client, and on an annual basis thereafter, a privacy policy to each client that is reasonably designed to aid in the client’s understanding of how the investment adviser collects and shares, to the extent permitted by state and federal law, non-public personal information. The investment adviser must promptly update and deliver to each client an amended privacy policy if any of the information in the policy becomes inaccurate.

13-414. Business Continuity and Succession Planning.

A. Every investment adviser shall establish, implement, and maintain written procedures relating to a business continuity and succession plan. The plan shall be based upon the facts and circumstances of the investment adviser’s business model, including the size of the firm, type(s) of services provided, and the number of locations of the investment adviser.

B. The plan shall provide for at least the following:

- (1) The protection, backup, and recovery of books and records;
- (2) Alternate means of communications with customers, key personnel, employees, vendors, service providers (including third-party custodians), and regulators, including, but not limited to, providing notice of a significant business interruption or the death or unavailability of key personnel or other disruptions or cessation of business activities;
- (3) Office relocation in the event of a temporary or permanent loss of a principal place of business;

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(4) Assignment of duties to qualified responsible persons in the event of the death or unavailability of key personnel; and

(5) Otherwise minimizing service disruptions and client harm that could result from a sudden significant business interruption.

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

A. A person who is an investment adviser, an investment adviser representative or a federal covered investment adviser is a fiduciary and has a duty to act primarily for the benefit of its clients. The provisions of this regulation apply to federal covered investment advisers to the extent that the conduct alleged is fraudulent, deceptive, or as otherwise permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290). While the extent and nature of this duty varies according to the nature of the relationship between an investment adviser, an investment adviser representative, or a federal covered investment adviser and its clients and the circumstances of each case, an investment adviser, an investment adviser representative, or a federal covered investment adviser shall not engage in prohibited fraudulent, deceptive, or manipulative conduct, including but not limited to the following:

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

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

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

(4) Exercising any discretionary authority in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten (10) business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary authority relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

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

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

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

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

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

(10) Charging a client an unreasonable fee.

(11) Failing to disclose to a client in writing before any advice is rendered any material conflict of interest relating to the adviser, its representatives, any of its employees, or affiliated persons, which could reasonably be expected to impair the rendering of unbiased and objective advice including:

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

(b) Charging a client an advisory fee for rendering advice without disclosing that a commission for executing securities transactions pursuant to such advice will be received by the adviser, its representatives, its employees, or affiliated persons.

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

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

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

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

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

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

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

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

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

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

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

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

C. The federal statutory and regulatory provisions referenced in this Rule shall apply to investment advisers, investment adviser representatives and federal covered advisers, regardless of whether the federal provision limits its application to advisers subject to federal registration.

13-603. Consents to Service of Process.

The following forms constitute compliance with Section 35-1-611(a) of the South Carolina Uniform Securities Act of 2005:

A. For broker-dealers, a fully executed Execution Page of the Form BD, Uniform Application for Broker-Dealer Registration;

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B. For investment advisers, a fully executed Execution Page of the Form ADV, Uniform Application for Investment Adviser Registration;

C. For agents and investment adviser representatives, a fully executed Form U-4, Uniform Application for Securities Industry Registration or Transfer;

D. For any offer or sale of securities made in compliance with Rules 501 through 508 of SEC Regulation D under the Securities Act of 1933, a fully executed Form D, Notice of Exempt Offering of Securities;

E. For any offer or sale made in compliance with R. 13-309 and Tier 2 of federal Regulation A under the Securities Act of 1933, a fully executed Uniform Notice of Regulation A – Tier 2 Offering filing form; and

F. For other filings, a fully executed Form U-2, Uniform Consent to Service of Process or such other form acceptable to the Securities Commissioner.

Fiscal Impact Statement:

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

Statement of Rationale:

The Attorney General, as Securities Commissioner, oversees and enforces the provisions of the South Carolina Uniform Securities Act of 2005. The regulations are being added to reflect recent developments in state and federal securities regulation, to promote capital formation, and to further implement provisions of the South Carolina Uniform Securities Act of 2005.

Document No. 4918

STATE BOARD OF EDUCATION

CHAPTER 43

Statutory Authority: 1976 Code Sections 59-26-10, 59-26-30, and 59-26-40

43-205.1. Assisting, Developing, and Evaluating Professional Teaching (ADEPT).

Synopsis:

The Department of Education proposes to revise Regulation 43-205.1, Assisting, Developing, and Evaluating Professional Teaching (ADEPT), to change the annual ADEPT Plan due date and to give districts more flexibility in assigning contract levels to newly hired teachers with previous teaching experience.

Notice of Drafting for the proposed amendments to the regulation was published in the *State Register* on August 23, 2019.

Instructions:

Sections III(C), III(E), IV(G), V(D), and VII(A) below replace Sections III(C), III(E), IV(G), V(D), and VII(A) that are currently in law.

Text:

43-205.1. Assisting, Developing, and Evaluating Professional Teaching (ADEPT).

I. State Standards for Professional Teaching

Teacher preparation programs and school districts must address, but are not limited to, the performance standards for Assisting, Developing, and Evaluating Professional Teaching (ADEPT), as specified in the State Board of Education's ADEPT implementation guidelines.

II. Teacher Candidates

A. All teacher education programs must adhere to State Board of Education regulations governing the preparation and evaluation of teacher candidates.

B. Each teacher education program must develop and implement a plan for preparing, evaluating, and assisting prospective teachers relative to the ADEPT performance standards in accordance with the State Board of Education’s ADEPT implementation guidelines. ADEPT plans must be approved by the State Board of Education prior to implementation.

C. By July 1 of each year, teacher education programs must submit assurances to the South Carolina Department of Education (SCDE) that they are complying with the State Board of Education’s ADEPT implementation guidelines. Proposed amendments to previously approved ADEPT plans must be submitted along with the assurances and must be approved by the State Board of Education prior to implementation.

D. Teacher education programs must submit information on their teacher candidates, as requested annually by the SCDE.

E. The SCDE will provide teacher education programs with ongoing technical assistance such as training, consultation, and advisement, upon request.

III. Induction-Contract Teachers

A. Teachers who possess a valid South Carolina pre-professional teaching certificate, as defined by the State Board of Education, may be employed under an induction contract for up to, but not to exceed, three years. The employment and dismissal provisions of Article 3, Chapter 19, and Article 5, Chapter 25, of Title 59 of the 1976 Code of Laws do not apply to teachers employed under induction contracts.

B. Each local school district must develop and implement a plan to provide induction-contract teachers with comprehensive guidance and assistance throughout each induction year. District induction plans must comply with the State Board of Education’s guidelines for assisting induction-contract teachers and must be approved by the State Board of Education prior to implementation.

C. On or before the date that the district extends offers of teaching employment for the following school year, teachers employed under induction contracts are to be notified in writing concerning their employment status. Teachers who complete an induction-contract year may, at the discretion of the school district, be employed under another induction-contract or an annual contract, or they may be released from employment. Teachers who are released may seek employment in another school district at the induction- or annual-contract level. The maximum induction period for a teacher is three years, regardless of the district in which the teacher is employed. A teacher who is completing a third year of induction is eligible for employment at the annual-contract level.

D. School districts must submit information on all teachers employed under induction contracts, as requested annually by the SCDE. Available flow-through funds to school districts will be provided on a first-year induction teacher basis.

E. By June 1 of each year, school districts must submit assurances to the SCDE that they are complying with the State Board of Education’s ADEPT implementation guidelines for assisting induction-contract teachers. A copy of the district’s proposed induction timeline must accompany the assurances. Proposed amendments to the district’s previously approved induction plan must be submitted along with the assurances and must be approved by the State Board of Education prior to implementation.

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F. By June 20 of each year, school districts must submit end-of-year information on teachers employed under induction contracts and on the employment contract decisions made for the following year, as requested by the SCDE.

G. The SCDE will provide school districts with ongoing technical assistance such as training, consultation, and advisement, upon request.

IV. Annual-Contract Teachers

A. Teachers who have satisfied their induction requirements may be employed under an annual contract. Full procedural rights under the employment and dismissal provisions of Article 3, Chapter 19, and Article 5, Chapter 25, of Title 59 of the 1976 Code of Laws do not apply to teachers employed under annual contracts. However, annual-contract teachers do have the right to an informal hearing before the district superintendent, under the provisions of S.C. Code Ann. Section 59-26-40 (Supp. 2012).

B. Teachers employed under an annual contract must be evaluated or assisted with procedures developed or adopted by the local school district in accordance with the State Board of Education's ADEPT implementation guidelines. These procedures must include the development, implementation, and evaluation of an individualized professional growth plan for each teacher.

C. Teachers must not be employed under an annual contract for more than four years.

D. During the first annual-contract year, the annual-contract teacher must, at the discretion of the school district, either undergo a formal performance evaluation or be provided with diagnostic assistance. The term "formal performance evaluation" is defined as a summative evaluation of teaching performance relative to the state standards and evaluation processes, as specified in the State Board of Education's ADEPT implementation guidelines. All formal evaluation processes must meet the general technical criteria of validity, reliability, maximum freedom from bias, and documentation. The term "diagnostic assistance" is defined as an optional process for providing individualized support to teachers who have demonstrated potential but who are not yet ready to successfully complete a formal performance evaluation.

1. An annual-contract teacher who has met the formal evaluation criteria set by the State Board of Education, the requirements for annual-contract teachers set by the local board of trustees, and the requirements established by the State Board of Education for the professional teaching certificate is eligible for employment at the continuing-contract level. At its discretion, the district may either employ the teacher under a continuing contract or terminate the teacher's employment. If employment is terminated, the teacher may seek employment in another school district. At the discretion of the next hiring district, the teacher may be employed at the annual or continuing-contract level.

2. An annual-contract teacher who has met the formal evaluation criteria set by the State Board of Education and the requirements set by the local board of trustees but who has not yet satisfied all requirements established by the State Board of Education for the professional teaching certificate is eligible for employment under a subsequent annual contract, with evaluation being either formal or informal (i.e., goals-based), at the discretion of the local school district. At its discretion, the district may either employ the teacher under an annual contract or terminate the teacher's employment. If employment is terminated, the teacher may seek employment in another school district at the annual-contract level.

3. An annual-contract teacher who for the first time fails to meet the formal evaluation criteria set by the State Board of Education or who fails to meet the requirements set by the local board of trustees is eligible for employment under a subsequent annual contract. At its discretion, the district may either employ the teacher under an annual contract or terminate the teacher's employment. If employment is terminated, the teacher may seek employment in another school district at the annual-contract level.

An annual-contract teacher who has demonstrated potential but who has not yet met the formal evaluation criteria set by the State Board of Education and/or the requirements set by the local board of trustees is eligible for a diagnostic-assistance year at the annual-contract level. This diagnostic-assistance year must be provided, if needed, at the discretion of the employing school district, either during the teacher's first annual-contract year or during the annual-contract year following the teacher's first unsuccessful formal evaluation. A teacher is eligible to receive only one diagnostic-assistance year. At the end of the diagnostic assistance year, the district may either employ the teacher under an annual contract or terminate the teacher's employment. If employment is terminated, the teacher may seek employment in another school district at the annual-contract level. A diagnostic-assistance year must be followed by formal (summative) evaluation at the annual-contract level during the teacher's next year of teaching employment.

4. An annual-contract teacher who for the second time fails to meet the formal evaluation criteria set by the State Board of Education will have his or her teaching certificate automatically suspended by the State Board of Education, as prescribed in Section 59-5-60 of the South Carolina Code of Laws, 1976, and in State Board of Education Regulation 43-58. Subsequent to this action, the teacher will be ineligible to be employed as a classroom teacher in a public school in this state for a minimum of two years. Before reentry into the profession, the teacher must complete a state-approved remediation plan based on the area(s) that were identified as deficiencies during the formal evaluation process. Remediation plans must be developed and implemented in accordance with the State Board of Education's ADEPT implementation guidelines.

Following the minimum two-year suspension period and the completion of the remediation plan, as verified by the SCDE, the teacher's certificate suspension will be lifted, and the teacher will be eligible for employment at the annual-contract level. Upon his or her reentry into the profession, the teacher must be formally evaluated. If, at the completion of the evaluation process, the teacher meets the formal evaluation criteria set by the State Board of Education, he or she may continue toward the next contract level. If, at the completion of the evaluation process, the teacher does not meet the formal evaluation criteria set by the State Board of Education, he or she is no longer eligible to be employed as a public school teacher in this state.

E. Each school district must develop a plan to evaluate and provide diagnostic assistance to teachers at the annual-contract level, in accordance with the State Board of Education's ADEPT implementation guidelines. District plans also must include procedures for developing, implementing, and evaluating individualized professional growth plans for annual-contract teachers.

F. School districts must establish criteria or requirements that teachers must meet at the annual-contract level. At a minimum, districts must require annual-contract teachers to meet the ADEPT formal evaluation criteria and all other requirements for the professional teaching certificate, as specified by the State Board of Education, in order to advance to the continuing-contract level.

G. By June 1 of each year, school districts must submit assurances to the SCDE that they are complying with the State Board of Education's ADEPT implementation guidelines for evaluating and assisting teachers at the annual-contract level. A copy of the district's proposed formal evaluation and diagnostic assistance timelines must accompany the assurances. Proposed amendments to the district's previously approved ADEPT plan for annual-contract teachers must be submitted along with the assurances and must be approved by the State Board of Education prior to implementation.

H. By June 20 of each year, school districts must submit end-of-year information on teachers employed under annual contracts and on the employment contract decisions made for the following year, as requested by the SCDE.

I. The SCDE will provide school districts with ongoing technical assistance such as training, consultation, and advisement, upon request.

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V. Continuing-Contract Teachers

A. Teachers who have met the formal evaluation criteria set by the State Board of Education, the requirements for annual-contract teachers set by the local board of trustees, and the requirements established by the State Board of Education for the professional teaching certificate are eligible for employment at the continuing-contract level. Teachers employed under continuing contracts have full procedural rights relating to employment and dismissal as provided for in Article 3, Chapter 19, and Article 5, Chapter 25, of Title 59 of the 1976 Code of Laws.

B. Teachers employed under continuing contracts must be evaluated on a continuous basis. The evaluation may be formal or informal (i.e., goals-based), at the discretion of the district. Districts must develop policies for recommending continuing-contract teachers for formal evaluation. Continuing-contract teachers who are being recommended for formal evaluation the following school year must be notified in writing on or before the date the school district issues the written offer of employment or reemployment. The written notification must include the reason(s) that a formal evaluation is recommended, as well as a description of the formal evaluation process. Continuing-contract teachers who are new to the district must be advised at the time of their hiring if they are to receive a formal evaluation.

C. Each school district must develop a plan, in accordance with State Board of Education's ADEPT implementation guidelines, to continuously evaluate teachers who are employed under continuing contracts. At a minimum, district ADEPT plans for continuing-contract teachers must address formal and informal evaluations and individualized professional growth plans.

D. By June 1 of each year, school districts must submit assurances to the SCDE that they are complying with the State Board of Education's ADEPT implementation guidelines for continuously evaluating teachers at the continuing-contract level. A copy of the district's proposed formal and informal evaluation timelines must accompany the assurances. Proposed amendments to the district's previously approved ADEPT plan for continuing-contract teachers must be submitted along with the assurances and must be approved by the State Board of Education prior to implementation.

E. By June 20 of each year, school districts must submit end-of-year information on teachers employed under continuing contracts and on the employment decisions made for the following year, as requested by the SCDE.

F. The SCDE will provide school districts with ongoing technical assistance such as training, consultation, and advisement, upon request.

VI. Teachers Who Do Not Have Sufficient Opportunity to Complete the ADEPT Process

A. A teacher who is employed under an induction, annual, or continuing contract and who is absent for more than 20 percent of the days in the district's SBE-approved annual evaluation cycle may, at the recommendation of the district superintendent, have his or her ADEPT results reported to the SCDE as "incomplete."

B. Teachers whose ADEPT results are reported to the SCDE as "incomplete" are eligible to repeat their contract level during the next year of employment.

VII. Teachers Employed from Out of State

A. Teachers employed from out of state who receive a South Carolina initial teaching certificate based on reciprocity and have less than one year of teaching experience are eligible for employment under an induction contract. Teachers employed from out of state who receive a South Carolina initial teaching certificate based on reciprocity and have one or more years of teaching experience are eligible for employment under an induction or annual contract, at the discretion of the school district.

B. Teachers employed from out of state who receive a South Carolina professional teaching certificate based on reciprocity are eligible for employment under an annual contract. At the annual-contract level, teachers may receive either a diagnostic-assistance year or a formal evaluation. Teachers who undergo formal evaluation and who, at the conclusion of the preliminary evaluation period, meet the formal evaluation criteria set by the State Board of Education may, at the discretion of the school district, have the final portion of the formal evaluation process waived. Teachers must successfully complete the formal evaluation at the annual-contract level before they are eligible to receive a continuing contract.

C. Teachers who are employed from out of state or from a nonpublic-school setting and who are certified by the National Board for Professional Teaching Standards (NBPTS) are exempted from initial certification requirements and are eligible for continuing contract status (S.C. Code Ann. Section 59-26-85 (Supp. 2012)).

VIII. Career and Technology Education Teachers, Candidates Pursuing Alternative Routes to Teacher Certification, and Teachers Employed on a Part-Time Basis

A. Teachers certified under the Career and Technology Education certification process must follow the same sequence as traditionally prepared teachers in terms of contract levels (i.e., induction, annual, and continuing) and ADEPT evaluation and assistance processes.

B. Candidates pursuing alternative routes to teacher certification must follow the same sequence as traditionally prepared teachers in terms of contract levels (i.e., induction, annual, and continuing) and ADEPT evaluation and assistance processes.

C. Teachers who are employed part-time and who receive a teaching contract (i.e., induction, annual, or continuing) must participate in the ADEPT evaluation and assistance processes.

IX. Teachers Employed under a Letter of Agreement

A. Teachers who are eligible for an induction or an annual contract but who are hired on a date that would cause their period of employment to be less than 152 days during the school year may be employed under a letter of agreement.

B. Teachers employed under a letter of agreement do not fall under ADEPT. However, districts must ensure that these teachers receive appropriate assistance and supervision throughout the school year.

C. The employment and dismissal provisions of Article 3, Chapter 19, and Article 5, Chapter 25, of Title 59 of the 1976 Code of Laws do not apply to teachers employed under a letter of agreement.

X. Teachers Who Hold an International Teaching Certificate

A. Teachers from outside the United States who hold an international teaching certificate must follow the same sequences as traditionally prepared teachers in terms of the beginning contract levels (i.e., induction and annual) and ADEPT evaluation and assistance processes.

B. Teachers from outside the United States who hold an international teaching certificate may remain at the annual-contract level but may not be employed under a continuing contract.

XI. Teachers Employed in Charter Schools

A. Except as otherwise provided in the Charter Schools Act (S.C. Code Ann. Section 59-40-50(A) (Supp. 2012)), charter schools are exempt from all provisions of law and regulations applicable to a public school, a school board, or a district. However, a charter school may elect to comply with one or more of these provisions of law or regulations, such as the provisions of the ADEPT statute and regulation.

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B. Charter schools that elect not to implement the ADEPT system may assist and/or evaluate their teachers according to the policies of their respective charter school committees. Certified teachers in these schools will accrue experience credit in a manner consistent with the provisions of State Board of Education Regulation 43-57 (S.C. Code Ann. Regs. 43-57 (2011)). Teachers in non-ADEPT charter schools who hold an initial teaching certificate are eligible to advance to a renewable limited professional certificate, as specified in State Board of Education Regulation 43-53 (S.C. Code Ann. Regs. (Supp. 2012)).

C. Charter schools that elect to implement the ADEPT system must comply with all provisions of the amended ADEPT statute (S.C. Code Ann. Sections 59-26-30 and 59-26-40, to be codified at Supp. 2012), this regulation, and the State Board of Education's ADEPT implementation guidelines. In fulfilling these requirements, the contract between the charter school and its sponsor must include an ADEPT provision. All certified teachers in the charter school must be assisted and evaluated in a manner consistent with the sponsor's State Board of Education-approved ADEPT plan for induction, formal evaluation, and goals-based evaluation. The ADEPT provision must address the charter school's responsibilities for ensuring the fidelity of the implementation of the ADEPT system. The provision also must address the sponsor's responsibilities in terms of staff training and program implementation. At a minimum, the sponsor must agree to disseminate all ADEPT-related information from the SCDE to the charter school and to report charter school teacher data to the SCDE. The provision must be included in the sponsor's ADEPT plan and approved by the State Board prior to implementation.

XII. Teachers Who Hold a Limited Professional Certificate

An educator who holds a valid South Carolina limited professional certificate is eligible for employment in a "regulated" South Carolina public school at the annual-contract level. At the annual-contract level, teachers may receive either a diagnostic-assistance year or a formal evaluation. Teachers who undergo formal evaluation and who, at the conclusion of the preliminary evaluation period, meet the formal evaluation criteria set by the State Board of Education may, at the discretion of the school district, have the final portion of the formal evaluation process waived. Teachers must successfully complete the formal evaluation at the annual-contract level before they are eligible to move from a limited professional certificate to a full professional certificate and to be employed under a continuing contract.

XIII. Reporting Requirements

Failure of a teacher education program or local school district to submit all required assurances or requested information pursuant to this regulation may result in the State Board of Education's withholding ADEPT funds.

Fiscal Impact Statement:

No additional state funding is requested. The South Carolina Department of Education estimates that no additional costs will be incurred in complying with the proposed revisions to R.43-205.1.

Statement of Rationale:

The 2016 updates to Sections 59-25-410 and 59-25-420 established that teacher contracts must be issued by April 30 and returned by May 10. In R.43-205.1, the current May 1 due date for annual ADEPT plans falls during this busy contract window. Since 2016, the State Board of Education, has extended the ADEPT plan due date to June 1. Changing the ADEPT plan due date to June 1 permanently would allow districts to focus on contracts during April and then use that data to complete their ADEPT plans for the coming year.

Additionally, over the course of the past two years, the Office of Educator Effectiveness and Leadership Development has sought feedback from district ADEPT leads on two changes that support district flexibility in hiring teachers with experience out of state or in another district. The proposed changes would grant districts flexibility to offer teachers with experience out of state or in another district an induction or an annual contract.

Document No. 4920
STATE BOARD OF EDUCATION
 CHAPTER 43

Statutory Authority: 1976 Code Sections 59-5-60, 59-5-65, and 59-25-110

43-55. Renewal of Credentials.

Synopsis:

The State Board of Education proposes to amend R.43-55, Renewal of Credentials, to modify references to the teacher certification office and to remove a renewal credit requirement of a graduate level course for certified educators without a master's degree.

Notice of Drafting for the proposed amendments to the regulation was published in the *State Register* on August 23, 2019.

Instructions:

Entire regulation is to be replaced with the following text.

Text:

43-55. Renewal of Credentials.

I. For the purposes of this regulation an educator is defined as any person who holds a professional certificate issued by the South Carolina Department of Education.

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

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

IV. To renew a professional certificate, educators must comply with all applicable guidelines relative to certificate renewal options and criteria, renewal credits, and verification requirements, in accordance with the current Certificate Renewal Plan, as developed by the teacher certification office and approved by the State Board of Education, as follows:

(A) An applicant who is employed in a position that requires educator certification must maintain verification of having earned a minimum of 120 renewal credits during the certificate's five-year validity period. Renewal credits may be earned through professional activities that directly relate to the educator's professional growth and development plan, support the goals of the employing educational entity, and promote student achievement, as required by Regulation 43-205.1, Assisting, Developing, and Evaluating Professional Teaching (ADEPT), and Regulation 43-165.1, Program for Assisting, Developing, and Evaluating Principal Performance (PADEPP).

(B) An applicant who is not employed in a position that requires educator certification but who chooses to maintain a current certificate must submit verification of having earned a minimum of 120 renewal credits during the certificate's five-year validity period. Renewal credits may be earned through professional activities that directly relate to the educator's current area(s) of certification or to a formal program of study (master's, specialist, or doctorate) in a certification area in which the educator is officially enrolled.

V. Renewal credits earned in state-identified areas of critical needs may be applied toward certificate renewal.

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VI. Applicants must comply with current State Department of Education approved Certificate Renewal Plan guidelines relative to obtaining, verifying, and submitting renewal credits. Applicants also are responsible for paying any required fee for credential renewal to the teacher certification office.

VII. Credit will not be allowed for a renewal activity that is repeated unless the activity has received prior written approval in writing from the teacher certification office.

VIII. Regulations governing effective dates of renewed certificates will be the same as those for initial and revised certificates, as specified in State Board of Education Regulation 43-52.

IX. A South Carolina professional teaching credential that has been expired

(A) for less than five (5) years may be extended upon written request from the educator to the teacher certification office. This nonrenewable extension is valid for one (1) year, during which time the school district or educator must submit verification that the educator has fulfilled all current requirements for renewal of the Professional Certificate. Upon verification that all requirements have been met, the Professional Certificate will be renewed for the remainder of the validation period (i.e., four additional years).

(B) for more than five (5) years, but less than ten (10) years, may be extended for a maximum of one (1) year at the written request of the school district that intends to employ the educator. During this one-year extension, the school district or educator must submit verification that the educator has met all current requirements for renewal of the Professional Certificate. Upon verification that all requirements have been met, the Professional Certificate will be renewed for the remainder of the validation period (i.e., four additional years).

(C) for more than ten (10) years will require that the educator either reapply for initial certification under the current requirements or satisfy current interstate reciprocity requirements.

Fiscal Impact Statement:

No additional state funding is requested. The South Carolina Department of Education estimates that no additional costs will be incurred in complying with the proposed revisions to R.43-55.

Statement of Rationale:

Amendments to R.43-55 will substitute a general office description for a specific office title no longer in use. Additional amendments will remove the requirement for a certified educator without a master's degree to complete at least three semester hours of college coursework at the graduate level every five years for certificate renewal purposes.

Document No. 4934
STATE BOARD OF FINANCIAL INSTITUTIONS
CONSUMER FINANCE DIVISION
CHAPTER 15
Statutory Authority: 1976 Code Sections 34-41-10 et seq.,
particularly Section 34-41-130

15-65. Check Cashing.

Synopsis:

The South Carolina State Board of Financial Institutions - Consumer Finance Division seeks to amend regulation 15-65 in order to clarify licensing requirements established by 1998 Act 433 pertaining to Check Cashing Services in South Carolina.

The Notice of Drafting was published in the *State Register* on October 25, 2019.

Instructions:

Print the amended regulation exactly as shown below.

Text:

ARTICLE 5
1988 ACT 433, SECTION 2, REGULATIONS

15-65. Check Cashing.

A. Definitions shall be those contained in the Act, S.C. Code Ann. Section 34-41-10 et seq. and the following:

(1) Branch Location Certificate – means the certificate issued to each branch location of a licensee pursuant to 34-41-10(5).

B. Application for licensure.

(1) Licenses and Branch Location Certificates shall expire at the close of business on December 31st of each year.

(2) License and Branch Location Certificate renewal fees must be paid to the Board of Financial Institutions – Consumer Finance Division no later than December 31st of each year.

Fiscal Impact Statement:

The Consumer Finance Division estimates that the additional costs incurred by the State in complying with the proposed regulation will be approximately \$0.

Statement of Rationale:

1998 Act 433 specifically provides for the South Carolina State Board of Financial Institutions to promulgate regulations necessary to carry out the purposes of this chapter, to provide for the protection of the public, and to assist licensees in interpreting and complying with this chapter. Regulation 15-65 is being added to further clarify licensing requirements imposed by the Act.

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Document No. 4894
STATE FISCAL ACCOUNTABILITY AUTHORITY
CHAPTER 19

Statutory Authority: 1976 Code Sections 11-35-10 et seq., and 2019 Act No. 41, Section 76

19-445. Consolidated Procurement Code.

Synopsis:

The Consolidated Procurement Code authorizes the State Fiscal Accountability Authority to promulgate regulations governing the procurement, management, and control of any and all supplies, services, information technology, and construction to be procured by the State and any other regulations relating to implementation of Title 11, Chapter 35 (Sections 11-35-60 & -540(1)). The Authority previously submitted proposed regulations for legislative approval on January 8, 2019, as Document 4861. Pursuant to Section 76 of 2019 Act No. 41, the Authority published interim regulations in the *State Register* on August 23, 2019. The Act also requires the Authority to publish proposed final regulations it will follow to implement changes; accordingly, these proposed regulations include the text of the previously published interim regulations. In addition, the proposed regulation will address various matters regarding Regulation 19-445 and procurement in general.

Notice of Drafting for the proposed amendments was published in the *State Register* on July 26, 2019.

Instructions:

The following sections of Regulation 19-445 are modified as provided below in the text. All other items and sections remain unchanged.

Text:

19-445. Consolidated Procurement Code.

(Statutory Authority: 1976 Code Section 11-35-10 et seq., and 2019 Act No. 41, Section 76)

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19-445.2097.	Rejection of Proposals.
19-445.2099.	Competitive Negotiations.
19-445.2100.	Small Purchases and Other Simplified Purchasing Procedures.
19-445.2105.	Sole Source Procurements.
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19-445.2115.	Information Technology Procurements.
19-445.2120.	Cost or Pricing Data.
19-445.2125.	Responsibility of Bidders and Offerors.
19-445.2127.	Organizational Conflicts of Interest.
19-445.2130.	Prequalification of Supplies and Suppliers.
19-445.2132.	Prequalification for a Single Solicitation.
19-445.2135.	Conditions for Use of Multi-term Contracts.
19-445.2137.	Food Service Contracts.
19-445.2140.	Specifications.
19-445.2141.	Commercial Products.
19-445.2143.	Contract Clauses and Administration.
19-445.2145.	Construction, Architect Engineer, Construction Management, and Land Surveying Services.
19-445.2150.	Surplus Property Management.
19-445.2152.	Leases, Lease/Payment, Installment Purchase, and Rental of Personal Property.
19-445.2155.	Intergovernmental Relations.
19-445.2160.	Assistance to Minority Businesses.
19-445.2165.	Gifts
19-445.2180.	Assignment, Novation, and Change of Name.
19-445.2200.	Administrative Review Protective Orders.
19-445.3000.	School District Procurement Codes; Model.

19-445.2000. State Procurement Regulations.

A. General.

These Regulations issued by the South Carolina State Fiscal Accountability Authority, hereafter referred to as the board, establish policies, procedures, and guidelines relating to the procurement, management, control, and disposal of supplies, services, information technology, and construction, as applicable, under the authority of the South Carolina Consolidated Procurement Code, as amended. These Regulations are designed to achieve maximum practicable uniformity in purchasing throughout state government. Hence, implementation of the Procurement Code by and within governmental bodies, as defined in Section 11-35-310(18) of the Procurement Code, shall be consistent with these Regulations. Nothing contained in these Rules and Regulations shall be construed to waive any rights, remedies or defenses the State might have under any laws of the State of South Carolina.

B. Organizational Authority.

(1) The Chief Procurement Officers acting on behalf of the board shall have the responsibility to audit and monitor the implementation of these Regulations and requirements of the South Carolina Consolidated Procurement Code. In accordance with Section 11-35-510 of the Code, all rights, powers, duties and authority relating to the procurement of supplies, services, and information technology and to the management, control, and warehousing of supplies, construction, information technology, and services now vested in or exercised by any governmental body under the provisions of law relating thereto, and regardless of source funding, are hereby vested in the appropriate chief procurement officers. In exercising this authority, the chief procurement officers shall afford each using agency reasonable opportunity to participate in and make recommendations with respect to procurement matters affecting the using agency. The chief procurement officers shall be responsible for

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developing such organizational structure as necessary to implement the provisions of the Procurement Code and these Regulations.

(2) Materials Management Office: The Materials Management Officer is specifically responsible for:

(a) developing a system of training and certification for procurement officers of governmental bodies in accordance with Section 11-35-1030;

(b) recommending differential dollar limits for direct procurements on the basis of but not limited to the following:

(1) procurement expertise,

(2) commodity,

(3) service,

(4) dollar;

(c) performing procurement audits of governmental bodies in accordance with Sections 11-35-1230 and 11-35-5340 of the Procurement Code.

(d) overseeing acquisitions for the State by the State Procurement Office.

(e) coordinating with the Information Technology Management Office in accordance with Section 11-35-820;

(f) overseeing the acquisition of procurements by the State Engineer in accordance with Section 11-35-830.

(3) Office of Information Technology Management: The Office of Information Technology Management shall be responsible for all procurements involving information technology pursuant to Section 11-35-820 of the Procurement Code.

(4) Office of State Engineer: The Office of State Engineer under the direction and oversight of the Materials Management Officer shall be responsible for all procurements involving construction, architectural and engineering, construction management, and land surveying services pursuant to Section 11-35-830 of the Procurement Code.

C. Definitions

(1) "Head of purchasing agency" means the agency head, that is, the individual charged with ultimate responsibility for the administration and operations of the governmental body. Whenever the South Carolina Consolidated Procurement Code or these Regulations authorize either the chief procurement officer or the head of the purchasing agency to act, the head of the purchasing agency is authorized to act only within the limits of the governmental body's authority under Section 11-35-1210, except with regard to acts taken pursuant to Section 11-35-1560 and 11-35-1570.

(2) "Procuring Agency" means "purchasing agency" as defined in Section 11-35-310.

(3) "Certification" means the authority delegated by the board or the Director of Procurement Services to a governmental body to make direct procurements not under term contracts. Certification is granted pursuant to Section 11-35-1210 and R.19-445.2020.

(4) "Responsible procurement officer" means the individual employed by either the purchasing agency or the chief procurement officers, as applicable, assigned to serve as the procurement officer, as defined in Section 11-35-310, and responsible for administering the procurement process. Typically, the responsible procurement officer will be identified by name in the solicitation, as amended, and any subsequent contracts, as amended.

D. Duty to Report Violations

All governmental bodies shall comply in good faith with all applicable requirements of the consolidated procurement code and these procurement regulations. When any information or allegations concerning improper or illegal conduct regarding a procurement governed by the consolidated procurement code comes to the attention of any employee of the State, immediate notice of the relevant facts shall be transmitted to the appropriate chief procurement officer.

E. Application of the Procurement Code.

(1) Other Required Approvals. Approval pursuant to the Code or regulations does not substitute for any other approval required by law. For example, if the Procurement Code applies to an acquisition and the overall arrangement involves either construction or the granting or acquiring any interest in real property, other independent processes or approval may be required by law, e.g., Sections 1-11-55, 1-11-56, 1-11-58, 1-11-65, or Chapter 47 of Title 2.

(2) Multiple Instruments Not Determinative. The application of the Code does not depend on whether the parties memorialize the overall transaction into one or more contractual instruments. As a remedial statute, the

Consolidated Procurement Code should be construed liberally to carry out its purposes. (Section 11-35-20) Accordingly, when multiple written agreements are part of an overall transaction to accomplish an overall purpose, the documents will be considered together for purposes of determining whether the Consolidated Procurement Code applies, even if the instruments have not been executed simultaneously or the parties are not the same.

(3) Revenue generating contracts. The Consolidated Procurement Code “applies to every procurement . . . by this State under contract acting through a governmental body . . .” (Section 11-35-40(2)) “The term ‘contract’ means “all types of state agreements, regardless of what they may be called, for the procurement . . . of . . . supplies, services, information technology, or construction.” (Section 11-35-310(8)) In pertinent part, the term “procurement” is defined as “buying, purchasing, renting, leasing, or otherwise acquiring any . . . construction.” (Section 11-35-310(25) (emphasis added.)) Accordingly, the Procurement Code applies even though the governmental body does not make a payment of money. Without limitation, examples of such contracts include revenue-generating contracts, concession agreements, and contracts structured as a design-build-finance-operate-maintain project. (Section 11-35-2910(8))

(4) Financed Construction. The Consolidated Procurement Code “applies to every procurement . . . by this State under contract acting through a governmental body . . .” (Section 11-35-40(2)) The term “contract” means “all types of state agreements, regardless of what they may be called, for the procurement . . . of . . . construction.” (Section 11-35-310(18)) In pertinent part, the term “procurement” is defined as “buying, purchasing, renting, leasing, or otherwise acquiring any . . . construction.” (Section 11-35-310(25) (emphasis added)) The term “construction” is defined as “the process of building . . . any . . . public improvements of any kind to real property.” (Section 11-35-310(7)) Read together, and absent an applicable exclusion (e.g., gifts) or exemption (e.g., Section 11-35-710), the Procurement Code applies to every acquisition of the process of improving real property by a governmental body, whether or not the acquisition involves an expenditure of money. Such acquisitions may be memorialized in a number of related agreements and, without limitation, may be structured as an in-kind exchange, lease-purchase, lease with purchase option, lease-lease-back, sale-lease-back, installment-purchase, or so-called public-private-partnership.

(5) Acquisition involving an interest in real property. Generally, the Procurement Code does not apply to an acquisition solely of an interest in real property. For example, the Procurement Code does not apply to an acquisition of land, even though it includes pre-existing improvements and fixtures (i.e., not built-to-suit), nor does it apply to an acquisition of a leasehold estate, even though it includes complementary subordinate supplies, services, information technology, or construction (e.g., landlord-performed tenant improvements for a lease not-to-own, building security, janitorial services). In contrast, the Procurement Code does apply to an acquisition of an interest in real property if the transaction also involves a substantial acquisition of supplies, services, information technology, or construction. For example, and without limitation, the Procurement Code would apply to an acquisition of food services, even though it involved the agency leasing its land to the contractor. As another example, as discussed in R.19-445.2000E(4), a lease-purchase of custom-built, new construction must be acquired pursuant to the Procurement Code. While not necessarily conclusive, the primary objective of the transaction may be determinative.

F. Notice.

(1) When adequate public notice is required by Article 5, the notice must contain sufficient information to allow a prospective offeror to make an informed business judgment as to whether she should compete (or would have competed) for the contract. At minimum the notice must contain the following information, as applicable:

- (a) a description of the item(s) to be acquired;
- (b) how to obtain a copy of the solicitation document or the anticipated contract;
- (c) when and where responses are due; and
- (d) the place of performance or delivery.

(2) In addition to the information above, the notices required by Section 11-35-1560 and Section 11-35-1570 must include the contract dollar amount of the proposed contract.

19-445.2010. Disclosure of Procurement Information.

A. Reserved.

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B. Prior to the issuance of an award or notification of intent to award, whichever is earlier, state personnel involved in an acquisition shall forward or refer all requests for information regarding the procurement to the responsible procurement officer. The procurement officer will respond to the request.

C. Prior to the issuance of an award or notification of intent to award, whichever is earlier, state personnel involved in an acquisition shall not engage in conduct that knowingly furnishes source selection information to anyone other than the responsible procurement officer, unless otherwise authorized in writing by the responsible procurement officer. "Source selection information" means any of the following information that is related to or involved in the evaluation of an offer (e.g., bid or proposal) to enter into a procurement contract, if that information has not been previously made available to the public or disclosed publicly: (1) Proposed costs or prices submitted in response to an agency solicitation, or lists of those proposed costs or prices, (2) source selection plans, (3) technical evaluation plans, (4) technical evaluations of proposals, (5) cost or price evaluations of proposals, (6) information regarding which proposals are determined to be reasonably susceptible of being selected for award, (7) rankings of responses, proposals, or competitors, (8) reports, evaluations of source selection committees or evaluations panels, (9) other information based on a case-by-case determination by the procurement officer that its disclosure would jeopardize the integrity or successful completion of the procurement to which the information relates.

D. In procurements conducted pursuant to Section 11-35-1530 or Section 11-35-1535, state personnel with access to proposal information shall not disclose either the number of offerors or their identity prior to the issuance of an award or notification of intent to award, whichever is earlier, except as otherwise required by law.

E. Prior to the issuance of an award or notification of intent to award, whichever is earlier, the procurement officer shall not release to any individual information obtained in response to an RFP, without first obtaining from that individual a written agreement, in a form approved by the responsible chief procurement officer, regarding restrictions on the use and disclosure of such information. Such agreements are binding and enforceable. Before allowing any individual to perform any role in discussions, negotiations, evaluation, or the source selection decision in a procurement conducted pursuant to Section 11-35-1530 or Section 11-35-1535, the responsible procurement officer must obtain from that individual, in a form approved by the appropriate chief procurement officer, a written acknowledgement of compliance and an agreement to comply with rules designed to protect the integrity of the procurement process.

F. The release of a proposal to non-state personnel for evaluation does not constitute public disclosure or a release of information for purposes of the Freedom of Information Act.

G. Except as prohibited by law, and subject to section 2200, state contracts may include clauses restricting the state's release of documents and information received from a contractor if those documents are exempt from disclosure under applicable law.

H. Subject to item (E), any person may furnish source selection information to the Office of the State Engineer. The procurement officer shall provide to the Office of the State Engineer any information it requests regarding a procurement.

I. Non-Public Solicitations. In accordance with Section 11-35-410(E), information that forms a part of a specific solicitation need not be publicly available if (a) the information is otherwise exempt from disclosure by law (e.g., Chapter 4, Title 30 (The Freedom of Information Act)), (b) the information is available to any prospective offeror that has executed a nondisclosure agreement (NDA), and (c) the appropriate chief procurement officer has approved the use and terms of an NDA for the solicitation at issue. Prior to use in a specific solicitation, the terms of a proposed NDA must be published in the solicitation unless otherwise approved by the CPO. When requesting approval from the appropriate chief procurement officer, the governmental body must identify the information to be released pursuant to the NDA, explain the reason for the request, cite the legal basis for not making the information publicly available, and provide any other information requested by the CPO. If governmental body declines a person's request to enter an NDA and acquire the information thereto, it must immediately notify the CPO. Consistent with R.19-445.2030, the applicable solicitation should instruct bidders how to comply with the NDA when submitting their offer. Information to be released pursuant to the NDA may also be released in accordance with R.19-445.2200 (Administrative Review Protective Orders).

19-445.2020. Certification.

A. Review Procedures.

(1) Unless otherwise authorized by statute, any governmental body that desires to make direct agency procurements in excess of \$50,000.00, shall contact the Materials Management Officer in writing to request certification in any area of procurement, including the following areas:

- (a) Supplies and services;
- (b) Reserved;
- (c) Construction, including, subject to Section 11-35-3220(9), construction-related professional services;
- (d) Information technology.

(2) The Materials Management Officer shall review and report on the particular governmental body's entire internal procurement operation to include, but not be limited to the following:

- (a) Adherence to provisions of the South Carolina Consolidated Procurement Code and these Regulations;
- (b) Procurement staff and training;
- (c) Adequate audit trails and purchase order register;
- (d) Evidences of competition;
- (e) Small purchase provisions and purchase order confirmation;
- (f) Emergency and sole source procurements;
- (g) Source selections;
- (h) File documentation of procurements;
- (i) Decisions and determinations made pursuant to section 2015;
- (j) Adherence to any mandatory policies, procedures, or guidelines established by the appropriate chief procurement officers;
- (k) Adequacy of written determinations required by the South Carolina Consolidated Procurement Code and these Regulations;
- (l) Contract administration;
- (m) Adequacy of the governmental body's system of internal controls in order to ensure compliance with applicable requirements.

(3) The report required by item A(2) shall be submitted to the board.

B. Approval

(1)(a) Upon recommendation by the Materials Management Officer, the Director of the Division of Procurement Services may authorize the particular governmental body to make direct agency procurements in the areas described in item A(1)(a) and A(1)(d), not under term contracts, in an amount up to one hundred fifty thousand dollars, provided a report required by item A(2) has been prepared within two years preceding the request.

(b) Upon recommendation by the State Engineer based on her knowledge of and experience with the particular governmental body, the Director of the Division of Procurement Services may authorize the particular governmental body to make direct agency procurements in the areas described in item A(1)(c), not under term contracts, in an amount up to one hundred fifty thousand dollars.

(c) The director shall advise the board in writing of all authorizations granted pursuant to this section B.

(2) If a governmental body requests certification above one hundred fifty thousand dollars, the request, along with the recommendation of the Materials Management Officer and the report required by item A(2), shall be submitted to the board. Upon recommendation by the Materials Management Officer and approval by the board, the particular governmental body may be certified and assigned a dollar limit below which the certified governmental body may make direct agency procurements not under term contracts.

(3) Certification under item B(1) or B(2) shall be in writing and specify:

- (a) The name of the governmental body;
- (b) Any conditions, limits or restrictions on the exercise of the certification;
- (c) The duration of the certification; and
- (d) The procurement areas in which the governmental body is certified.

C. Using the criteria listed in item A(2) above, the office of each chief procurement officer shall be reviewed at least every five years by the audit team of the Materials Management Office. The results of the audit shall be provided to the appropriate chief procurement officer and the Executive Director of the Authority.

D. Limitations.

(1) Such certification as prescribed in section B shall be subject to any term contracts established by the chief procurement officers which require mandatory procurement by all governmental bodies.

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(2) Such certification as prescribed in section B shall be subject to maintaining an adequate staff of qualified or certified procurement officers.

19-445.2030. Competitive Sealed Bidding—The Invitation for Bids.

A. The invitation for bids shall be used to initiate a competitive sealed bid procurement and shall include the following, as applicable:

(1) instructions and information to bidders concerning the bid submission requirements, including the time and date set for receipt of bids, the individual to whom the bid is to be submitted, the address of the office to which bids are to be delivered, the maximum time for bid acceptance by the State, and any other special information;

(2) the purchase description, evaluation factors, delivery or performance schedule, and such inspection and acceptance requirements as are not included in the purchase description;

(3) the contract terms and conditions, including warranty and bonding or other security requirements, as applicable; and

(4) Instructions to bidders on how to visibly mark information which they consider to be exempt from public disclosure.

B. Adequate notice of the invitation for bids must be given at a reasonable time before the date set forth in it for the opening of bids. Accordingly, bidding time will be set to provide bidders a reasonable time to prepare their bids. Without limiting the foregoing requirements, the date of opening may not be less than seven (7) days after notice of the solicitation is provided as required by Section 11-35-1520(3), unless a shorter time is deemed necessary for a particular procurement as determined in writing by the Chief Procurement Officer or the head of the purchasing agency or his designee.

19-445.2042. Pre-Bid Conferences.

A. Pre-bid conferences may be conducted. The conference should be held long enough after the Invitation for Bids has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Notice of the conference must be included in the notice of the solicitation required by Articles 5 or 9 of this code.

B. Nothing stated at the pre-bid conference shall change the Invitation for Bids unless a change is made by written amendment. A potential bidder's failure to attend an advertised pre-bid conference will not excuse its responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the State.

C. Pre-bid conferences may not be made mandatory absent a written determination by the head of the governmental body or his designee that the unique nature of the procurement justifies a mandatory pre-bid conference and that a mandatory pre-bid conference will not unduly restrict competition.

D. To minimize the time and expense imposed on industry by pre-bid conferences, the procurement officer should arrange for attendance by electronic means to the maximum extent practicable.

19-445.2045. Receipt, Safeguarding, and Disposition of Bids.

A. Procedures Prior to Bid Opening.

All bids (including modifications) received prior to the time of opening shall be kept secure and, except as provided in subsection B below, unopened. Necessary precautions shall be taken to insure the security of the bid. Prior to bid opening, information concerning the identity and number of bids received shall be made available only to the state employees, and then only on a "need to know" basis. When bid samples are submitted, they shall be handled with sufficient care to prevent disclosure of characteristics before bid opening.

B. Unidentified Bids.

Unidentified bids may be opened solely for the purpose of identification, and then only by an official specifically designated for this purpose by the Chief Procurement Officer, the procurement officer of the governmental body, or a designee of either officer. If a sealed bid is opened by mistake, the person who opens the bid will immediately write his signature and position on the envelope and deliver it to the aforesaid official. This official shall immediately write on the envelope an explanation of the opening, the date and time opened, the invitation for bids' number, and his signature, and then shall immediately reseal the envelope.

C. When bids or proposals are rejected, or a solicitation cancelled after bids or proposals are received, the bids or proposals which have been opened shall be retained in the procurement file or, if unopened, otherwise disposed of. Unopened bids or proposals are not considered to be public information under Chapter 4 of Title 30 (Freedom of Information Act).

19-445.2065. Rejection of Bids.

A. Unless there is a compelling reason to reject one or more bids, award will be made to the lowest responsible and responsive bidder. Every effort shall be made to anticipate changes in a requirement prior to the date of opening and to notify all prospective bidders of any resulting modification or cancellation, thereby permitting bidders to change their bids and preventing the unnecessary exposure of bid prices. As a general rule after opening, an invitation for bids should not be canceled and readvertised due solely to increased quantities of the items being procured; award should be made on the initial invitation for bids and the additional quantity required should be treated as a new procurement.

B. Cancellation of Bids Prior to Award.

(1) When it is determined prior to the issuance of an award or notification of intent to award, whichever is earlier, but after opening, that the requirements relating to the availability and identification of specifications have not been met, the invitation for bids shall be cancelled. Invitations for bids may be cancelled after opening, but prior to award, when such action is consistent with subsection A above and the procurement officer determines in writing that:

- (a) inadequate or ambiguous specifications were cited in the invitation;
- (b) specifications have been revised;
- (c) the supplies, services, information technology, or construction being procured are no longer required;
- (d) the invitation did not provide for consideration of all factors of cost to the State, such as cost of transporting state furnished property to bidders' plants;
- (e) bids received indicate that the needs of the State can be satisfied by a less expensive article differing from that on which the bids were invited;
- (f) all otherwise acceptable bids received are at unreasonable prices;
- (g) the bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or
- (h) for other reasons, cancellation is clearly in the best interest of the State.

(2) Determinations to cancel invitations for bids shall state the reasons therefor.

C. Extension of Bid Acceptance Period.

Should administrative difficulties be encountered after bid opening which may delay award beyond bidders' acceptance periods, the several lowest bidders should be requested, before expiration of their bids, to extend the bid acceptance period (with consent of sureties, if any) in order to avoid the need for re-advertisement.

19-445.2080. Bid Reductions.

The responsible procurement officer may accept a voluntary reduction in price from a low bidder after bid opening but prior to award; provided that such reduction is not conditioned on, nor results in, the modification or deletion of any conditions contained in the invitation for bids.

19-445.2090. Award.

A. Application.

The contract shall be awarded to the lowest responsible and responsive bidder(s) whose bid meets the requirements and criteria set forth in the invitation for bids.

B. The procurement officer shall issue the notice of intent to award or award on the date specified in the solicitation, unless the procurement officer determines, and gives notice, that a longer review time is necessary. The procurement officer shall give notice of the revised posting date in accordance with Section 11-35-1520(10).

19-445.2095. Competitive Sealed Proposals.

A. Request for Proposals.

The provisions of Regulations 19-445.2030B and 19-445.2040 shall apply to implement the requirements of Section 11-35-1530 (2), Public Notice.

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B. Receipt, Safeguarding, and Disposition of Proposals.

The provisions of Regulation 19-445.2045 shall apply to competitive sealed proposals.

C. Receipt of Proposals.

The provisions of Regulation 19-445.2050(B) shall apply to competitive sealed proposals. For the purposes of implementing Section 11-35-1530(3), Receipt of Proposals, the following requirements shall be followed:

(1) Proposals shall be opened publicly by the procurement officer or his designee in the presence of one or more witnesses at the time and place designated in the request for proposals. Proposals and modifications shall be time-stamped upon receipt and held in a secure place until the established due date. After the date established for receipt of proposals, a Register of Proposals shall be prepared which shall include for all proposals the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the item offered. The Register of Proposals shall be certified in writing as true and accurate by both the person opening the proposals and the witness. The Register of Proposals shall be open to public inspection only after the issuance of an award or notification of intent to award, whichever is earlier. Proposals and modifications shall be shown only to State personnel having a legitimate interest in them and then only on a "need to know" basis. Contents and the identity of competing offers shall not be disclosed during the process of opening by state personnel.

(2) As provided by the solicitation, offerors must visibly mark all information in their proposals that they consider to be exempt from public disclosure.

D. [Repealed]

E. Clarifications and Minor Informalities in Proposals.

The provisions of Section 11-35-1520(13) shall apply to competitive sealed proposals.

F. Specified Types of Construction.

Consistent with Section 48-52-670, which allows the use of competitive sealed proposals, it is generally not practicable or advantageous to the State to procure guaranteed energy, water, or wastewater savings contracts by competitive sealed bidding.

G. Procedures for Competitive Sealed Proposals.

The appropriate Chief Procurement Officer may develop and issue procedures which shall be followed by all agencies using the competitive sealed proposal method of acquisition. Unless excused by the State Engineer, the Office of State Engineer shall oversee (1) the evaluation process for any procurement of construction if factors other than price are considered in the evaluation of a proposal, and (2) any discussions with offerors conducted pursuant to Section 11-35-1530(6) or subsection I below.

H. Other Applicable Provisions.

The provisions of the following Regulations shall apply to competitive sealed proposals:

- (1) Regulation 19-445.2042, Pre-Bid Conferences,
- (2) Regulation 19-445.2060, Telegraphic and Electronic Bids,
- (3) Regulation 19-445.2075, All or None Qualifications,
- (4) Regulation 19-445.2085, Correction or Withdrawal of Bids; Cancellation of Awards, and Cancellation of Awards Prior to Performance.
- (5) Regulation 19-445.2137, Food Service Contracts.

I. Discussions with Offerors

(1) Classifying Proposals.

For the purpose of conducting discussions under Section 11-35-1530(6) and item (2) below, proposals shall be initially classified in writing as:

- (a) acceptable (i.e., reasonably susceptible of being selected for award);
- (b) potentially acceptable (i.e., reasonably susceptible of being made acceptable through discussions); or
- (c) unacceptable.

(2) Conduct of Discussions.

If discussions are conducted, the procurement officer shall exchange information with all offerors who submit proposals classified as acceptable or potentially acceptable. The content and extent of each exchange is a matter of the procurement officer's judgment, based on the particular facts of each acquisition. In conducting discussions, the procurement officer shall:

- (a) Control all exchanges;
- (b) Advise in writing every offeror of all deficiencies in its proposal, if any, that will result in rejection as non-responsive;

(c) Attempt in writing to resolve uncertainties concerning the cost or price, technical proposal, and other terms and conditions of the proposal, if any;

(d) Resolve in writing suspected mistakes, if any, by calling them to the offeror's attention.

(e) Provide the offeror a reasonable opportunity to submit any cost or price, technical, or other revisions to its proposal, but only to the extent such revisions are necessary to resolve any matter raised by the procurement officer during discussions under items (2)(b) through (2)(d) above.

(3) Limitations. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. Ordinarily, discussions are conducted prior to final ranking. Discussions may not be conducted unless the solicitation alerts offerors to the possibility of such an exchange, including the possibility of limited proposal revisions for those proposals reasonably susceptible of being selected for award.

(4) Communications authorized by Section 11-35-1530(6) and items (1) through (3) above may be conducted only by procurement officers authorized by the appropriate chief procurement officer.

J. Rejection of Individual Proposals.

(1) Proposals need not be unconditionally accepted without alteration or correction, and to the extent otherwise allowed by law, the State's stated requirements may be clarified after proposals are submitted. This flexibility must be considered in determining whether reasons exist for rejecting all or any part of a proposal. Reasons for rejecting proposals include but are not limited to:

(a) the business that submitted the proposal is nonresponsible as determined under Section 11-35-1810;

(b) the proposal ultimately (that is, after an opportunity, if any is offered, has passed for altering or clarifying the proposal) fails to meet the announced requirements of the State in some material respect; or

(c) the proposed price is clearly unreasonable.

(2) The reasons for cancellation or rejection shall be made a part of the procurement file and shall be available for public inspection.

K. Negotiations.

(1) Prior to initiating negotiations under Section 11-35-1530(8), the using agency must document its negotiation objectives.

(2) The responsible procurement officer must participate in, control, and document all negotiations.

L. Delay in Posting Notice of Intent to Award or Award.

Regulation 19-445.2090B shall apply to competitive sealed proposals.

19-445.2097. Rejection of Proposals.

A. Unless there is a compelling reason to reject one or more proposals, award will be made to the highest ranked responsible offeror or otherwise as allowed by Section 11-35-1530. Every effort shall be made to anticipate changes in a requirement prior to the date of opening and to notify all prospective offerors of any resulting modification or cancellation.

B. Cancellation of Solicitation Prior to Award.

(1) When it is determined prior to the issuance of an award or notification of intent to award, whichever is earlier, but after opening, that the requirements relating to the availability and identification of specifications have not been met, the request for proposals shall be cancelled. A request for proposals may be cancelled after opening, but prior the issuance of an award or notification of intent to award, whichever is earlier, when such action is consistent with subsection A above and the procurement officer determines in writing that:

(a) inadequate or ambiguous specifications were cited in the solicitation;

(b) specifications have been revised;

(c) the supplies, services, information technology, or construction being procured are no longer required;

(d) the solicitation did not provide for consideration of all factors of cost to the State, such as cost of transporting state furnished property to bidders' plants;

(e) proposals received indicate that the needs of the State can be satisfied by a less expensive article differing from that on which the proposals were requested;

(f) all otherwise acceptable proposals received are at unreasonable prices;

(g) the proposals were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or

(h) for other reasons, cancellation is clearly in the best interest of the State.

(2) Determinations to cancel a request for proposals shall state the reasons therefor.

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C. Extension of Bid Acceptance Period.

Should administrative difficulties be encountered after opening which may delay award beyond offeror's acceptance periods, the relevant offerors should be requested, before expiration of their offers, to extend the acceptance period (with consent of sureties, if any).

19-445.2099. Competitive Negotiations.

A. General

(1) Competitive negotiations are governed by R.19-445.2030B, -2040, -2042, -2045, -2050B, -2085C, -2090B, -2095C, -2095J, and -2098. Regulation 19-445-2097 (Rejection of Proposals) applies to competitive negotiations except that R.19-445.2099(K)(1) is substituted for R.19-445.2097A.

(2) Documentation required by this Regulation 19-445.2099 must be prepared at the time the process to be documented is conducted.

(3) For each competitive negotiation the head of the using agency or his designee must appoint in writing an individual to serve as the selection executive (SE). The SE must be an individual who has sufficient rank and professional experience to effectively carry out the functions of an SE. Subject to the authority and approval of the responsible procurement officer, the SE shall—

(a) Recommend an acquisition team, tailored for the particular acquisition, that includes appropriate contracting, legal, logistics, technical, and other expertise to ensure a well-developed solicitation, a comprehensive evaluation of offers, and effective negotiations;

(b) Approve the acquisition plan and the solicitation before solicitation release;

(c) Ensure consistency among and sufficiency of the solicitation requirements, evaluation factors and subfactors, solicitation provisions or contract clauses, and data requirements;

(d) Ensure that proposals are evaluated based solely on the factors and subfactors contained in the solicitation;

(e) Consider the recommendations of subject matter experts, advisory boards or panels (if any); and

(f) Select the source or sources whose proposal is the best value to the State, as provided in R.19-445.2099K.

(4) Consistent with Section 11-35-1535(A)(3), competitive negotiated acquisitions may be conducted only by the office of the appropriate chief procurement officer; accordingly, a chief procurement officer may not delegate to a using agency the authority to conduct a competitive negotiation.

B. Procedures for Competitive Negotiations.

The Division of Procurement Services may develop and issue procedures which shall be followed when using the competitive negotiations method of acquisition.

C. Definitions

Clarification means any communication in which the responsible procurement officer requests or accepts information that clarifies any information in a proposal. Clarification does not include the request or acceptance of any change to the terms of an offer.

Competitive range means the offeror or group of offerors selected for negotiation.

Deficiency means any term of an offer that does not conform to a material requirement of a solicitation. A material requirement is one that affects the price, quantity, quality, delivery, or other performance obligations of the contract.

Negotiation means any communication, oral or written, that invites or permits an offeror to change any texts or graphics in the terms of its offer in any way. Negotiation does not include communications involving (i) information that is necessary to understand an offer, but that does not change any text or graphics in the offer, (ii) information about the offeror, or (iii) any other information that will not bind the parties upon acceptance of an offer.

Offer means those portions of a proposal that constitute a written promise or set of promises to act or refrain from acting in a specified way, so made as to manifest a commitment to be bound by those promises upon acceptance by the State. Offer does not include mere descriptions of approaches, plans, intentions, opinions, predictions, or estimates; statements that describe the offeror's organization or capability; or any other statements that do not make a definite and firm commitment to act or refrain from acting in a specified way.

Proposal means the information submitted to the State in response to a request for proposals. The information in a proposal includes (i) the offer, (ii) information explaining the offer, (iii) information about the offeror, and (iv) any other information that is relevant to source selection decision making.

Weakness means a flaw in the proposal that increases the risk of unsuccessful contract performance. A “significant weakness” in the proposal is a flaw that appreciably increases the risk of unsuccessful contract performance.

D. Amending the solicitation

(1) When, either before or after receipt of proposals, the State changes its requirements or terms and conditions, the responsible procurement officer shall amend the solicitation.

(2) When, after the receipt of proposals, the State discovers that material inadequacies of the solicitation have contributed to technical or pricing deficiencies, the responsible procurement officer shall amend the solicitation to resolve the inadequacies, preferably prior to proceeding further with the procurement process.

(3) If a proposal of interest to the State involves a desirable departure from the stated requirements, the responsible procurement officer shall amend the solicitation, preferably prior to completion of proposal evaluation pursuant to F(1), provided this can be done without revealing to the other offerors the alternate solution proposed or any other information that is entitled to protection (see Regulation 19-445.2099I).

(4) Amendments issued after the established time and date for receipt of proposals may not exceed the general scope of the request for proposals and must be issued to those offerors that have not been eliminated from the competition.

(5) If, based on market research or otherwise, an amendment proposed for issuance after offers have been received is so substantial as to exceed what prospective offerors reasonably could have anticipated, so that additional sources likely would have submitted offers had the substance of the amendment been known to them, the responsible procurement officer shall cancel the original solicitation and issue a new one, regardless of the stage of the acquisition.

E. Evaluation Factors

(1) The award decision is based on evaluation factors and significant subfactors that are tailored to the acquisition.

(2) Evaluation factors and significant subfactors must—

(a) Represent the key areas of importance and emphasis to be considered in the source selection decision; and

(b) Support meaningful comparison and discrimination between and among competing proposals.

(3) The evaluation factors and significant subfactors that apply to an acquisition and their relative importance are within the broad discretion of the responsible procurement officer, subject to the following requirements:

(a) Price or cost to the State shall be evaluated unless the responsible procurement officer documents the reasons price or cost is not an appropriate evaluation factor for the acquisition and that decision is approved by the head of the using agency.

(b) The quality of the item to be acquired shall be addressed in every source selection through consideration of one or more non-cost evaluation factors such as past performance, compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, and prior experience.

(c) Past performance shall be evaluated unless the responsible procurement officer documents the reasons past performance is not an appropriate evaluation factor for the acquisition.

(4) All factors and significant subfactors that will affect contract award and their relative importance shall be stated clearly in the solicitation. The rating method need not be disclosed in the solicitation.

(5) The request for proposals must state the relative importance of all factors to be considered in evaluating proposals but need not state a numerical weighting for each factor.

(6) If price is an evaluation factor, the solicitation must state whether all evaluation factors other than cost or price, when combined, are significantly more important than, approximately equal to, or significantly less important than cost or price.

F. Evaluation Process

(1) General. Proposal evaluation is an assessment of the proposal and the offeror’s ability to perform the prospective contract successfully. All proposals shall be evaluated and, after evaluation, their relative qualities must be assessed solely on the factors and subfactors specified in the solicitation. The relative strengths, deficiencies, significant weaknesses, and risks supporting proposal evaluation shall be documented in the contract file.

(2) Evaluation methods. Evaluations may be conducted using any rating method or combination of methods, including color or adjectival ratings, numerical weights, and ordinal rankings.

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(3) Cost or price evaluation. The responsible procurement officer shall document the cost or price evaluation. Price reasonableness shall be determined independently of cost or price evaluation.

(4) Past performance evaluation.

(a) Past performance information is one indicator of an offeror's ability to perform the contract successfully. The currency and relevance of the information, source of the information, context of the data, and general trends in contractor's performance shall be considered. This comparative assessment of past performance information is separate from the responsibility determination.

(b) The solicitation shall provide offerors an opportunity to identify past or current contracts (including Federal, State, and local government and private) for efforts similar to the stated requirement. The solicitation shall also authorize offerors to provide information on problems encountered on the identified contracts and the offeror's corrective actions. When evaluating an offeror's past performance, this information, as well as information obtained from any other sources, must be considered; however, the relevance of similar past performance information is a matter of business judgment.

(c) The evaluation should take into account past performance information regarding predecessor companies, key personnel who have relevant experience, or subcontractors that will perform major or critical aspects of the requirement when such information is relevant to the instant acquisition.

(5) Technical evaluation. The source selection records shall include—

(a) An assessment of each offeror's ability to accomplish the technical requirements; and

(b) A summary, matrix, or quantitative ranking, along with appropriate supporting narrative, of each technical proposal using the evaluation factors.

G. Exchanges with offerors.

(1) Control. The responsible procurement officer shall control all exchanges after opening and prior to award.

(2) Fairness and Impartiality. The responsible procurement officer shall treat all offerors fairly and impartially when deciding whether and when to seek clarification or to negotiate. Similarly-situated offerors shall be given similar opportunities to clarify and, if in the competitive range, to negotiate.

(3) Clarifications. The responsible procurement officer may conduct clarifications at any time prior to the award decision.

(4) Competitive Range.

(a) After complying with Section 11-35-1535(G) (Evaluation), and before negotiating with anyone, the responsible procurement officer shall establish a competitive range comprised of the offerors that submitted the most promising offers.

(b) Ordinarily, the competitive range should not include more than three offerors. The responsible procurement officer may select only one offeror and may select more than three. The rationale for establishment of, and every modification to, the competitive range shall be determined in writing.

(c) Prior to conducting the minimum negotiations required by Section 11-35-1535(I)(3)(b)(i) and R.19-445.2099H(2), otherwise promising offerors should not be excluded from the competitive range due solely to deficiencies that are reasonably susceptible of correction.

(d) After conducting the minimum negotiations required by 11-35-1535(I)(3)(b)(i) and R.19-445.2099H(2), the responsible procurement officer may eliminate an offeror from the competitive range if the offeror is no longer considered to be among the most promising.

(e) Offerors excluded or otherwise eliminated from the competitive range may request a debriefing.

H. Negotiations with offerors

(1) Negotiations – General.

(a) The responsible procurement officer shall participate in and control all negotiations.

(b) The primary objective of negotiation is to maximize the State's ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation.

(c) The State may use any method of communication.

(d) Prior to any negotiation session, the using agency must document its prenegotiation objectives with regard to each offeror in the competitive range.

(e) The responsible procurement officer shall prepare a record of each negotiation session.

(f) Negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract.

(g) The responsible procurement officer may not relax or change any material requirement of the solicitation during negotiation except by amendment in accordance with R.19-445.2099D.

(h) Negotiations may include pricing. The responsible procurement officer may state a price that the State is willing to pay for what has been offered and may tell an offeror its price standing.

(i) Subject to the following requirements, the scope and extent of negotiations are a matter of the responsible procurement officer's judgment:

- (i) Section 11-35-30 (Obligation of Good Faith);
- (ii) R.19-445.2099G(2) (Fairness and Impartiality); and
- (iii) R.19-445.2099H(2) (Minimum Negotiations).

(j) The State may engage in more than one session with an offeror if necessary. Subject to R.19-445.2099G(2), the conduct of multiple sessions with a particular offeror does not require the conduct of multiple sessions with other offerors.

(k) Throughout the competitive negotiation process, state personnel shall not disclose the content of any offeror's proposal to any other offeror.

(l) State personnel shall not promise that the State will select an offeror for award if it makes a particular change or set of changes to its offer.

(2) Negotiations – Minimum – Problem Identification

The State shall negotiate with each offeror in the competitive range. At a minimum, the State shall identify and seek the correction of any deficiency and the elimination of any other undesirable term in an offer.

(3) Negotiations – Enhancement.

(a) The responsible procurement officer may negotiate with offerors in the competitive range to seek changes in their offers that the State desires and to allow them to make other improvements.

(b) The responsible procurement officer may state specific terms that the State desires and seek improvements in already acceptable terms.

(4) Proposal Revisions.

(a) The responsible procurement officer may request or allow proposal revisions either (i) to clarify and document understandings reached during negotiations, or (ii) to provide offerors an opportunity to respond to an amendment.

(b) If an offeror's proposal is eliminated or otherwise removed from the competitive range, no further revisions to that offeror's proposal shall be accepted or considered.

(c) Upon the completion of all negotiations, the responsible procurement officer shall request that offerors still in the competitive range submit final offers not later than a specified common cutoff date and time that allows a reasonable opportunity for submission. When submitting final offers, an offeror may revise any aspect of its offer. The responsible procurement officer shall notify offerors that failure to submit a final offer by the common cutoff date and time will result in the consideration of their last prior offer. Requests for final offers shall advise offerors that final offers shall be in writing and that the government intends to make award without obtaining further revisions.

I. Limitations on exchanges. State personnel involved in the acquisition shall not engage in conduct that—

(1) Favors one offeror over another;

(2) Reveals an offeror's technical solution, including unique technology, innovative and unique uses of commercial items, or any information that would compromise an offeror's intellectual property to another offeror;

(3) Reveals the names of individuals providing reference information about an offeror's past performance; or

(4) Knowingly furnishes source selection information in violation of Regulation 19-445.2010.

J. Tradeoff Process

(1) A tradeoff process is appropriate when it may be in the interest of the State to consider award to other than the lowest priced offeror or other than the highest technically rated offeror.

(2) This process permits tradeoffs among cost or price and non-cost factors and allows the State to accept other than the lowest priced proposal. The perceived benefits of the higher priced proposal shall merit the additional cost, and the rationale for tradeoffs must be documented in the file.

K. Award

(1) Unless there is a compelling reason to reject proposals, award must be made to the responsible offeror whose final proposal meets, in all material respects, the requirements announced in the solicitation, as amended,

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and is determined in writing to provide the best value to the State, taking into consideration the evaluation factors set forth in the request for proposals and, if price is an evaluation factor, any tradeoffs among price and non-price factors. Award must be based on a comparative assessment of final proposals from offerors within the competitive range against all source selection criteria in the solicitation.

(2) The contract file must document the basis on which the award is made, and the documentation must explain and justify the rationale for any business judgments and tradeoffs made or relied on in the award determination, including benefits associated with additional costs. Although the rationale for the selection decision must be documented, that documentation need not quantify the tradeoffs that led to the decision.

(3) The contract file must document who performed the functions required by sections F, J, and K of R.19-445.2099 and which functions they performed.

19-445.2100. Small Purchases and Other Simplified Purchasing Procedures.

A. Authority.

(1) An agency may make small purchases not exceeding the limits prescribed in Section 11-35-1550 in accordance with the procedures in that section and herein.

(2) Any purchase of supplies, services, or information technology made pursuant to Section 11-35-1550 must be within the agency's certification.

(3) These simplified acquisition procedures shall not be used for items available under mandatory state term contracts (see R.19-445-2020B(1)).

(4) Contracts solely for the procurement of commercially available off-the-shelf products pursuant to Section 11-35-1550 are not subject to laws identified in Section 11-35-2040.

(5) When required, adequate public notice must comply with R.19-445.2000F.

(6) Section 11-35-4210(1)(d) makes the protest process inapplicable to contracts with an actual or potential value of up to \$50,000. Because the protest process applies to all small purchases in excess of \$50,000, notice of an award must be communicated to all bidders on the same date award is made and must be documented in the procurement file. Any method of communication may be used.

B. Purchases pursuant to Section 11-35-1550(2)(b) (Three Written Quotes).

(1) If an agency does not receive responsive quotes from at least three responsible bidders, adequate public notice must be given and documented with the purchase requisition. So-called "no bids" are not bona fide and do not count as one of the three.

(2) Requests for quotes must be distributed equitably among qualified suppliers, unless adequate public notice is given in South Carolina Business Opportunities.

C. Purchases pursuant to Section 11-35-1550(2)(c) (Advertised Small Purchase) may be made by giving adequate public notice in South Carolina Business Opportunities and:

(1) issuing a written solicitation for written quotes, as described in Section 11-35-1550(2)(c);

(2) soliciting bids in accordance with Section 11-35-1520, Competitive Sealed Bidding, Section 11-35-1525, Competitive Fixed Price Bidding, or Section 11-35-1528, Competitive Best Value Bidding; or

(3) soliciting proposals in accordance with Section 11-35-1530, Competitive Sealed Proposals.

D. When conducting a small purchase over twenty-five thousand dollars for which adequate public notice is required, potential offerors must be provided reasonable time to prepare their bids, no less than seven (7) days after such notice is provided, unless a shorter time is deemed necessary for a particular procurement as determined in writing by the head of the purchasing agency, the appropriate chief procurement officer, or the designee of either.

E. Establishment of Blanket Purchase Agreements.

(1) General. A blanket purchase agreement is a simplified method of filling repetitive needs for small quantities of miscellaneous supplies, services, or information technology by establishing "charge accounts" with qualified sources of supply. Blanket purchase agreements are designed to reduce administrative costs in accomplishing small purchases by eliminating the need for issuing individual purchase documents.

(2) Alternate Sources. To the extent practicable, blanket purchase agreements for items of the same type should be placed concurrently with more than one supplier. All competitive sources shall be given an equal opportunity to furnish supplies, services, or information technology under such agreements.

(3) Terms and Conditions. Blanket purchase agreements shall contain the following provisions:

(a) Description of agreement. A statement that the supplier shall furnish supplies, services, or information technology, described therein in general terms, if and when requested by the Procurement Officer, or his authorized representative, during a specified period and within a stipulated aggregate amount, if any. Blanket purchase agreements may encompass all items that the supplier is in a position to furnish.

(b) Extent of obligation. A statement that the State is obligated only to the extent of authorized calls actually placed against the blanket purchase agreement.

(c) Notice of individuals authorized to place calls and dollar limitations. A provision that a list of names of individuals authorized to place calls under the agreement, identified by organizational component, and the dollar limitation per call for each individual shall be furnished to the supplier by the Procurement Officer.

(d) Delivery tickets. A requirement that all shipments under the agreement, except subscriptions and other charges for newspapers, magazines, or other periodicals, shall be accompanied by delivery tickets or sales slips which shall contain the following minimum information:

- (1) name of supplier;
- (2) blanket purchase agreement number;
- (3) date of call;
- (4) call number;
- (5) itemized list of supplies, services, or information technology furnished;
- (6) quantity, unit price, and extension of each item less applicable discounts (unit price and extensions need not be shown when incompatible with the use of automated systems, provided that the invoice is itemized to show this information); and
- (7) date of delivery or shipment.

(e) Invoices one of the following statements:

(1) A summary invoice shall be submitted at least monthly or upon expiration of the blanket purchase agreement, whichever occurs first, for all deliveries made during a billing period, identifying the delivery tickets covered therein, stating their total dollar value, and supported by receipted copies of the delivery tickets; or

(2) An itemized invoice shall be submitted at least monthly or upon expiration of the blanket purchase agreement, whichever occurs first, for all deliveries made during a billing period and for which payment has not been received. Such invoices need not be supported by copies of delivery tickets;

(3) When billing procedures provide for an individual invoice for each delivery, these invoices shall be accumulated provided that a consolidated payment will be made for each specified period; and the period of any discounts will commence on final date of billing period or on the date of receipt of invoices for all deliveries accepted during the billing period, whichever is later. This procedure should not be used if the accumulation of the individual invoices materially increases the administrative costs of this purchase method.

F. Competition Under Blanket Purchase Agreement.

Calls against blanket purchase agreements shall be placed after prices are obtained. When concurrent agreements for similar items are in effect, calls shall be equitably distributed. In those instances where there is an insufficient number of BPAs for any given class of supplies, services, or information technology to assure adequate competition, the individual placing the order shall solicit quotations from other sources.

G. Calls Against Blanket Purchase Agreement.

Calls against blanket purchase agreements generally will be made orally, except that informal correspondence may be used when ordering against agreements outside the local trade area. Written calls may be executed. Documentation of calls shall be limited to essential information. Forms may be developed for this purpose locally and be compatible with the Comptroller General's Office STARS system.

H. Receipt and Acceptance of Supplies or Services.

Acceptance of supplies, services, or information technology shall be indicated by signature and date on the appropriate form by the authorized State representative after verification and notation of any exceptions.

I. Review Procedures.

The governmental body shall review blanket purchase agreement files at least semiannually to assure that authorized procedures are being followed. Blanket purchase agreements shall be issued for a period of no longer than 12 months.

19-445.2105. Sole Source Procurements.

A. Application.

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The provisions of this Regulation shall apply to all sole source procurements unless emergency conditions exist as defined in Regulation 19-445.2110.

B. Exceptions.

Sole source procurement is not permissible unless there is only a single supplier. The following are examples of circumstances which could necessitate sole source procurement:

- (1) where the compatibility of equipment, accessories, or replacement parts is the paramount consideration;
- (2) where a sole supplier's item is needed for trial use or testing;
- (3) [Repealed]
- (4) [Repealed]
- (5) where the item is one of a kind; and
- (6) [Repealed]

C. Written Determination.

(1) The written determination to conduct a procurement as a sole source shall be made by either the Chief Procurement Officer, the head of a purchasing agency, or designee of either above the level of the procurement officer. Any delegation of authority by either the Chief Procurement Officer or the head of a purchasing agency with respect to sole source determinations shall be submitted in writing to the Materials Management Officer.

(2) The written determination must include a purchase description that states the using agency's actual needs, which shall not be unduly restrictive. In cases of reasonable doubt, competition should be solicited. The determination must contain sufficient factual grounds and reasoning to provide an informed, objective explanation for the decision and must be accompanied by market research that supports the decision. The determination must be authorized prior to contract execution.

D. Notice.

(1) Compliance with the notice requirements in Section 11-35-1560(A) must be documented in the procurement file.

(2) The public notice required by Section 11-35-1560(A) must include the written determination required by Section C(2) above or instructions how to obtain the written determination immediately upon request.

E. Other Applicable Provisions.

Sole source procurements must comply with all applicable statutes and regulations, including without limitation, Sections 11-35-30 (Obligation of good faith), -210 (Determinations), -410 (Public access to procurement information), -1810 (Responsibility of bidders and offerors), -1830 (Cost or pricing data), -2010 (Types of contracts), -2030 (Multiterm contracts), -1610 (Change order or contract modification), -2440 (Records of procurement actions), -2730 (Assuring competition), and -4230 (Authority to resolve contract and breach of contract controversies).

19-445.2110. Emergency Procurements.

A. Application.

The provisions of this Regulation apply to every procurement made under emergency conditions that will not permit other source selection methods to be used.

B. Definition.

An emergency condition is a situation which creates a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, equipment failures, fire loss, or such other reason as may be proclaimed by either the Chief Procurement Officer or the head of a purchasing agency or a designee of either office. The existence of such conditions must create an immediate and serious need for supplies, services, information technology, or construction that cannot be met through normal procurement methods and the lack of which would seriously threaten:

- (1) the functioning of State government;
- (2) the preservation or protection of property; or
- (3) the health or safety of any person.

C. Limitations.

Emergency procurement shall be limited to those supplies, services, information technology, or construction items necessary to meet the emergency.

D. Conditions.

Any governmental body may make emergency procurements when an emergency condition arises and the need cannot be met through normal procurement methods, provided that whenever practical, approval by either the head of a purchasing agency or his designee or the Chief Procurement Officer shall be obtained prior to the procurement.

E. Selection of Method of Procurement.

The procedure used shall be selected to assure that the required supplies, services, information technology, or construction items are procured in time to meet the emergency. Given this constraint, such competition as is practicable shall be obtained.

F. Notice.

Compliance with the notice requirements in Section 11-35-1570(B) must be documented in the procurement file.

G. Written Determination.

The Chief Procurement Officer or the head of the purchasing agency or a designee of either office shall make a written determination stating the basis for an emergency procurement and for the selection of the particular contractor. The determination must contain sufficient factual grounds and reasoning to provide an informed, objective explanation for the decision.

19-445.2115. Information Technology Procurements.

A. Reserved.

B. Reserved.

C. Software Licensing

Pursuant to Section 11-35-510, the Information Technology Management Officer may execute an agreement with a business on behalf of, and which binds all, governmental bodies in order to establish the terms and conditions upon which computer software may be licensed, directly or indirectly, from that business by a governmental body. Such an agreement may provide for the voluntary participation of any other South Carolina public procurement unit. Such agreements do not excuse any governmental body from complying with any applicable requirements of the Procurement Code and these Regulations, including the requirements of Section 11-35-1510.

19-445.2120. Cost or Pricing Data.

A. Definitions

(1) Adequate Price Competition. Price competition exists if competitive sealed proposals are solicited, at least two responsive and responsible offerors independently compete for a contract, and price is a substantial factor in the evaluation. If the foregoing conditions are met, price competition shall be presumed to be "adequate" unless the procurement officer determines in writing that such competition is not adequate.

(2) Commercial product has the meaning stated in Section 11-35-1410(1).

(3) Established catalog price has the meaning stated in Section 11-35-1410.

(4) Established Market Price means a current price, established in the usual and ordinary course of trade between buyers and sellers, which can be substantiated from sources which are independent of the manufacturer or supplier and may be an indication of the reasonableness of price.

(5) Prices Set by Law or Regulation. The price of a supply or service is set by law or regulation if some governmental body establishes the price that the offeror or contractor may charge the State and other customers.

B. Thresholds

(1) Section 11-35-1830(1)(a) applies where the total contract price exceeds five hundred thousand dollars.

(2) Section 11-35-1830(1)(b) applies where the pricing of any change order, contract modification, or termination settlement exceeds five hundred thousand dollars, unless the procurement officer determines in writing that such information is necessary to determine that the pricing is reasonable. Price adjustment amounts shall consider both increases and decreases (e.g., a \$150,000 modification resulting from a reduction of \$350,000 and an increase of \$200,000 is a pricing adjustment exceeding \$500,000.). This requirement does not apply when unrelated and separately priced changes for which cost or pricing data would not otherwise be required are included for administrative convenience in the same modification.

(3) Ordinarily, cost and pricing data should not be required for the acquisition of any item that meets the definition of commercial product, including any modification that does not change the item from a commercial

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product to a non-commercial product. The contractor may be required to submit cost or pricing data for commercial products or COTS only if the purchase or modification exceeds the thresholds established in this section and the procurement officer determines in writing that no other basis exists to establish price reasonableness.

C. Conditions of Waiver

The requirements of Section 11-35-1830 may be waived if the head of the using agency determines in writing that the price can be determined to be fair and reasonable without submission of cost or pricing data.

D. Refusal to Submit Data

A refusal by the offeror to supply the requested information may be grounds to disqualify the offeror or to defer award pending further review and analysis.

19-445.2125. Responsibility of Bidders and Offerors.

A. State Standards of Responsibility.

Factors to be considered in determining whether the state standards of responsibility have been met include whether a prospective contractor has:

- (1) available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;
- (2) a satisfactory record of performance;
- (3) a satisfactory record of integrity;
- (4) qualified legally to contract with the State; and
- (5) supplied all necessary information in connection with the inquiry concerning responsibility.

B. Obtaining Information; Duty of Contractor to Supply Information.

At any time prior to award, the prospective contractor shall supply information requested by the procurement officer concerning the responsibility of such contractor. If such contractor fails to supply the requested information, the procurement officer shall base the determination of responsibility upon any available information or may find the prospective contractor non responsible if such failure is unreasonable. In determining responsibility, the procurement officer may obtain and rely on any sources of information, including but not limited to the prospective contractor; knowledge of personnel within the using or purchasing agency; commercial sources of supplier information; suppliers, subcontractors, and customers of the prospective contractor; financial institutions; government agencies; and business and trade associations.

C. Demonstration of Responsibility.

The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

- (1) evidence that such contractor possesses such necessary items;
- (2) acceptable plans to subcontract for such necessary items; or
- (3) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

D. Duty Concerning Responsibility.

(1) Before awarding a contract or issuing a notification of intent to award, whichever is earlier, the procurement officer must be satisfied that the prospective contractor is responsible. The determination is not limited to circumstances existing at the time of opening.

(2) Consistent with Section 11-35-1529(3), the procurement officer must determine responsibility of bidders in competitive on-line bidding before bidding begins.

E. Written Determination of Nonresponsibility.

If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the procurement officer. A copy of the determination shall be sent promptly to the nonresponsible bidder or offeror. The final determination shall be made part of the procurement file.

F. Special Standards of Responsibility

When it is necessary for a particular acquisition or class of acquisitions, the procurement officer may develop, with the assistance of appropriate specialists, special standards of responsibility. Special standards may be particularly desirable when experience has demonstrated that unusual expertise or specialized facilities are needed for adequate contract performance. The special standards shall be set forth in the solicitation (and so

identified) and shall apply to all offerors. A valid special standard of responsibility must be specific, objective and mandatory.

G. Subcontractor responsibility.

(1) Generally, prospective prime contractors are responsible for determining the responsibility of their prospective subcontractors. Determinations of prospective subcontractor responsibility may affect the procurement officer's determination of the prospective prime contractor's responsibility. A prospective contractor may be required to provide written evidence of a proposed subcontractor's responsibility.

(2) When it is in the state's interest to do so, the procurement officer may directly determine a prospective subcontractor's responsibility (e.g., when the prospective contract involves medical supplies, urgent requirements, or substantial subcontracting). In this case, the same standards used to determine a prime contractor's responsibility shall be used by the procurement officer to determine subcontractor responsibility.

19-445.2127. Organizational Conflicts of Interest.

A. General.

(1) "Organizational conflict of interest" occurs when, because of other activities or relationships with the State or with other businesses:

- (a) a business is unable or potentially unable to render impartial assistance or advice to the State, or
- (b) the business' objectivity in performing the contract work is or might be otherwise impaired, or
- (c) a business has an unfair competitive advantage.

(2) This regulation applies to acquisitions of supplies, services and information technology, except for acquisitions made pursuant to Section 11-35-1550. Unless the procurement uses a project delivery method identified in Section 11-35-3005(1)(e), 1(f), or (2)(a), this regulation does not apply to acquisitions under Article 9 (Construction, Architect-Engineer, Construction Management, and Land Surveying Services).

(3) The general rules in sections B (Providing systems engineering and technical direction), C (Preparing specifications or work statements), and D (Providing evaluation of offers) below prescribe limitations on contracting as the means of avoiding organizational conflicts of interest that might otherwise exist in the stated situations. Conflicts may arise in situations not expressly covered in sections B, C, and D. Each individual contracting situation should be examined on the basis of its particular facts and the nature of the proposed contract. The exercise of common sense, good judgment, and sound discretion is required in both the decision on whether a significant potential conflict exists and, if it does, the development of an appropriate means for resolving it. The two underlying principles are

- (a) Preventing the existence of conflicting roles that might bias a contractor's judgment; and
- (b) Preventing unfair competitive advantage. Without limitation, an unfair competitive advantage exists where a business competing for award of a State contract possesses (i) proprietary information that was obtained from the State without authorization; or (ii) source selection information (R.19-445.2010C) that is relevant to the contract but is not available to all competitors, and such information would assist that business in obtaining the contract.

(4) The terms "contractor" and "subcontractor" are defined by Section 11-35-310.

B. Providing systems engineering and technical direction. (1) A business shall not be awarded a contract to supply a system or any of its major components, or be a subcontractor or consultant, if that business, as a contractor, provided or provides a combination of substantially all of the following activities:

- (a) determining specifications or developing work statements,
- (b) determining parameters,
- (c) identifying and resolving interface problems,
- (d) developing test requirements,
- (e) evaluating test data,
- (f) supervising design,
- (g) directing other contractors' operations, and
- (h) resolving technical controversies.

(2) This section B does not prohibit a contractor providing systems engineering and technical direction, from developing or producing a system if the entire effort is conducted under a single contract.

C. Preparing specifications or work statements.

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(1) If a contractor prepares and furnishes specifications for a specific acquisition of tangible supplies or information resources, or their components, that contractor shall not be allowed to furnish these items, either as a contractor or as a subcontractor at any tier, for a reasonable period of time including, at least, the duration of the initial contract for purchase of the items.

(2) If a contractor prepares, or assists in preparing, a work statement to be used in a specific acquisition of a system or services—or provides material leading directly, predictably, and without delay to such a work statement—that contractor may not supply the system, major components of the system, or the services, either as a contractor or as a subcontractor at any tier, unless (a) the acquisition is a sole source under R.19-445.2105; (b) it has participated in the development and design work; or (c) more than one contractor has been involved in preparing the work statement.

D. Providing evaluation of offers. If a contractor evaluates or supports the evaluation of a bid or proposal for a contract with a governmental body, that contractor and its affiliates are barred from performing under that contract as either a contractor or as a subcontractor at any tier.

E. Procurement Officer Responsibilities.

(1) The responsible procurement officer shall (a) analyze planned acquisitions in order to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible; and (b) review plans to avoid, neutralize, or mitigate significant potential conflicts before contract award.

(2) The responsible procurement officer shall determine whether the apparent successful offeror has an organizational conflict of interest. The responsible procurement officer shall award the contract to the apparent successful offeror unless (i) a conflict of interest is determined to exist that cannot be avoided or mitigated, or (ii) the conflict is not waived as provided in section F. Before determining to withhold award based on conflict of interest considerations, the procurement officer shall notify the contractor, provide the reasons therefor, and allow the contractor a reasonable opportunity to respond.

F. Waiver. With respect to the award of an individual contract, the using agency may waive an organizational conflict of interest by determining that the application of these rules in a particular situation would not be in the State's interest. A determination to waive a conflict of interest must be in writing, shall set forth the extent of the conflict, and requires approval by the agency head or her designee above the level of the agency's senior procurement official. If a waiver involves an acquisition with a value that exceeds either the limits of the governmental body's authority under Section 11-35-1210(1) or one million dollars, the appropriate Chief Procurement Officer must concur in the waiver and the written determination must be published with the notice of intent to award. Any report required by R.19-445.2020A(2) must include every waiver addressing a procurement during the audit period.

G. The appropriate Chief Procurement Officer may develop and issue procedures which shall be followed by all agencies to identify organizational conflicts of interest and techniques to avoid or mitigate them.

19-445.2135. Conditions for Use of Multi-term Contracts.

A. General.

A multi-term contract is a contract for the acquisition of supplies, services, or information technology for more than one year. A contract is not a multi-term contract if no single term exceeds one year and each term beyond the first requires the governmental body to exercise an option to extend or renew. A multi-term contract is appropriate when it is in the best interest of the State to obtain uninterrupted services for a period in excess of one year, where the performance of such services involves high start up costs, or when a changeover of service contracts involves high phase in/phase out costs during a transition period. The multi-term method of contracting is also appropriate when special production of definite quantities of supplies for more than one year is necessary to best meet state needs but funds are available only for the initial fiscal period. Special production refers to production for contract performance when it requires alteration in the contractor's facilities or operations involving high start up costs.

B. Objective.

The objective of the multi-term contract is to promote economy and efficiency in procurement by obtaining the benefits of sustained volume production and consequent low prices, and by increasing competitive participation in procurements which involve special production with consequent high start-up costs and in the procurement of services which involve high start-up costs or high phase-in/phase-out costs during changeover of service contracts.

C. Exceptions.

This Regulation 19-445.2135 applies only to contracts for supplies, services, or information technology and does not apply to contracts for construction.

D. Conditions for Use.

(1) A multi-term contract may be used if , prior to issuance of the solicitation, the Procurement Officer determines in writing that:

(a) Special production of definite quantities or the furnishing of long term services are required to meet state needs; or

(b) a multi-term contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.

(2) The following factors are among those relevant to such a determination:

(a) firms which are not willing or able to compete because of high start up costs or capital investment in facility expansion will be encouraged to participate in the competition when they are assured of recouping such costs during the period of contract performance;

(b) lower production cost because of larger quantity or service requirements, and substantial continuity of production or performance over a longer period of time, can be expected to result in lower unit prices;

(c) stabilization of the contractor's work force over a longer period of time may promote economy and consistent quality;

(d) the cost and burden of contract solicitation, award, and administration of the procurement may be reduced.

(3) The determination must contain sufficient factual grounds and reasoning to provide an informed, objective explanation for the decision.

E. Solicitation.

The solicitation shall state:

(1) the estimated amount of supplies or services required for the proposed contract period;

(2) that a unit price shall be given for each supply or service, and that such unit prices shall be the same throughout the contract (except to the extent price adjustments may be provided in the solicitation and resulting contract);

(3) that the multi-term contract will be cancelled only if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal period succeeding the first; however, this does not affect either the state's rights or the contractor's rights under any termination clause in the contract;

(4) that the procurement officer of the governmental body must notify the contractor on a timely basis that the funds are, or are not, available for the continuation of the contract for each succeeding fiscal period;

(5) whether bidders or offerors may submit prices for:

(a) the first fiscal period only;

(b) the entire time of performance only; or

(c) both the first fiscal period and the entire time of performance;

(6) that a multi-term contract may be awarded and how award will be determined including, if prices for the first fiscal period and entire time of performance are submitted, how such prices will be compared; and,

(7) that, in the event of cancellation as provided in (E) (3) of this subsection, the contractor will be reimbursed the unamortized, reasonably incurred, nonrecurring costs.

F. Award.

Award shall be made as stated in the solicitation and permitted under the source selection method utilized. Care should be taken when evaluating multi-term prices against prices for the first fiscal period that award on the basis of prices for the first period does not permit the successful bidder or offerer to "buy in", that is give such bidder or offeror an undue competitive advantage in subsequent procurements.

G. Maximum Contract Periods

Every contract with a total potential duration in excess of five years must be approved as required by Section 11-35-2030(4) or Section 11-35-2030(5). No solicitation shall be issued for a contract with a total potential duration in excess of five years, nor shall any contract with a total potential duration in excess of five years be awarded pursuant to Section 11-35-1560, until such approval is granted.

19-445.2141. Commercial Products.

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A. Definitions.

(1) Commercial product has the meaning stated in Section 11-35-1410, and does not include printing or insurance.

(2) Commercially available off-the-shelf product (“COTS”) has the meaning stated in Section 11-35-1410, and does not include printing or insurance.

B. General.

(1) Agencies shall conduct market research to determine whether commercial products or COTS are available that could meet agency requirements, and should endeavor to acquire commercial products or COTS when they are available to meet agency needs (see R.19-445.2140D (Preference for commercially available products)).

(2) Consistent with Section 11-35-1535(A)(2), the competitive negotiations source selection method may not be used to acquire only commercially available off-the-shelf products.

C. Price reasonableness.

(1) An advantage of COTS is that a competitive market, evidenced by substantial commercial sales, helps to determine price reasonableness. Substantial sales of a COTS product may establish catalog prices (see Section 11-35-1410) and market prices. Market prices are current prices that are established in the usual and ordinary course of trade between buyers and sellers (see R.19-445.2120A(3)). A characteristic of both catalog prices and market prices is that they can be substantiated from sources independent of the offeror—for example, through market research.

(2) “Items customarily sold in bulk” means products that are loaded and carried in bulk without mark or count. COTS does not include bulk materials, like fuel and grain, because the prices for those items fluctuate, making it difficult or impossible to rely on short-term pricing to establish price reasonableness for purchase contracts that may be for a longer term.

D. Purchase description or specification.

The agency’s purchase description must contain sufficient detail for potential offerors of commercial products or COTS to know which products may be suitable. Generally, an agency’s specification for COTS should describe the type of product to be acquired and explain how the agency intends to use the product in terms of function to be performed, performance requirement or physical characteristics. Describing the agency’s needs in these terms allows offerors to propose products that will best meet the State’s needs.

E. Simplified purchasing procedures for COTS.

(1) Section 11-35-1550(2)(b) authorizes the use of simplified procedures for the acquisition of supplies and information resources in amounts up to \$100,000, if the responsible procurement officer reasonably expects, based on the nature of the supplies or information resources sought, and on market research, that offers will include only COTS. The purpose of these simplified procedures is to vest procurement officers with additional procedural discretion and flexibility, so that COTS acquisitions in this dollar range may be solicited, offered, evaluated, and awarded in a simplified manner that maximizes efficiency and economy and minimizes burden and administrative costs for both the State and industry (see R.19-445.2100).

(2) The procurement officer should be aware of customary commercial terms and conditions when pricing COTS. COTS prices are affected by factors that include, but are not limited to, speed of delivery, length and extent of warranty, limitations of seller’s liability, quantities ordered, length of the performance period, and specific performance requirements. The procurement officer should review the using agency’s standard contract terms and conditions, along with commercial terms appropriate for the acquisition of the particular item. The procurement officer should consider avoiding terms inconsistent with commercial practice, unless those terms are required by law (see R.19-445.2143) or are essential to the using agency’s requirements.

(3) Section 11-35-2040 provides that COTS purchases made using any of the simplified procedures of Section 11-35-1550 are exempt from a number of statutory provisions that vendors have complained are overly burdensome. The procurement officer should consider Section 11-35-2040 and R.19-445.2143 when preparing the solicitation or written request for quotes.

(4) Regulation 19-445.2120B(3) prohibits requiring cost or pricing data when acquiring a commercial product, including COTS, unless the purchase or modification exceeds the thresholds established in that section and the procurement officer determines in writing that no other basis exists to establish price reasonableness.

F. The appropriate Chief Procurement Officer may develop and issue guidance, including solicitation forms, which may be used by agencies acquiring COTS using small purchase procedures.

19-445.2143. Contract clauses and administration.

A. Contracts formed pursuant to the Consolidated Procurement Code are deemed to incorporate all applicable provisions thereof and the ensuing regulations.

B. Prohibited Terms. Unless otherwise specifically provided by or authorized by law, if a contract contains any of the following terms, the term shall be void, and the contract is otherwise enforceable as if it did not contain such term or condition:

(1) Terms (a) subjecting the State of South Carolina or its agencies to the jurisdiction of the courts of other states; or (b) requiring the State of South Carolina or its agencies to bring or defend a legal claim in a venue outside this State. (Sections 11-35-2050 and -4230)

(2) Terms limiting the time in which the State of South Carolina or its agencies may bring a legal claim under the contract to a period shorter than that provided in South Carolina law. (Sections 11-35-4230(2) and 15-3-140)

(3) Terms imposing a payment obligation, including a rate of interest for late payments, inconsistent with the terms of Section 11-35-45.

(4) Terms that require the State to defend, indemnify, or hold harmless another person. (Section 11-35-2050)

(5) Terms requiring that the contract be governed or interpreted by other than South Carolina law. (Section 11-35-2050)

C. A material change is a change order or contract modification that is beyond the general scope of the original contract, such that the subject of the modification should be competitively procured absent a valid sole-source justification. Material changes are inconsistent with the underlying purposes and policies of this code. The appropriate Chief Procurement Officer may develop and issue guidance and procedures for evaluating whether a change order or modification is material.

19-445.2145. Construction, Architect Engineer, Construction Management, and Land Surveying Services.

A. Definitions

(1) Designer, as used in these regulations, means a person who has been awarded, through the qualifications-based process set forth in Section 11-35-3220, a contract with the State for the design of any infrastructure facility using the design-bid-build project delivery method defined in Section 11-35-2910(6).

(2) Builder, as used in these regulations, means a person who has been awarded, through competitive sealed bidding, a separate contract with the State to construct (alter, repair, improve, or demolish) any infrastructure facility using the design-bid-build project delivery method defined in Section 11-35-2910(6).

(3) Design-Builder, as used in these regulations, means a person who has been awarded a contract with the State for the design and construction of any infrastructure facility using the design-build project delivery method defined in Section 11-35-2910(7).

(4) DBO Producer, as used in these regulations, means a person who has been awarded a contract with the State for the design, construction, operation, and maintenance of any infrastructure facility using the design-build-operate-maintain project delivery method defined in Section 11-35-2910(9).

(5) DBFO Producer, as used in these regulations, means a person who has been awarded a contract with the State for the design, construction, finance, operation, and maintenance of any infrastructure facility using the design-build-finance-operate-maintain project delivery method defined in Section 11-35-2910(8).

(6) Guaranteed Maximum Price (GMP) means a price for all costs for the construction and completion of the project, or designated portion thereof, including all construction management services and all mobilization, general conditions, profit and overhead costs of any nature, and where the total contract amount, including the contractor's fee and general conditions, will not exceed a guaranteed maximum amount.

(7) Independent Peer Reviewer means a person who has been awarded a contract with the State for an independent, contemporaneous, peer review of the design services provided to the State by a DBO or DBFO Producer. In the event the State does not elect to contract with the Independent Peer Reviewer proposed by the successful DBO or DBFO Producer, the Independent Peer Reviewer shall be selected as provided in Section 11-35-2910(11).

(8) Operator, as used in these regulations, means a person who has been awarded, through competitive sealed bidding, a separate contract with the State for the routine operation, routine repair, and routine maintenance (Operation and Maintenance) of any infrastructure facility, as defined in Section 11-35-2910(13).

B. Choice of Project Delivery Method.

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(1) This Subsection contains provisions applicable to the selection of the appropriate project delivery method for constructing infrastructure facilities, that is, the method of configuring and administering construction projects which is most advantageous to the State and will result in the most timely, economical, and otherwise successful completion of the infrastructure facility. The governmental body shall have sufficient flexibility in formulating the project delivery approach on a particular project to fulfill the State's needs. Before choosing the project delivery method, a careful assessment must be made of requirements the project must satisfy and those other characteristics that would be in the best interest of the State.

(2) Selecting An Appropriate Project Delivery Method.

In selecting an appropriate project delivery method for each of the State's Infrastructure Facilities, the governmental body should consider the results achieved on similar projects in the past and the methods used. Consideration should be given to all authorized project delivery methods, the comparative advantages and disadvantages of each, and how these methods may be appropriately configured and applied to fulfill State requirements. Additional factors to consider include:

(a) the extent to which the governmental body's design requirements for the Infrastructure Facility are known, stable, and established in writing;

(b) the extent to which qualified and experienced State personnel are available to the governmental body to provide the decision-making and administrative services required by the project delivery method selected;

(c) the extent to which decision-making and administrative services may be appropriately assigned to designers, builders, construction-managers at-risk, design-builders, DBO producers, DBFO producers, peer reviewers, or operators, as appropriate to the project delivery method;

(d) the extent to which outside consultants, including construction manager agent, may be able to assist the governmental body with decision-making and administrative contributions required by the project delivery method;

(e) the governmental body's projected cash flow for the Infrastructure Facility to be acquired (both sources and uses of the funds necessary to support design, construction, operations, maintenance, repairs, and demolition over the facility life cycle);

(f) the type of infrastructure facility or service to be acquired - for example, public buildings, schools, water distribution, wastewater collection, highway, bridge, or specialty structure, together with possible sources of funding for the infrastructure facility - for example, state or federal grants, state or federal loans, local tax appropriations, special purpose bonds, general obligation bonds, user fees, or tolls;

(g) the required delivery date of the infrastructure facility to be constructed;

(h) the location of the infrastructure facility to be constructed;

(i) the size, scope, complexity, and technological difficulty of the infrastructure facility to be constructed;

(j) the State's current and projected sources and uses of public funds that are currently generally available (and will be available in the future) to support operation, maintenance, repair, rehabilitation, replacement, and demolition of existing and planned infrastructure facilities;

(k) and, any other factors or considerations specified in the Manual for Planning of Execution of State Permanent Improvements, Part 11, or as otherwise requested by the State Engineer.

(3) Except for guaranteed energy, water, or wastewater savings contracts (Section 48-52-670), design-bid-build (acquired using competitive sealed bidding) is hereby designated as an appropriate project delivery method for any infrastructure facility and may be used by any governmental body without further project specific justification.

(4) Governmental Body Determination.

The head of the governmental body shall make a written determination that must be reviewed by the State Engineer. The determination shall describe the project delivery method (Section 11-35-3005), source selection method (Section 11-35-3015 and 11-35-1510), any additional procurement procedures (11-35-3023 and 11-35-3024(2)(c)), and types of performance security (Sections 11-35-3030 and 11-35-3037) selected and set forth the facts and considerations leading to those selections. This determination shall demonstrate either reliance on paragraph (3) above, or that the considerations identified in paragraphs (1) and (2) above, as well as the requirements and financing of the project, were all considered in making the selection. Any determination to use a project delivery method other than design-bid-build must explain why the use of design-bid-build is not practical or advantageous to the State. Any determination to use any of the additional procedures allowed by Section 11-35-3024(2)(c) must explain why the use of such procedures are in the best interests of the State. Any

request to use the prequalification process in a design-bid-build procurement must be in writing and must set forth facts sufficient to support a finding that pre-qualification is appropriate and that the construction involved is unique in nature, over ten million dollars in value, or involves special circumstances.

C. Bonds and Security.

(1) Bid Security. Bid Security required by Section 11-35-3030 shall be a certified cashier's check or a bond, in a form to be specified in the Manual for Planning and Execution of State Permanent Improvements - Part II, provided by a surety company licensed in South Carolina with an "A" minimum rating of performance as stated in the most current publication of "Best Key Rating Guide, Property Liability", which company shows a financial strength rating of at least five (5) times that portion of the contract price that does not include operations, maintenance, and finance. Each bond shall be accompanied by a "Power of Attorney" authorizing the attorney in fact to bind the surety.

(2) Contract Performance and Payment Bonds. Unless waived pursuant to Section 11-35-3030(2)(iii), the contractor shall provide a certified cashier's check in the full amount of the Performance and Payment Bonds or may provide, and pay for the cost of, Performance and Payment Bonds in a form to be specified in the Manual for Planning and Execution of State Permanent Improvements-Part II. Each bond for construction exceeding \$50,000 shall be issued by a Surety Company licensed in South Carolina with an "A" minimum rating of performance as stated in the most current publication of "Best Key Rating Guide, Property Liability", which company shows a financial strength rating of at least five (5) times that portion of the contract price that does not include operations, maintenance, and finance. Where the agency requires a payment bond for construction of \$50,000 or less, the bond must be issued by a surety meeting the requirements of Section 29-6-270. Each bond shall be accompanied by a "Power of Attorney" authorizing the attorney in fact to bind the surety.

D. Architect Engineer, Construction Management and Land Surveying Services Procurement.

(1) The Advertisement of Project Description

The provisions of Regulation 19-445.2040 shall apply to implement the requirements of Code Section 11-35-3220(2), Advertisement of Project Description.

(2) State Engineer's Office Review.

The Office of State Engineer will provide forms in the Manual for Planning and Execution of State Permanent Improvements Projects-Part II for use by governmental bodies in submitting a contract for approval pursuant to Section 11-35-3220(8) of the Code.

E. Contract Forms.

(1) Pursuant to Section 11-35-2010(2), the following contract forms shall be used as applicable, as amended by the State Engineer, and as provided in the Manual for Planning and Execution of State Permanent Improvements-Part II. Subject to the foregoing:

(a) If an agency conducts a competitive sealed bid to acquire construction independent of architect-engineer or construction management services, the governmental body may use a document in the form of AIA Document A701.

(b) If an agency acquires architect-engineer services independent of construction, the governmental body may use a document in the form of AIA Document B151.

(c) If an agency acquires construction independent of architect-engineer or construction management services, the governmental body may use documents in the form of ALA Document A101 and A201. Other contract forms may be used as are approved by the State Engineer.

(d) If an agency acquires architect-engineer services, construction management services, and construction on the same project, each under separate contract, the governmental body may use documents in the form of AIA Documents A101/CMa, A201/CMa, B141/CMa, and B801/CMa. This paragraph does not apply if an agency acquires both construction and construction management services from the same business under the same contract.

(2) With prior approval of the State Engineer, a governmental body may supplement the contract forms identified in paragraph (1), as they have been amended by the State Engineer.

(3) Paragraph (1) does not apply to a contract entered into pursuant to Sections 11-35-1530, 11-35-1550, 11-35-3230, or 11-35-3310.

(4) For any contract forms specified herein, the Manual for Planning and Execution of State Permanent Improvements-Part II shall specify the appropriate edition or, if applicable, replacement form.

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(5) For any contract forms not specified herein or otherwise required by law, the Manual for Planning and Execution of State Permanent Improvements-Part II may, without limitation, require the use of any appropriate contract document, standard industry contract form, standard state amendments to such documents or forms, or publish state specific contract forms. Absent contrary instructions in the Manual, the governmental body may use a contract written for an individual project.

(6) Construction under Procurement Code Section 11-35-1550 and 11-35-1530 may be in a format and description of services approved by the State Engineer.

F. Manual for Planning and Execution of State Permanent Improvements Projects.

For the purpose of these Regulations and Code Section 11-35-3240, a manual of procedures to be followed by governmental bodies for planning and execution of state permanent improvement projects is prepared and furnished by the designated board office, and included in this regulation. Part II of this manual, covering the procurement of construction for the projects, will be the responsibility of the Office of the State Engineer.

G. Prequalifying Construction Bidders.

In accordance with Section 11-35-3023, the State Engineer's Office shall develop procedures for a prequalification process and shall include it in the Manual for Planning and Execution of State Permanent Improvements-Part II. The provisions of Regulation 19-445.2132 shall apply to implement Section 11-35-3023.

H. With regard to Section 11-35-3310, the State Engineer's Office will establish working procedures for indefinite quantity contracts for professional services, and shall include them in the Manual for Planning and Execution of State Permanent Improvements-Part II. With regard to Section 11-35-3320, the State Engineer's Office will establish working procedures for task order contracts for construction services and shall include them in the Manual for Planning and Execution of State Permanent Improvements-Part II.

I. Construction Procurement-The Invitation for Bids.

The provisions of Regulation 19-445.2040 shall apply to implement the requirements of Section 11-35-3020(a), Invitation for Bids. The provisions of Regulation 19-445.2090(B) shall not apply to implement the requirements of Code Section 11-35-3020.

J. Participation in Prior Reports or Studies.

(1) Before awarding a contract for a report or study that could subsequently be used in the creation of design requirements for an infrastructure facility or service, the procurement officer should address, to the extent practical, the contractor's ability to compete for follow-on work.

(2) Before issuing a request for proposals for an infrastructure facility or service, the procurement officer should take reasonable steps to determine if prior participation in a report or study could provide a firm with a substantial competitive advantage, and, if so, the procurement officer should take appropriate steps to eliminate or mitigate that advantage.

(3) In complying with items (1) and (2) above, the procurement officer shall consider the requirements of Section 11-35-3245 and the Manual for Planning and Execution of State Permanent Improvements, Part II.

K. Additional Procedures for Design-Build; Design-Build-Operate-Maintain; and Design-Build-Finance-Operate-Maintain.

(1) Content of Request for Proposals. Each request for proposals (RFP) issued by the State for design-build, design-build-operate-maintain, or design-build-finance-operate-maintain services shall contain a cover sheet that: (a) confirms that design requirements are included in the RFP, (b) confirms that proposal development documents are solicited in each offeror's response to the RFP, and (c) states the governmental body's determination for that procurement (i) whether offerors must have been prequalified through a previous request for qualifications; (ii) whether the governmental body will select a short list of responsible offerors prior to discussions and evaluations (along with the number of proposals that will be short-listed); and (iii) whether the governmental body will pay stipends to unsuccessful offerors (along with the amount of such stipends and the terms under which stipends will be paid).

(2) Purpose of Design Requirements. The purpose and intent of including design requirements in the RFP is to provide prospective and actual offerors a common, and transparent, written description of the starting point for the competition and to provide the State with the benefit of having responses from competitors that meet the same RFP requirements. In order to be effective, the governmental body must first come to understand and then to communicate its basic requirements for the infrastructure facility to those who are considering whether they will participate in the procurement competition.

(3) Purpose of Requirement for Proposal Development Documents. The purpose and intent of including the requirement for submittal of proposal development documents in each RFP for design-build, design-build-operate-maintain, or design-build-finance-operate-maintain is to provide actual offerors with a common, and transparent, written description of the finish point for the competition. To be responsive, each offeror must submit drawings and other design related documents that are sufficient to fix and describe the size and character of the infrastructure facility to be acquired, including price (or life-cycle price for design-build-operate-maintain and design-build-finance-operate-maintain procurements).

(4) Content of Request for Proposals: Evaluation Factors. Each request for proposals for design-build, design-build-operate-maintain, or design-build-finance-operate-maintain shall state the relative importance of (1) demonstrated compliance with the design requirements, (2) offeror qualifications, (3) financial capacity, (4) project schedule, (5) price (or life-cycle price for design-build-operate-maintain and design-build-finance-operate-maintain procurements), and (6) other factors, if any by listing the required factors in descending order of importance (without numerical weighting), or by listing each factor along with a numerical weight to be associated with that factor in the governmental body's evaluation. Subfactors, if any, must be stated in the RFP and listed, pursuant to the requirements of this Regulation, either in descending order, or with numerical weighting assigned to each subfactor. The purpose and intent of disclosing the relative importance of factors (and subfactors) is to provide transparency to prospective and actual competitors from the date the RFP is first published.

(5) The Manual for Planning and Execution of State Permanent Improvement Projects - Part II must include guidelines for the proper drafting of design requirements, proposal development documents, and requests for proposals.

L. Errors and Omissions Insurance.

(1) For design services in design-bid-build procurements. A governmental body shall include in the solicitation such requirements as the procurement officer deems appropriate for errors and omissions insurance (commonly called "professional liability insurance" in trade usage) coverage of architectural and engineering services in the solicitation for design services in design-bid-build procurements.

(2) For design services to be provided as part of design-build procurements. A governmental body shall include in the solicitation for design-build such requirements as the procurement officer deems appropriate for errors and omissions insurance coverage of architectural and engineering services to be provided as part of such procurements. Prior to award, the head of a governmental body, or his delegee, shall review and approve the errors and omissions insurance coverage for all design-build contracts in excess of \$25,000,000.

(3) For design services to be provided as part of design-build-operate-maintain and design-build-finance-operate-maintain procurements. A governmental body shall include in the solicitation for design-build-operate-maintain and design-build-finance-operate-maintain such requirements as the procurement officer deems appropriate for errors and omissions insurance coverage of architectural and engineering services to be provided as part of such procurements. Prior to award, the head of a governmental body, or his delegee, shall review and approve the errors and omissions insurance coverage for all design-build-operate-maintain and design-build-finance-operate-maintain contracts in excess of \$25,000,000.

(4) For Construction Management (Agency) services. A governmental body shall include in the solicitation for construction management agency services such requirements as the procurement officer deems appropriate for errors and omissions insurance coverage.

(5) Errors and omissions (or professional liability) insurance coverage for construction management services is typically not required when the governmental body is conducting a construction management at-risk procurement.

M. Other Security; Operations Period Performance Bonds.

(1) Purpose.

To assure the timely, faithful, and uninterrupted provision of operations and maintenance services procured separately, or as one element of design-build-operate-maintain or design-build-finance-operate-maintain services, the governmental body shall identify, in the solicitation, one or more of the other forms of security identified in Section 11-35-3037 that shall be furnished to the governmental body by the offerors (or bidders) in order to be considered to be responsive.

(2) Operations Period Performance Bonds.

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(a) If required in a solicitation for operation and maintenance, design-build-operate-maintain, or design-build-finance-operate-maintain, each offeror shall demonstrate in its offer that it is prepared to provide, and upon award of the contract, to maintain in effect an operations period performance bond that secures the timely, faithful, and uninterrupted performance of operations and maintenance services required under the contract, in the amount of 100% of that portion of the contract price that includes the cost of such operation and maintenance services during the period covered by the bond. In those procurements in which the contract period for operation and maintenance is longer than 5 years, the procurement officer may accept an operations period performance bond of five years' duration, provided that such bond is renewable by the contractor every five (5) years during the contract, and provided further, that the contractor has made a firm contractual commitment to maintain such bond in full force and effect throughout the contract term.

(b) The operations period performance bond shall be delivered by the contractor to the governmental body at the same time the contract is executed. If a contractor fails to deliver the required bond, the contractor's bid (or offer) shall be rejected, its bid security shall be enforced, award of the contract shall be made to the next ranked bidder (or offeror), or the contractor shall be declared to be in default, as otherwise provided by these regulations.

(c) Operations period performance bond shall be in a form to be specified in the Manual for Planning and Execution of State Permanent Improvement, Part II. Each bond shall be issued by a Surety Company licensed in South Carolina with an "A" minimum rating of performance as stated in the most current publication of "Best Key Rating Guide, Property Liability", which company shows a financial strength rating of at least five (5) times the bond amount.

(3) Letters of Credit to Cover Interruptions in Operation.

(a) If required in a solicitation for operation and maintenance, design-build-operate-maintain, or design-build-finance-operate-maintain, each offeror shall demonstrate in its offer that it is prepared to post, and upon award of the contract shall post, and in each succeeding year adjust and maintain in place, an irrevocable letter of credit with a banking institution in this State that secures the timely, faithful, and uninterrupted performance of operations and maintenance services required under the contract, in an amount established under the contract that is sufficient to cover 100% of the cost of performing such operation and maintenance services during the next 12 months.

(b) The letter of credit required under this Section shall be posted by the contractor at the same time the contract is executed, and thereafter, shall be annually adjusted in amount and maintained by the contractor. If an offeror or bidder fails to demonstrate in its offer that it is prepared to post the required letter of credit, the bid (or offer) shall be rejected, the bid security shall be enforced, and award of the contract shall be made to the next ranked bidder (or offeror), as otherwise provided by these regulations. If the contractor fails to place and maintain the required letter of credit, the contractor shall be declared to be in default, as otherwise provided by these regulations.

(c) If required by the solicitation, letters of credit shall be in a form to be specified in the Manual for Planning and Execution of State Permanent Improvement, Part II.

(4) Guarantees.

(a) If required in a solicitation for operation and maintenance, design-build-operate-maintain, or design-build-finance-operate-maintain, the contractor and affiliated organizations (including parent corporations) shall provide a written guarantee that secures the timely, faithful, and uninterrupted performance of operations and maintenance services required under the contract, in an amount established under the contract that is sufficient to cover 100% of the cost of performing such operation and maintenance services during the contract period.

(b) The written guarantee required under this Section shall be submitted by each offeror at the time the proposal is submitted. If the contractor fails to submit the required guarantee, the contractor's bid (or offer) shall be rejected, its bid security shall be enforced, and award of the contract shall be made to the next ranked bidder (or offeror) as otherwise provided by these regulations.

(c) If required by the solicitation, guarantees shall be in a form to be specified in the Manual for Planning and Execution of State Permanent Improvement, Part II.

N. Construction Management At-Risk.

(1) Absent the approval required by Section 11-35-2010, a contract with a construction manager at-risk may not involve cost reimbursement.

(2) Prior to contracting for a GMP, all construction management services provided by a construction manager at-risk must be paid as a fee based on either a fixed rate, fixed amount, or fixed formula.

(3) As required by Section 11-35-3030(2)(a)(iv), construction may not commence until the bonding requirements of Section 11-35-3030(2)(a) have been satisfied. Subject to the foregoing, bonding may be provided and construction may commence for a designated portion of the construction.

(4) In a construction management at-risk project, construction may not commence for any portion of the construction until after the governmental body and the construction manager at risk contract for a fixed price or a GMP regarding that portion of the construction. Prior to executing a contract for a fixed price or a GMP, a governmental body shall comply with Section 11-35-1830 and Regulation 19-445.2120, if applicable. For purposes of Section 11-35-1830(3)(a), adequate price competition exists for all components of the construction work awarded by a construction manager at-risk on the basis of competitive bids.

(5) When seeking competitive sealed proposals in a construction management at-risk procurement, the solicitation shall include a preliminary budget, and if applicable, completed programming and the conceptual design. The solicitation shall request information concerning the prospective offeror's qualifications, experience, and ability to perform the requirements of the contract, including but not limited to, experience on projects of similar size and complexity, and history of on-time, on-budget, on-schedule construction. The offeror's proposed fee may be a factor in determining the award.

(6) After all preconstruction services and final construction drawings have been completed, or prior thereto upon written determination by the procurement officer, a governmental body must negotiate with and contract for a GMP with a construction manager at-risk. If negotiations are unsuccessful, the governmental body may issue an invitation for bids, as allowed by this code, for the remaining construction.

(7) A governmental body shall have the right at any time, and for three years following final payment, to audit the construction manager at-risk to disallow and to recover costs not properly charged to the project. Any costs incurred above the GMP shall be paid for by the construction manager at-risk.

(8) A construction manager at-risk may not self-perform any construction work for which subcontractor bids are invited, unless no acceptable bids are received or a subcontractor fails to perform. Ordinarily, the contract with a construction manager at-risk should require the construction manager at-risk to invite bids for all major components of the construction work. Section 11-35-4210 does not apply to any subcontractor bid process conducted by a construction manager at-risk.

19-445.2152. Leases, Lease/Payment, Installment Purchase, and Rental of Personal Property.

A. Justification. A governmental body proposing to enter into an agreement other than an outright purchase is responsible for the justification of such action. Lease, lease/purchase, installment purchase, or rental agreements are subject to the procedures of the Procurement Code and these Regulations.

B. Procedures. Upon written justification by the procurement officer of the governmental body of such alternate method, the following procedures will be followed:

(1) The State of South Carolina Standard Equipment Agreement will be used in all cases unless modifications are approved by the Director of the Division of Procurement Services or his designee. A purchasing agency may enter into an agreement for the rental of equipment without using the Standard Equipment Agreement when the agreement has a total potential value of fifteen thousand dollars or less or the agreement does not exceed ninety days in duration.

(2) Installment purchases will require the governmental body to submit both a justification and purchase requisition to the appropriate chief procurement officer or his designee for processing.

(3) All lease/purchase and installment sales contracts must contain an explicitly stated rate of interest to be incurred by the State under the contract.

19-445.3000. School District Procurement Codes; Model.

A. Application.

Under Section 11-35-5340, a school district is exempt from the South Carolina Consolidated Procurement Code (except for a procurement audit) if the district has its own procurement code which is, in the written opinion of the Division of Procurement Services of the State Fiscal Accountability Authority, substantially similar to the provisions of the Consolidated Procurement Code and regulations in effect at the time the opinion is issued.

B. Delegation.

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The authority and responsibilities under Section 11-35-5340 are hereby delegated to the Materials Management Officer.

C. Substantially Similar.

To qualify for approval, a district code should largely mirror, but need not be identical to, the Consolidated Procurement Code. Because a district code needs only to be substantially similar to the consolidated procurement code and regulations, a district code may accommodate the differing context of school districts (e.g., differences between state government and local school district operations, including size, purchasing staff resources, volume and type of procurements, and structure of its governing body and executive hierarchy) as long as it preserves the sound procurement policies and practices underlying the rules found in the consolidated procurement code and regulations.

D. Definitions.

Covered District means a school district subject to the requirements of Section 11-35-5340. Model code means a model school district procurement code and any subsequent modifications to the model code, including instructions regarding how each district may customize the model code to an individual district's organizational structure.

E. Guidelines; Model Code.

By requiring a written opinion, Section 11-35-5340 provides for an exercise of judgment. The best interest of the state is served by exercising this judgment in a consistent manner. Accordingly, the Materials Management Office may publish guidance regarding its exercise of this judgment, including publication of a model code. In developing a model code, the Materials Management Officer should consult with all covered districts and the State Department of Education. Any model should be designed to serve and comply with the purposes and policies enumerated in Section 11-35-20 in the specific context of local school district operations, with due regard for minimizing administrative costs of compliance with the model code. Prior to publishing a model code, the Materials Management Officer must determine in writing that the model code is substantially similar to the provisions of the South Carolina Consolidated Procurement Code and these procurement regulations. Any school district may adopt the model code.

F. Duration of Written Opinion.

A written opinion issued pursuant to Section 11-35-5340 remains valid for a covered district's procurement code until the covered district seeks and receives a written opinion for modifications to its procurement code.

G. Effect of Adoption.

A procurement code adopted by a school district in accordance with all applicable law shall have the full force and effect of law.

Fiscal Impact Statement:

No additional state funding is requested. The State Fiscal Accountability Authority estimates that no additional costs will be incurred by the State and its political subdivisions in complying with the proposed revisions to Regulation 19-445.

Statement of Rationale:

The Consolidated Procurement Code expressly contemplates the continued development of explicit and thoroughly considered procurement policies and practices. The proposed changes are needed to accommodate developments in the law and in best practices for government procurement, and to further consolidate, clarify, and modernize the law governing procurement in this State. S.C. Code Section 11-35-20(d).

Document No. 4885
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61

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

61-69. Classified Waters.

Synopsis:

R.61-69 establishes the State’s site-specific water quality standards and provides a listing of all named and specific unnamed waterbodies, their classifications, and locations. The Department of Health and Environmental Control (“Department”) amends R.61-69 to clarify and correct, as needed, waterbody names, counties, classes, and descriptions. The Department also includes stylistic changes for overall improvement of the text of the regulation.

The Department had a Notice of Drafting published in the February 22, 2019, *South Carolina State Register*.

Instructions:

Amend R.61-69 pursuant to each individual instruction provided with the text of the amendments below.

Text:

61-69. Classified Waters.

(Statutory Authority: 1976 Code Sections 48-1-10 et seq.)

Amend 61-69.H to read:

H. List of Waterbody Names, County(ies), Class, and Descriptions.

Waterbody Name	County(ies)	Class	Waterbody Description and (Site-Specific Standard)
Abner Creek	Pkns	ORW(FW)	The entire creek tributary to Eastatooe Creek
Adams Creek	Chtn	ORW(SFH)	The entire creek tributary to Bohicket Creek
Allan Creek (also called Allen Creek)	Spbg	FW	The entire creek tributary to Enoree River
Alligator Creek	Cltm	ORW(SFH)	The entire creek tributary to South Edisto River
Allison Creek	York	FW	The entire creek tributary to Lake Wylie
Alston Creek	Chtn	SFH	The entire creek tributary to Wando River
Anderson Reservoir	Andn	FW	The entire reservoir on Beaverdam Creek
Archers Creek	Bftr	SA	That portion of the creek from Port Royal to U.S. Government Parris Island Bridge
Archers Creek	Bftr	SFH	That portion of the creek from the U.S. Government Parris Island Bridge to Broad River
Ashepoo River	Cltm	FW	That portion of the river to saltwater intrusion
Ashepoo River	Cltm	SFH	That portion of the river from saltwater intrusion to the Atlantic Ocean
Ashley River	Chtn, Dchr	FW	That portion of the river from its beginning at Cypress Swamp to the confluence with Popper Dam Creek

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Waterbody Name	County(ies)	Class	Waterbody Description and (Site-Specific Standard)
Ashley River	Chtn, Dchr	SA	That portion of the river from the confluence with Popper Dam Creek to Church Creek
Ashley River	Chtn	SA sp	That portion of the river from Church Creek to Orangegrove Creek (D.O. not less than 4 mg/L)
Ashley River	Chtn	SA	That portion of the river from Orangegrove Creek to Charleston Harbor
Ashpole Swamp	Dill, Marn	FWsp	The entire swamp tributary to Lumbar River (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Atlantic Intracoastal Waterway	Hory	SA	That portion of the waterway from the North Carolina line to S.C. Hwy 9
Atlantic Intracoastal Waterway	Hory	FW	That portion of the waterway from S.C. Hwy 9 to its confluence with Waccamaw River
Atlantic Intracoastal Waterway	Gtwn, Hory	FWsp	That portion of the waterway from its confluence with Waccamaw River to Thoroughfare Creek (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Atlantic Intracoastal Waterway	Gtwn	SA sp	That portion of the waterway from Thoroughfare Creek to the headwaters of Winyah Bay (D.O. not less than 4 mg/L)
Atlantic Intracoastal Waterway	Gtwn	SB	That portion of the waterway from the headwaters of Winyah Bay to South Santee River
Atlantic Intracoastal Waterway	Chtn	SFH	That portion of the waterway from South Santee River to the Ben Sawyer Bridge
Atlantic Intracoastal Waterway	Chtn	SB	That portion of the waterway from the Ben Sawyer Bridge through Charleston Harbor to the confluence of Elliott Cut and Stono River
Atlantic Intracoastal Waterway	Chtn	SFH	That portion of the waterway from the confluence of Elliott Cut and Stono River to the S.C.L. Railroad Bridge over Stono River
Atlantic Intracoastal Waterway	Chtn	SFH	That portion of the waterway from the S.C.L. Railroad Bridge over Stono River to the confluence of Wadmalaw Sound and Stono River
Atlantic Intracoastal Waterway	Chtn	ORW(SFH)	That portion of the waterway from the confluence of Wadmalaw Sound and Stono River to Gibson Creek
Atlantic Intracoastal Waterway	Chtn	ORW(SFH)	That portion of the waterway from Gibson Creek along Wadmalaw River and Dawho River to North Creek
Atlantic Intracoastal Waterway	Chtn	ORW(SFH)	That portion of the waterway from North Creek through Watts Cut to South Edisto River
Atlantic Intracoastal Waterway	Chtn, Cltn	ORW(SFH)	That portion of the waterway from South Edisto River at Watts Cut to South Edisto River at Fenwick Cut
Atlantic Intracoastal Waterway	Cltn	SFH	That portion of the waterway from South Edisto River at Fenwick Cut along the Ashepoo River to the confluence with St. Helena Sound
Atlantic Intracoastal Waterway	Bfirt, Cltn	SFH	That portion of the waterway from the confluence with St. Helena Sound through the Sound to the confluence with Coosaw River

Waterbody Name	County(ies)	Class	Waterbody Description and (Site-Specific Standard)
Atlantic Intracoastal Waterway	Bfirt	SFH	That portion of the waterway from the confluence with Coosaw River along Brickyard Creek to the confluence with Albergottie Creek
Atlantic Intracoastal Waterway	Bfirt	SA	That portion of the waterway from the confluence of Brickyard and Albergottie Creeks to become the Beaufort River to a boundary drawn along Beaufort River between the upper banks of Battery Creek and Cat Island Creek
Atlantic Intracoastal Waterway	Bfirt	SFH	That portion of the waterway from a boundary drawn along Beaufort River between the upper bank of Battery Creek and Cat Island through Port Royal Sound to the confluence with Skull Creek
Atlantic Intracoastal Waterway	Bfirt	SFH	That portion of the waterway from the confluence with Skull Creek through Calibogue Sound, along Cooper River and Ramshorn Creek, to the confluence with New River
Atlantic Intracoastal Waterway	Jspr	SA	That portion of the waterway from the confluence of Ramshorn Creek with New River to Watts Cut and Wright River
Atlantic Intracoastal Waterway	Jspr	SA	That portion of the waterway from Wright River to Mud River to Savannah River
Back River	Bkly	FW	The entire river tributary to Cooper River
Bad Creek	Ocne	ORW(FW)	That portion of the creek from the North Carolina line to Chattooga River
Bad Creek Reservoir	Ocne	FW	The entire reservoir
Bailey Creek	Andn	FW	The entire creek tributary to Rocky Creek
Bailey Creek	Chtn	ORW(SFH)	The entire creek tributary to St. Pierre Creek
Baker Creek	Mcmk	FW	The entire creek tributary to Lake Strom Thurmond
Ballast Creek	Bfirt	SA	That portion of the creek from the tidal node to Beaufort River
Ballast Creek	Bfirt	SFH	That portion of the creek from the tidal node to Broad River
Bartons Branch (also called Summerhouse Branch and Johnsons Swamp)	Gtwn, Wmbg	FWsp	The entire branch tributary to Horse Pen Swamp (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Bass Creek	Bfirt	ORW(SFH)	The entire creek tributary to May River
Bass Hole Bay	Gtwn	ORW(SFH)	The entire bay between Old Man Creek and Debidue Creek
Battery Creek	Bfirt	SA	That portion of the creek from the two unnamed headwater creeks down to a point 1000 feet below their confluence at Rabbit Island
Battery Creek	Bfirt	SFH	That portion of the creek from a point 1000 feet below the headwater creeks confluence at Rabbit Island to the confluence with Beaufort River
Battle Creek	Ocne	TPGT	The entire creek tributary to Tugaloo River
Bear Creek	Andn	FW	The entire creek tributary to Rocky Creek
Bear Creek	Lctr	FW	The entire creek tributary to Cane Creek

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Waterbody Name	County(ies)	Class	Waterbody Description and (Site-Specific Standard)
Bear Creek	Newb, Lexi	FW	The entire creek tributary to Lake Murray
Bear Swamp	Diln	FWsp	The entire swamp tributary to Ashpole Swamp (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Beards Fork Creek	Lrns	FW	The entire creek tributary to Duncan Creek
Beaufort River	Bfirt	SA	That portion of the river from the confluence of Albergottie Creek and Brickyard Creek to a boundary drawn between the upper bank of Battery Creek and Cat Island Creek
Beaufort River	Bfirt	SFH	That portion of the river from a boundary drawn between the upper bank of Battery Creek and Cat Island Creek to the confluence with Port Royal Sound
Beaver Creek	Andn	FW	The entire creek tributary to Rocky River
Beaver Creek	Krsh	FW	The entire creek tributary to Wateree Lake
Beaverdam Creek	Andn	FW	The entire creek tributary to Rocky River
Beaverdam Creek	Drln, Cfld	FW	The entire creek tributary to Black Creek
Beaverdam Creek	Efld	FW	The entire creek tributary to Turkey Creek
Beaverdam Creek	Gnvl	ORW(FW)	That portion of the creek from its headwaters to Secondary Road 563
Beaverdam Creek	Gnvl	FW	That portion of the creek from Secondary Road 563 to Enoree River
Beaverdam Creek	Lrns	FW	The entire creek tributary to Enoree River
Beaverdam Creek	Mrlb	FW	The entire creek tributary to Little Pee Dee River
Beaverdam Creek	York	FW	The entire creek tributary to Crowder’s Creek
Beaverdam Creek (also called Irene Creek)	Chke	FW	The entire creek tributary to Thicketty Creek
Beaverdam Creek (also called Big Beaverdam Creek)	Andn	FW	The entire creek tributary to Rocky River
Bees Creek	Jspr	SB	The entire creek tributary to Coosawhatchie River
Bell Swamp Creek	Diln	FW	The entire creek tributary to Little Pee Dee River
Beresford Creek	Bkly	SFH	That portion of the creek from Wando River to a point 4 miles from Wando River
Beresford Creek	Bkly	SA	That portion of the creek from a point 4 miles from Wando River to Clouter Creek
Betsy Creek	Andn	FW	The entire creek tributary to Beaver Creek
Big Bay Creek	Chtn	ORW(SFH)	The entire creek tributary to South Edisto River
Big Boggy Swamp	Drln	FW	The entire swamp tributary to McIntosh Mill Stream
Big Creek	Andn	FW	The entire creek tributary to Saluda River
Big Dutchmans Creek	Ffld	FW	The entire creek tributary to Lake Wateree
Big Dutchmans Creek	York	FW	The entire creek tributary to Catawba River
Big Generostee Creek	Andn	FW	The entire creek tributary to Savannah River
Big Lake	Rlnd	ORW(FW)	The entire lake within the boundaries of Congaree National Park

Waterbody Name	County(ies)	Class	Waterbody Description and (Site-Specific Standard)
Big Pine Tree Creek	Kshw	FW	The entire creek tributary to Wateree River
Big Rock Creek	Gnwd	FW	The entire creek tributary to Wilson Creek
Big Swamp	Flrn	FWsp	The entire swamp tributary to Lynches River (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Black Creek	Cfld	FW	That portion of the creek from its headwaters to S.C. 145
Black Creek	Cfld, Drln	FWsp	That portion of the creek from S.C. 145 through Lake Robinson and Lake Prestwood to U. S. 52 (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Black Creek	Drln, Flrn	FW	That portion of the creek from U.S. 52 to Great Pee Dee River
Black River	Clrn, Gtwn, Lee, Smtr, Wmbg	FWsp	That portion of the creek from its headwaters to U.S. 701 (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Black River	Gtwn	SA	That portion of the river from U.S. 701 to Pee Dee River
Blue Hill Creek	Abvl	FW	The entire creek tributary to Norris Creek
Bly Creek	Gtwn	ORW(SFH)	The entire creek tributary to Old Man Creek
Bob's Garden Creek	Gtwn	ORW(SFH)	The entire creek tributary to Jones Creek
Boggy Swamp	Gtwn	FWsp	That portion of the river from the headwaters to saltwater intrusion (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Bohicket Creek	Chtn	ORW(SFH)	The entire creek tributary from North Edisto River to Church Creek
Boone Hall Creek	Chtn	SFH	The entire creek tributary to Horlbeck Creek
Boor Creek	Gtwn	ORW(SFH)	The entire creek between Jones Creek and Wood Creek
Brasstown Creek	Ocne	TPGT	That portion of the creek from headwaters to Tugaloo River
Bread and Butter Creek	Gtwn	ORW(SFH)	The entire creek tributary to Town Creek
Brickyard Creek	Chtn	SB	The entire creek tributary to Ashley River
Brickyard Creek	Bfirt	SFH	The entire creek tributary to Beaufort River
Broad Creek (NDZ)	Bfirt	SFH	The entire creek tributary to Calibogue Sound
Broad River	Brft, Jspr	SFH	The entire river tributary to Port Royal Sound
Broad River (Main Stem)	Chke, Cstr, Ffld, Nbry, Rlnd, Unin, York	FW	The entire river tributary to Congaree River
Broadmouth Creek	Abvl, Andn	FW	The entire creek tributary to Saluda River
Broadway Creek	Andn	FW	The entire creek tributary to Rocky Creek
Brown Swamp	Hory, Marn	FWsp	The entire swamp tributary to Little Pee Dee River (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Brunson Swamp	Hory	FW	The entire swamp tributary to Little Pee Dee River
Brushy Creek	Gnvl	FW	That portion of the creek from headwaters northeast of Greenville to Enoree River
Brushy Creek	Gnvl	FW	The entire creek tributary to Reedy River
Brushy Creek	Pkns	FW	The entire creek tributary to Saluda River

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Waterbody Name	County(ies)	Class	Waterbody Description and (Site-Specific Standard)
Buck Creek	Brwl	FW	The entire creek tributary to Salkehatchie River
Buck Creek	Spbg	FW	The entire creek tributary to Pacolet River
Buck Hollow	Gnvl	TN	The entire tributary to Middle Saluda River
Buck Swamp	Diln, Marn, Mrlb	FWsp	The entire swamp tributary to Little Pee Dee River (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Buckhorn Creek	Gnvl	ORW(FW)	That portion of the creek from headwaters, including Buckhorn Lake, to Tanyard Road
Buckhorn Creek	Gnvl	FW	That portion of the creek from Tanyard Road to Enoree River
Buffalo Creek	Unin	FW	The entire creek tributary to Fairforest Creek
Buffalo Creek	Chke	FW	The entire creek tributary to Broad River
Bull Branch	Mrlb	FW	The entire branch tributary to Hagins Prong
Bull Creek	Bfrit	ORW(SFH)	The entire creek tributary to Cooper River and May River
Bull Creek	Hory	FW	The entire creek tributary to Pee Dee River to Waccamaw River
Bull Run Branch	Cstr	FW	The entire branch within Chester County
Bull Swamp	Orbg	FWsp	The entire swamp tributary to Four Hole Swamp (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Bull Swamp Creek	Lxtn, Orbg	FW	The entire creek tributary to North Fork Edisto River
Bullock Creek	York	FW	The entire creek tributary to Broad River
Bull's Bay	Chtn	ORW(SFH)	The entire bay
Bulls Creek	Chtn	SA sp	The entire creek tributary to Ashley River (D.O. not less than 4 mg/L)
Bullyard Sound	Chtn	ORW(SFH)	The entire sound
Burdine Creek	Pkns	FW	The entire creek tributary to Georges Creek
Burgess Creek	Ocne	TN	That portion of the creek from its headwaters to Mill Creek
Burnetts Creek	Slda	FW	The entire creek tributary to Little Saluda River
Burnt Gin Lake	Smtr	FW	The entire lake located on the western reaches of Cane Savannah Creek
Bush Creek (or River)	Lrns, Nbry	FW	The entire creek tributary to Lake Murray
Byrum's Creek (Branch from Appleton Mill to Whitner Creek)	Andn	FW	The entire creek tributary to Whitner Creek
Calhoun Creek	Abvl	FW	The entire creek tributary to Little River
Calibogue Sound	Bfrit	SFH	The entire sound tributary to the Atlantic Ocean
Callawassie Creek	Bfrit	ORW(SFH)	The entire creek tributary to Colleton River
Camp Branch	Ocne	FW	The entire branch tributary to Opossum Creek
Cane Creek	Lctr	FW	The entire creek tributary to Catawba River
Cane Creek	Pkns	TN	The entire creek tributary to Lake Keowee
Cannons Creek	Nbry	FW	The entire creek tributary to Broad River
Canoe Creek	Andn	FW	The entire creek tributary to Little Generostee Creek
Cantrell Creek	Ocne	TN	That portion of the creek from its headwaters to Lake Cheohee

Waterbody Name	County(ies)	Class	Waterbody Description and (Site-Specific Standard)
Cape Romain Harbor	Chtn	ORW(SFH)	The entire harbor
Caper's Inlet	Chtn	ORW(SFH)	The entire inlet tributary to the Atlantic Ocean
Captain Bill's Creek	Jspr	FW	The entire creek tributary to Bee's Creek
Carrick Creek	Pkns	ORW(FW)	That portion of the creek from its headwaters to Pinnacle Lake
Carrick Creek	Pkns	FW	That portion of the creek from the dam at Pinnacle Lake to the end of Table Rock State Park land
Carter Creek	Flrn	FW	The entire creek tributary to Lynches River
Cat Island Creek	Bfrit	SFH	The entire creek from Beaufort River to Chowan Creek
Catawba-Wateree River	Cstr, Ffld, Kshw, Lctr, Rlnd, Smtr, York	FW	The entire river tributary to Santee River
Catfish Creek	Marn	FWsp	The entire creek tributary to Pee Dee River (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Causeway Branch	Smtr	FW	The entire branch tributary to Second Mill Pond
Caw Caw Swamp	Aldl, Hmpt	FWsp	The entire swamp tributary to Whippy Swamp (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Cedar Creek	Cfld, Drln	FW	The entire creek tributary to Pee Dee River
Cedar Creek	Ffld, Rlnd	FW	The entire creek tributary to Broad River
Cedar Creek	Rlnd	FW	That portion of the creek outside the boundary of Congaree National Park
Cedar Creek	Rlnd	ORW(FW)	That portion of the creek beginning at the boundary of Congaree National Park to Wise Lake
Cedar Creek	Rlnd	ONRW(FW)	That portion of the creek beginning at Wise Lake to confluence with Congaree River
Cedar Creek Reservoir	Cstr, Ffld, Lntn	FW	The entire lake on Catawba River
Cemetery Creek (also called Silver Brook Creek)	Andn	FW	The entire creek tributary to Rocky River
Charleston Harbor	Chtn	SB	From Battery to the Atlantic Ocean
Charlies Creek	Abvl	FW	The entire creek tributary to Rocky River
Chattooga River	Ocne	FW	That portion of the river from its confluence with Opossum Creek to Tugaloo River
Chattooga River	Ocne	ORW(FW)	That portion of the river from the North Carolina line to its confluence with Opossum Creek
Chauga Creek (also called Jerry Creek)	Ocne	FW	The entire creek tributary to Chauga River
Chauga River	Ocne	ORW(FW)	That portion of the river from its headwaters to 1 mile above U.S. 76
Chauga River	Ocne	FW	That portion of the river from 1 mile above U.S. 76 to Tugaloo River
Chechessee Creek	Bfrit	ORW(SFH)	The entire creek tributary to Colleton River and Chechessee River
Chechessee River	Bfrit	SFH	The entire river tributary to Port Royal Sound

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Waterbody Name	County(ies)	Class	Waterbody Description and (Site-Specific Standard)
Chehaw River	Cltn	SFH	The entire river tributary to Combahee River
Cheohee Creek	Ocne	ORW(FW)	That portion of the creek from headwaters to end of U.S. Forest Service Land
Cheohee Creek	Ocne	FW	That portion of the creek from U.S. Forest Service Land to confluence with Tamassee Creek
Cherokee Creek	Andn	FW	The entire creek tributary to Hencoop Creek
Cherokee Creek	Chke	FW	The entire creek tributary to Broad River
Chickasaw Creek	Abvl	FW	The entire creek tributary to Little River
Chinners Swamp	Hory	FWsp	The entire swamp tributary to Brunson Swamp (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Choestoea Creek	Ocne	FW	The entire creek tributary to Hartwell Lake
Chowan Creek (also called Cowen Creek)	Bfrit	SFH	The entire creek tributary to Beaufort River
Church Creek	Chtn	ORW(SFH)	That portion of the creek from Wadmalaw Sound to Ravens Point
Church Creek	Chtn	SFH	That portion of the creek from Ravens Point to Hoopstick Island
Clambank Creek	Gtwn	ORW(SFH)	The entire creek tributary to Town Creek
Clark Creek	Flrn, Wmbg	FWsp	The entire creek tributary to Pee Dee River (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Clark Creek	York	FW	The entire creek tributary to Bullock Creek
Clark(s) Hill Reservoir (NDZ) (also called J. Strom Thurmond Lake)	Abvl, Mcmk	FW	The entire reservoir on Savannah River
Clark Sound	Chtn	SB	The entire sound tributary to Charleston Harbor
Clouds Creek	Slda	FW	The entire creek tributary to Lake Murray
Coastal Waters	Bfrit, Chtn, Gtwn, Hory, Jspr	SFH	From the land to the 3 mile limit of State jurisdiction in the Atlantic Ocean
Coastal Waters		SFH	Coastal waters offshore from the land to the 3 mile limit of State jurisdiction in the Atlantic Ocean
Coastal Waters		SFH	From the land to the 3 mile limit of State jurisdiction in the Atlantic Ocean
Coldspring Branch	Gnvl	ORW(FW)	The entire branch tributary to Middle Saluda River
Colleton River	Bfrit	ORW(SFH)	The entire river tributary to Chechessee River
Combahee River	Bfrit, Cltn, Hmpt	FW	That portion of the river from confluence of Salkehatchie River with Little Salkehatchie River to saltwater intrusion at U.S. Hwy 17
Combahee River	Bfrit, Cltn	SFH	That portion of the river from saltwater intrusion at U.S. Hwy 17 to St. Helena Sound
Coneross Creek	Ocne	FW	That portion of the creek through Negro Fork Creek
Congaree Creek	Lxtn	FW	The entire creek tributary to Congaree River
Congaree River	Clhn, Lxtn, Rlnd	FW	The entire river tributary to Santee River
Contrary Swamp	Diln	FW	The entire swamp from its headwaters to the North Carolina line near South of the Border

Waterbody Name	County(ies)	Class	Waterbody Description and (Site-Specific Standard)
Cooks Creek	Gtwn	ORW(SFH)	The entire creek between Old Man Creek and Debidue Creek
Cooper River	Bkly, Chtn	FW	That portion of the river from the confluence of West Branch Cooper River and East Branch Cooper River (the Tee) to a point approximately 30 miles above the junction of Ashley and Cooper Rivers
Cooper River	Bkly, Chtn	SB	That portion of the river below a point approximately 30 miles above the junction of Ashley and Cooper Rivers to the junction of Ashley and Cooper Rivers
Cooper River	Bfrit	ORW(SFH)	That portion of the river from New River to Ramshorn Creek
Cooper River	Bfrit	SFH	That portion of the river from Ramshorn Creek to Calibogue Sound
Coosaw River	Bfrit	SFH	The entire river tributary to St. Helena Sound
Coosawhatchie River	Aldl, Hmpt, Jspr	FW	That portion of the river from its headwaters to saltwater intrusion
Coosawhatchie River	Aldl, Hmpt, Jspr	SFH	That portion of the river from saltwater intrusion to Broad River
Copahee Sound	Chtn	ORW(SFH)	The entire sound
Corbin Creek	Ocne	ORW(TPGT)	The entire creek tributary to Devils Fork
Corner Creek	Abvl	FW	The entire creek tributary to Little River
Coronaca Creek	Gnwd	FW	The entire creek tributary to Wilson Creek
Cowpen Swamp	Diln	FWsp	The entire swamp tributary to Bear Swamp (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Cowpens Creek	Chke	FW	The entire creek tributary to Little Thicketty Creek
Cox Branch	Bmbg	FW	The entire branch tributary to Lemon Creek
Cox Creek	Andn	FW	The entire creek tributary to Rocky Creek
Cox Camp Creek	Gnvl	TN	The entire creek tributary to Middle Saluda River
Crab Haul Creek	Gtwn	ORW(SFH)	The entire creek tributary to Old Man Creek
Crane Creek	Rlnd	FW	The entire creek tributary to Broad River
Crims Creek	Nbry	FW	The entire creek tributary to Broad River
Crooked Creek	Mrlb	FW	The entire creek tributary to Pee Dee River
Crowders Creek	York	FW	The entire creek tributary to Lake Wylie
Cutoff Creek	Gtwn	SFH	The entire creek between Oyster Bay and Town Creek
Cypress Branch	Flrn, Smtr	FWsp	The entire branch tributary to Douglas Swamp (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Cypress Swamp	Dchr	FW	The entire swamp tributary to Ashley River
Dark Creek	Ocne	ORW(FW)	The entire creek tributary to East Fork Chattooga River
Darrell Creek	Chtn	SFH	The entire creek tributary to Wando River
Dawho River	Chtn	ORW(SFH)	The entire river from South Edisto River to North Edisto River
Debidue Creek	Gtwn	SFH	That portion of the creek from its headwaters to confluence with Cooks Creek, but not including tidal creeks on western shore between Bass Hole Bay and Cooks Creek

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Waterbody Name	County(ies)	Class	Waterbody Description and (Site-Specific Standard)
Debidue Creek	Gtwn	ORW(SFH)	That portion of the creek from confluence with Cooks Creek to North Inlet and all tidal creeks including those on western shore between Bass Hole Bay and Cooks Creek
Debordieu Channel	Gtwn	SFH	The entire channel tributary to Debidue Creek
Deep Creek	Flrn	FW	The entire creek tributary to Lynches River
Devils Fork	Ocne	TN	That portion of the creek from confluence of Corbin Creek and Howard Creek to Lake Jocassee
Dewee's Inlet	Chtn	SFH	The entire inlet tributary to the Atlantic Ocean
Diversion Canal	Bkly	FW	The entire canal between Lake Marion and Lake Moultrie
Doolittle Creek	Chke	FW	The entire creek tributary to Broad River
Double Branch	Abvl	FW	The entire branch tributary to Long Cane Creek
Double Branch	Lxtn	FW	The entire branch tributary to Saluda River
Douglas Swamp	Clrn, Flrn, Smtr	FWsp	The entire swamp tributary to Pudding Swamp (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Dry Branch	Rlnd	ORW (FW)	That portion of the stream beginning at the boundary of the Congaree National Park to Weston Lake
Dry Branch	Rlnd	FW	That portion of the branch outside the boundary of the Congaree National Park
Dry Fork	Cstr	FW	The entire fork tributary to Sandy River
Duck Creek	Aldl	FW	The entire creek tributary to Coosawhatchie River
Duck Creek	Gtwn	ORW(SFH)	The entire creek tributary to Jones Creek
Duck Island Channel	Chtn	SA sp	The entire channel connecting two segments of the Ashley River (D.O. not less than 4 mg/L)
Duncan Creek	Lrns, Nbry	FW	The entire creek tributary to Enoree River
Duncan Creek	Lxtn	FW	The entire creek tributary to Chinquapin Creek
Dunn Sound	Hory	SFH	The entire sound
Durbin Creek	Gnvl, Lrns	FW	The entire creek tributary to Enoree River
Dye Branch (also called Dry Branch)	York	FW	The entire branch tributary to Jones Branch
Eagle Creek	Chtn	SB	The entire creek tributary to Ashley River
Eastatoe Creek	Pkns	ORW(FW)	That portion of the creek from its headwaters to its confluence with Laurel Creek
Eastatoe Creek	Pkns	TPGT	That portion of the creek from its confluence with Laurel Creek to Lake Keowee
East Beards Creek	Andn	FW	The entire creek tributary to Wilson Creek
East Fork (also called Fork Creek)	Cfld	FW	The entire creek tributary to Lynches River
East Fork Chattooga River	Ocne	ORW(FW)	That portion of the river from the North Carolina line to its confluence with Indian Camp Branch
East Fork Chattooga River	Ocne	TN	That portion of the river from its confluence with Indian Camp Branch to Chattooga River
East Rock Creek	Andn	FW	The entire creek tributary to Broadway Creek

Waterbody Name	County(ies)	Class	Waterbody Description and (Site-Specific Standard)
Edisto River	Chtn, Cltn	ORW(FW)	That portion of the river from U.S. 17 to its confluence with Dawho River and South Edisto River
Edisto River (Main Stem)	Orbg, Bmbg, Dchr, Cltn, Chtn	FW	That portion of the river from the confluence of North and South Forks to U.S. 17
Eighteen Mile Creek	Pkns, Andn	FW	The entire creek tributary to Hartwell Lake
Emory Creek	Pkns	ORW(FW)	That portion of the creek from its headwaters to the northern boundary of Table Rock Resort property
Emory Creek	Pkns	TN	That portion of the creek from northern boundary of Table Rock Resort property to its confluence with Oolenoy River
Enoree River	Gnvl, Spbg, Lrns, Unin, Nbry	FW	The entire river tributary to Broad River
Fairforest Creek	Spbg, Unin	FW	The entire creek tributary to Tyger River
Fall Creek	Ocne	FW	The entire creek tributary to Chattooga River
Falls Creek	Gnvl	ORW(FW)	That portion of the creek from its headwaters to Lake Trammell
Falls Creek	Gnvl	TN	That portion of the creek from the dam at Lake Trammell to Gap Creek
Fields Cut	Jspr	SA	The entire stream
Filbin Creek	Chtn	FW	That portion of the creek from its headwaters to the tide gates at Virginia Avenue
Filbin Creek	Chtn	SB	That portion of the creek from the tide gates at Virginia Avenue to Cooper River
First Creek	Lxtn	FW	The entire creek tributary to Congaree Creek
Fishing Creek	Cstr, York	FW	The entire creek tributary to Catawba River
Fishing Creek	Chtn	ORW(SA)	That portion of the creek from its headwaters to a point 2 miles from its mouth
Fishing Creek	Chtn	ORW(SFH)	That portion of the creek from a point 2 miles from its mouth to its confluence with St. Pierre Creek
Fishing Creek	Chtn	ORW(SFH)	The entire creek tributary to Dawho River
Fishing Creek Lake	Cstr, Lntr	FW	The entire lake on Catawba River
Fishtrap Branch	Ocne	FW	The entire branch tributary to Chattooga River
Five Fathom Creek	Chtn	SFH	The entire creek tributary to Bull's Bay
Flagreed Creek	Abvl	FW	The entire creek tributary to Calhoun Creek
Folly River	Chtn	SFH	The entire river tributary to Stono river
Fork Creek	Cfld	FW	The entire creek tributary to Lynches River
Foster Creek	Chtn	SFH	The entire creek tributary to Wando River
Four Hole Swamp	Orbg, Dchr, Bkly, Clhn	FWsp	The entire swamp tributary to Edisto River (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Four Mile Creek	Orbg	FW	The entire creek tributary to North Fork Edisto River
Foreteen Mile Creek	Lxtn	FW	The entire creek tributary to Twelve-Mile Creek
Frampton Creek	Chtn	ORW(SFH)	The entire creek tributary to Frampton Inlet
Fripps Inlet	Bftr	ORW(SFH)	The entire inlet tributary to the Atlantic Ocean

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Waterbody Name	County(ies)	Class	Waterbody Description and (Site-Specific Standard)
Frohawk Creek	Spbg	FW	The entire creek tributary to South Tyger River
Gaffney Creek	Chke	FW	The entire creek tributary to Broad River
Gap Creek	Gnvl	TN	The entire creek tributary to its confluence with Middle Saluda River
Garden Creek	Chtn	ORW(SFH)	The entire creek tributary to Toogoodoo Creek
Georges Creek (and branch from Easley)	Pkns	FW	The entire creek tributary to Saluda River
Gibson Creek	Chtn	ORW(SFH)	The entire creek tributary to Wadmalaw River
Gilder Creek (also called Gillard Creek)	Gnvl	FW	The entire creek tributary to Enoree River
Gills Creek	Rlnd	FW	The entire creek tributary to Congaree River
Golden Creek	Pkns	FW	The entire creek tributary to Twelve Mile Creek
Goose Creek	Bkly	FW	That portion of the creek from its headwaters to Goose Creek Reservoir dam
Goose Creek	Bkly	SB	That portion of the creek from Goose Creek Reservoir dam to Cooper River
Graham Creek	Chtn	SFH	The entire creek tributary to Bull's Bay
Gramling Creek	Orbg	FWsp	The entire creek tributary to Little Bull Swamp (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Granny's Quarter Creek	Kshw	FW	The entire creek tributary to Wateree River
Grapevine Branch	Bmbg	FW	The entire branch tributary to Lemon Creek
Grassy Run Branch	Cstr	FW	The entire branch tributary to Rocky Creek
Grays Sound	Chtn	SFH	The entire sound
Great Falls Reservoir	Cstr, Lctr	FW	The entire reservoir on Catawba River
Great Pee Dee River	Cfld, Diln, Drln, Flrn, Marn, Mrlb, Wmbg	FW	That portion of the river from North Carolina line to its confluence with Thoroughfare Creek
Great Pee Dee River	Gtwn	SB sp	That portion of the river from its confluence with Thoroughfare Creek to Winyah Bay (D.O. not less than daily average 5 mg/L and minimum 4 mg/L)
Green Creek	Pkns	ORW(FW)	The entire creek tributary to Carrick Creek
Green Swamp	Smttr	FWsp	The entire swamp tributary to Pocotaligo River (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Groundwaters	All	GB	The entire groundwaters of the State (unless otherwise listed)
Guerin Creek	Bkly, Chtn	SFH	The entire creek tributary to Wando river
Gulley Branch	Flrn	FW	The entire branch tributary to Jefferies Creek
Gum Branch	Dchr	FWsp	The entire branch tributary to Indian Field Swamp (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Haile Gold Mine Creek	Lctr	FW	The entire creek tributary to Little Lynches River
Halfmoon Branch	Bmbg	FW	The entire branch tributary to Ghents Branch
Hamlin Sound	Chtn	SFH	The entire sound
Hanging Rock Creek	Lctr, Kshw	FW	The entire creek tributary to Little Lynches River

Waterbody Name	County(ies)	Class	Waterbody Description and (Site-Specific Standard)
Harbor River	Bfrit	ORW(SFH)	The entire river tributary to St. Helena Sound and Fripps Inlet
Hard Labor Creek	Gnwd, Mcmk	FW	The entire creek tributary to Stevens Creek
Harris Mill Branch	Gnwd	FW	The entire branch tributary to Rocky Creek
Hartwell Lake (NDZ)	Andn, Ocne, Pkns	FW	All that portion within South Carolina
Haulover Creek	Gtwn	SB	The entire creek between Mud Bay and Jones Creek
Hawe Creek	Mcmk	FW	The entire creek tributary to Lake Strom Thurmond
Hayes Swamp	Diln	FWsp	The entire swamp tributary to Little Pee Dee River (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Head Foremost Creek	Gnvl	ORW(FW)	The entire creek tributary to Middle Saluda River
Hellhole Creek	Lxtn	FW	The entire creek tributary to Lightwood Knot Creek
Hembree Creek	Andn	FW	The entire creek tributary to Hartwell Lake
Hemedy Creek (also called Ramsey Creek)	Ocne	FW	The entire creek tributary to Chauga River
Hencoop Creek	Andn	FW	The entire creek tributary to Rocky Creek
Hobcaw Creek	Chtn	SFH	The entire creek tributary to Wando River
Hog Inlet/Cherry Grove Inlet	Hory	SFH	The entire inlet
Hollow Creek	Lxtn	FW	The entire creek tributary to Lake Murray
Horlbeck Creek	Chtn	SFH	The entire creek tributary to Wando River
Horse Creek	Aikn	FW	The entire creek tributary to Savannah River
Howard Creek	Ocne	ORW(TPGT)	That portion of the creek from its headwaters to 0.3 mile below Hwy 130 above the flow augmentation system at the Bad Creek pumped storage station dam
Howard Creek	Ocne	TN	That portion of the creek from just above the flow augmentation system at the Bad Creek pumped storage station dam to Devils Fork
Hunting Swamp	Hory	FW	The entire swamp tributary to Little Pee Dee River
Husbands Creek	Mrlb	FW	The entire creek tributary to Pee Dee River
Indian Camp Branch	Ocne	ORW(FW)	The entire branch tributary to East Fork Chattooga River
Indian Creek	Lrns	FW	The entire creek tributary to Enoree River
Indian Field Swamp	Dchr, Orbg	FWsp	The entire swamp tributary to Polk Swamp (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Ira Branch	Ocne	ORW(FW)	The entire branch tributary to the Chattooga River
Irene Creek	Chke	FW	The entire creek tributary to Thicketty Creek
J. Strom Thurmond Lake (also called Clarks Hill Reservoir) (NDZ)	Abvl, Mcmk	FW	The entire lake on Savannah River

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Waterbody Name	County(ies)	Class	Waterbody Description and (Site-Specific Standard)
Jackies Branch	Pkns	TN	The entire branch tributary to the confluence with Laurel Fork Creek
Jacks Creek	Ocne	ORW(FW)	The entire creek tributary to the East Fork Chattooga River
Jackson Branch	Aldl, Hmpt	FW	The entire branch tributary to Whippy Swamp
Jackson Creek	Ffld	FW	The entire creek tributary to Little River
Jackson Creek	Rlnd	FW	The entire creek tributary to Gills Creek
Jacobs Creek	Lrns	FW	The entire creek tributary to Sand Creek
Jeffries Creek	Drln, Flrn	FWsp	The entire creek tributary to Pee Dee River (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Jeremy Inlet	Chtn	ORW(SFH)	The entire inlet tributary to the Atlantic Ocean
Jericho Creek	Bfirt	SA	The entire creek tributary to Battery Creek
Jerry Creek	Ocne	FW	The entire creek tributary to Chauga River
Jimmies Creek	Spbg	FW	The entire creek tributary to the Tyger River
Johnson Creek	Bfirt	ORW(SFH)	The entire creek tributary to Harbor River and the Atlantic Ocean
Johnsons Swamp (also called Summerhouse Branch and Bartons Branch)	Gtwn, Wmbg	FWsp	The entire swamp tributary to Horse Pen Swamp (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Jones Creek	Gtwn	SB	That portion of the creek from its confluence with Mud Bay to its confluence with Nancy Creek
Jones Creek	Gtwn	SFH	That portion of the creek from its confluence with Nancy Creek to a point midway between its confluence with Duck Creek and Noble Slough
Jones Creek	Gtwn	ORW(SFH)	That portion of the creek from a point midway between its confluence with Duck Creek and Noble Slough to North Inlet
Jordan Branch	Brwl	FW	The entire branch tributary to Toby Creek
Julian Creek	Gnvl	ORW(FW)	The entire creek tributary to Matthews Creek
Jumping Branch	Ocne	TN	That portion of the branch From its headwaters to Lake Cherokee
Kate Fowler Branch	Gnwd	FW	The entire branch tributary to Ninety-Six Creek
Kellers Creek	Abvl	FW	The entire creek tributary to McCord Creek
Kelsey Creek	Spbg	FW	The entire creek tributary to Fairforest Creek
Kilgore Branch	Drln	FW	The entire branch tributary to Black Creek
King Creek	Ocne	ORW(FW)	The entire creek tributary to Chattooga River
Kinley Creek	Lxtn	FW	The entire creek tributary to Saluda River
Knox Creek	Ocne	FW	That portion of the creek from Lake Cheohee Dam to the confluence with Cheohee Creek
Koon Branch	Lxtn	FW	The entire branch tributary to Rawls Creek
Lake Cheohee	Ocne	FW	The entire lake
Lake Cherokee (also called Lake Isaquenna)	Ocne	FW	The entire lake
Lake Greenwood	Gnwd, Lrns, Nbry	FW	The entire lake on Saluda River
Lake Hartwell (NDZ)	Ocne, Pkns, Andn	FW	All that portion within South Carolina

Waterbody Name	County(ies)	Class	Waterbody Description and (Site-Specific Standard)
Lake Jocassee	Ocne	TPGT	The entire lake
Lake Keowee (NDZ)	Andn, Pkns	FW	The entire lake
Lake Lanier	Gnvl	FW	The entire lake on Vaughn Creek
Lake Marion	Bkly, Clrn, Orbg, Smtr	FW	The entire lake
Lake Moultrie	Bkly	FW	The entire lake
Lake Murray (NDZ)	Lxtn, Nbry, Rlnd, Slda	FW	The entire lake on Saluda River
Lake Rabon	Lrns	FW	The entire lake on Rabon Creek, North Rabon Creek, and South Rabon Creek
Lake Richard B. Russell	Abvl, Andn	FW	The entire lake
Lake Rotary	Gnvl	FW	The entire lake
Lake Secession	Abvl, Andn	FW	The entire lake on Rocky River
Lake Sudy	Gnvl	FW	The entire lake
Lake Swamp	Drln, Flrn	FWsp	The entire lake tributary to Sparrow Swamp (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Lake Swamp (also called Lynches Lake)	Flrn	FWsp	The entire lake (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Lake Swamp	Hory	FWsp	The entire lake tributary to Little Pee Dee River (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Lake Trammell	Gnvl	TN	The entire lake
Lake Tugaloo	Ocne	TPGT	The entire lake
Lake Wylie (NDZ)	York	FW	The entire lake on Catawba River
Langston Creek (unnamed Creek to Reedy River 1 1/2 mile above Long Branch)	Gnvl	FW	The entire creek tributary to Reedy River
Laurel Branch	Pkns	ORW(FW)	The entire branch tributary to Eastatoe Creek
Laurel Creek	Gnvl	FW	The entire creek tributary to Reedy River
Laurel Creek	Pkns	ORW(FW)	The entire creek tributary to Eastatoe Creek
Laurel Fork Creek	Pkns	TN	The entire creek tributary to Lake Jocassee
Lawsons Fork Creek	Spbg	FW	The entire creek tributary to Pacolet River
Leadenwah Creek	Chtn	ORW(SFH)	The entire creek tributary to North Edisto River
Lee Swamp	Smtr	FWsp	The entire swamp tributary to Rocky Bluff Swamp (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Lemon Creek	Bmbg	FWsp	The entire creek tributary to Little Salkehatchie River (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Lick Creek	Lrns	FW	The entire creek tributary to North Rabon Creek
Lick Log Creek	Ocne	FW	That portion of the creek from its headwaters through Thrift Lake
Lick Log Creek	Ocne	ORW(FW)	That portion of the creek from Thrift Lake to Chattooga River
Lightwood Knot Creek	Lxtn	FW	The entire creek tributary to North Fork Edisto River
Limber Pole Creek	Ocne	TN	The entire creek tributary to Devils Fork
Limestone Creek	Chke	FW	The entire creek tributary to Broad River

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Waterbody Name	County(ies)	Class	Waterbody Description and (Site-Specific Standard)
Little Beaverdam Creek	Andn	FW	The entire creek tributary to Rocky River
Little Boggy Swamp	Drln	FW	The entire swamp tributary to Big Boggy Swamp
Little Eastatoe Creek	Pkns	TPGT	That portion of the creek from its headwaters to its confluence with Eastatoe Creek
Little Fork Creek	Cfld	FW	The entire creek tributary to East Fork or Fork Creek
Little Horse Creek	Aikn	FW	The entire creek tributary to Horse Creek
Little Jones Creek	Gtwn	SFH	The entire creek tributary to Jones Creek
Little Lynches River (also called Lynches Creek)	Krsh, Lctr	FW	The entire river tributary to Lynches River
Little Pee Dee River	Diln, Marn, Mrlb	FW	That portion from its headwaters to the confluence with Lumber River
Little Pee Dee River	Hory, Marn	ORW(FW)	That portion of the river from the confluence with Lumber River to the confluence with Great Pee Dee River
Little Pine Tree Creek	Krsh	FW	The entire creek tributary to Big Pine Tree Creek
Little River	Abvl, Mcmk	FW	The entire river tributary to Lake Strom Thurmond
Little River	Ffld	FW	The entire river tributary to Broad River
Little River	Lrns, Nbry	FW	The entire river tributary to Saluda River
Little River	Ocne	FW	The entire river tributary to Lake Hartwell
Little River Inlet	Hory	SFH	The entire inlet from its confluence with the Atlantic Intracoastal Waterway to its confluence with the Atlantic Ocean
Little Salkehatchie River	Bmbg, Cltn	FW	The entire river tributary to Salkehatchie River
Little Saluda River	Slda	FW	The entire river tributary to Lake Murray
Little Sandy River	Cstr	FW	The entire river tributary to Sandy River
Little Thicketty Creek	Chke	FW	The entire creek tributary to Thicketty Creek
Long Branch	Abvl, Andn	FW	The entire branch tributary to Rocky River
Long Cane Creek	Abvl, Mcmk	FW	The entire creek tributary to Lake Strom Thurmond
Long Creek	Chtn	ORW(SFH)	The entire creek tributary to Steamboat Creek
Long Creek	Ocne	FW	The entire creek tributary to Chattooga River
Lorick Branch	Lxtn	FW	The entire branch tributary to Saluda River
Lower Toogoodoo Creek	Chtn	SFH	That portion of the creek from its headwaters to a point 3 miles from its mouth
Lower Toogoodoo Creek	Chtn	ORW(SFH)	That portion of the creek from a point 3 miles from its mouth to its confluence with Toogoodoo Creek
Ludlow Branch	Mcmk	FW	The entire branch tributary to Lake Strom Thurmond
Lumber River	Diln, Hory, Marn	FW	The entire river tributary to Little Pee Dee River
Lynches Lake (also called Lake Swamp)	Fln	FWsp	The entire lake (D.O. not less than 4 mg/L, pH 5.0 – 8.5)

Waterbody Name	County(ies)	Class	Waterbody Description and (Site-Specific Standard)
Lynches River	Cfld, Diln, Flrn, Krsh, Lctr, Lee, Smtr	FW	The entire river tributary to Pee Dee River
Mad Dog Branch	Pkns	FW	The entire branch tributary to Georges Creek
Maidendown Swamp	Marn	FWsp	The entire swamp tributary to Buck Swamp (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Maple Creek	Spbg	FW	The entire creek tributary to South Tyger River
Maple Swamp	Diln	FWsp	The entire swamp tributary to Little Pee Dee River (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Mark Bay	Chtn	ORW(SFH)	The entire bay
Martin Creek	Ocne	FW	The entire creek tributary to Lake Hartwell
Matthews Creek	Gnvl	ORW(FW)	That portion of the Creek from its headwaters to the end of State land in the Mountain Bridge area
Matthews Creek	Gnvl	TN	That portion of the creek from the end of State land in the Mountain Bridge area to its confluence with South Saluda River
May River	Bftr	ORW(SFH)	The entire river tributary to Calibogue Sound
McAlpine Creek	Lctr	FW	The entire creek tributary to Sugar Creek
McCall Branch	Flrn	FW	The entire branch tributary to Lynches River
McCord Creek	Abvl	FW	The entire creek tributary to Long Cane Creek
McIntosh Mill Stream	Drln	FW	The entire stream tributary to Black Creek
McKenzie Creek	Rlnd	FW	That portion of the creek outside the boundary of the Congaree National Park
McKenzie Creek	Rlnd	ORW(FW)	That portion of the creek beginning at the boundary of the Congaree National Park to its confluence with Toms Creek
McKinneys Creek	Ocne	TN	That portion of the creek from its headwaters to Hwy 25
McKinneys Creek	Ocne	FW	That portion of the creek from Hwy 25 to Lake Keowee
McLeod Creek (also called Tom Point Creek)	Chtn	ORW(SFH)	The entire creek tributary to North Edisto River
Meings Creek (also called Meng Creek)	Unin	FW	The entire creek tributary to Broad River
Middle Branch	Flrn	FWsp	The entire branch tributary to Jeffries Creek (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Middle Pen Swamp	Orbg	FWsp	The entire swamp tributary to Four Hole Swamp (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Middle Saluda River	Gnvl	ORW(FW)	That portion of the river from its headwaters to the end of State Land at Jones Gap State Park land
Middle Saluda River	Gnvl	TN	That portion of the river from Jones Gap State Park land to Oil Camp Creek
Middle Swamp	Drln, Flrn	FWsp	The entire swamp tributary to Jeffries Creek (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Middle Tyger River	Gnvl, Spbg	FW	The entire river tributary to North Tyger River

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Waterbody Name	County(ies)	Class	Waterbody Description and (Site-Specific Standard)
Mill Branch	Orbg	FW	The entire branch tributary to North Fork Edisto River
Mill Creek	Chke	FW	The entire creek tributary to Limestone Creek
Mill Creek	Ffld	FW	The entire creek tributary to Little River
Mill Creek	Gnvl	FW	That portion of the creek from its headwaters to the end of Pleasant Ridge State Park land including the unnamed lake
Mill Creek	Ocne	TN	That portion of the creek from its headwaters to Burgess Creek
Mill Creek	Pkns	TPGT	The entire creek tributary to Eastatoe Creek
Mill Creek	Rlnd	FW	The entire creek tributary to Congaree River
Mill Creek	Spbg	FW	The entire creek tributary to Enoree River
Mill Creek	Smtr	FW	The entire creek tributary to Lake Marion
Millpond Branch	Flrn	FW	The entire branch tributary to Lynches River
Milton Creek	Chtn	ORW(SFH)	The entire creek tributary to Shingle Creek
Mine Creek	Slda	FW	The entire creek tributary to Little Saluda River
Mitchell Creek	Unin	FW	The entire creek tributary to Fairforest Creek
Molasses Creek	Chtn	SFH	The entire creek tributary to Wando River
Moody Creek	Ocne	TN	That portion of the creek from its headwaters to its confluence with Cantrell Creek
Morgan River	Bfrt	SFH	The entire river tributary to St. Helena Sound
Mosquito Creek	Cltn	ORW(SFH)	That portion of the creek from Bull Cut to South Edisto River
Moss Mill Creek	Ocne	ORW(FW)	The entire creek tributary to Chattooga River
Mountain Creek	Gnvl	FW	The entire creek tributary to Enoree River
Mountain Creek	Lrns	FW	The entire creek tributary to North Rabon Creek
Mud Creek	Chtn	ORW(SFH)	The entire creek tributary to South Edisto River
Mud Creek	Gtwn	SFH	The entire creek between Oyster Bay and Town Creek
Mud River (also called Fields Cut)	Jspr	SA	The entire river between Savannah River and Wright River
Muddy Creek	Flrn, Wmbg	FWsp	The entire creek tributary to Clark Creek (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Murrells Inlet	Gtwn	SFH	The entire inlet tributary to the Atlantic Ocean
Myers Creek	Rlnd	FW	That portion of the creek outside the boundary of the Congaree National Park
Myers Creek	Rlnd	ORW(FW)	That portion of the creek beginning at the boundary of the Congaree National Park to its confluence with Cedar Creek
Naked Creek	Mrlb	FW	The entire creek tributary to Pee Dee River
Nancy Creek	Gtwn	SB	The entire creek tributary to Jones Creek
New Chehaw River	Cltn	SFH	The entire river tributary to St. Helena Sound
New Cut	Chtn	SFH	The entire cut between Church Creek and Stono River
New River	Bfrt, Jspr	SA	The entire river tributary to the Atlantic Ocean
Newman Swamp	Drln	FWsp	The entire swamp tributary to Sparrow Swamp (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Ninety Six Creek	Gnwd	FW	The entire creek tributary to Wilson Creek
No Mans Friend Creek	Gtwn	SB	The entire creek between Mud Bay and Oyster Bay

Waterbody Name	County(ies)	Class	Waterbody Description and (Site-Specific Standard)
Noble Slough	Gtwn	SB	The entire slough between Oyster Bay and Jones Creek
Norris Creek	Abvl	FW	The entire creek tributary to Long Cane Creek
North Edisto River	Chtn	ORW(SFH)	That portion of the river from its headwaters to the Atlantic Intracoastal Waterway
North Edisto River	Chtn	SFH	That portion of the river from the Atlantic Intracoastal Waterway to Steamboat Creek
North Edisto River	Chtn	ORW(SFH)	That portion of the river from Steamboat Creek to the Atlantic Ocean
North Fork Edisto River	Aikn, Lxtn, Orbg	FW	The entire river tributary to Edisto River
North Fork Little River	Ocne	TPGT	That portion of the river from the confluence of Mill Creek and Burgess Creek to Hwy 11
North Fork Little River	Ocne	FW	That portion of the river from Hwy 11 to its confluence with Little River
North Inlet	Gtwn	ORW(SFH)	The entire inlet tributary to the Atlantic Ocean
North Pacolet River	Spbg	FW	The entire river tributary to Pacolet River
North Rabon Creek	Lrns	FW	The entire creek tributary to Rabon Creek
North Saluda River	Gnvl	ORW(FW)	That portion of the river from its headwaters to S.C. 42
North Saluda River	Gnvl	FW	That portion of the river from S.C. 42 to Saluda River
North Santee River	Gtwn	FW	That fresh water portion of the river
North Santee River	Gtwn	SA	That portion of the river from U.S. Hwy 17 to 1000 ft below the Atlantic Intracoastal Waterway
North Santee River	Gtwn	ORW(SFH)	That portion of the river from U.S. Hwy 17 from 1000 feet below the Atlantic Intracoastal Waterway to the Atlantic Ocean
North Tyger River	Spbg	FW	The entire river tributary to Tyger River
Ocella Creek	Chtn	ORW(SFH)	The entire creek tributary to South Creek
Oil Camp Creek	Gnvl	ORW (FW)	That portion of the creek from its headwaters to the end of State land at Ceasars Head State Park
Oil Camp Creek	Gnvl	TN	That portion of the creek from Ceasars Head State Park land to Middle Saluda River
Okatie River	Bfrit	ORW(SFH)	The entire river tributary to Colleton River
Old Chehaw River	Cltn	SFH	The entire river tributary to Combahee River
Old Dead River	Rlnd	ORW(FW)	The entire river within the boundary of the Congaree National Park
Old House Creek	Bfrit	SFH	The entire creek tributary to Fripps Inlet
Old Man Creek	Gtwn	ORW(SFH)	The entire creek tributary to Town Creek
Olive Branch	Lxtn	FW	The entire branch tributary to Duncan Creek
Oolenoy River	Pkns	TPGT	That portion of the river from its headwaters to Emory Creek
Oolenoy River	Pkns	FW	That portion of the river from Emory Creek to its confluence with South Saluda River
Opossum Creek	Ocne	FW	The entire creek tributary to Chattooga River
Oyster Bay	Gtwn	SB	The entire bay between No Mans Friend Creek and Noble Slough
Oyster House Creek	Chtn	ORW(SFH)	The entire creek tributary to Wadmalaw River

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Waterbody Name	County(ies)	Class	Waterbody Description and (Site-Specific Standard)
Pacolet River	Chke, Spbg, Unin	FW	The entire river tributary to Broad River
Palmetto Swamp	Hory	FW	The entire swamp tributary to Little Pee Dee River
Panther Creek	Mrlb	FW	The entire creek tributary to Beaverdam Creek
Park Creek	Abvl	FW	The entire creek tributary to Little River
Payne Branch	Gnvl	FW	The entire branch tributary to South Rabon Creek
Pen Branch	Orbg	FW	The entire branch tributary to North Fork Edisto River
Peoples Creek (also called Gaffney Creek and Town Creek)	Chke	FW	The entire creek tributary to Broad River
Pig Pen Branch	Ocne	ORW(FW)	The entire branch tributary to Lick Log Creek
Pinckney Branch	Ocne	FW	The entire branch tributary to Chattooga River
Pinnacle Lake	Pkns	ORW(FW)	The entire lake
Pleasant Meadow Swamp	Hory	FWsp	The entire swamp tributary to Lake Swamp (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Pocalla Creek	Smtr	FWsp	The entire creek tributary to Pocotaligo River (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Pocotaligo River	Clrn, Smtr	FWsp	The entire river tributary to Black River (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Polk Swamp	Dchr, Orbg	FWsp	The entire swamp tributary to Edisto River (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Port Royal Sound	Bfirt	SFH	The entire sound tributary to the Atlantic Ocean
Price Inlet	Chtn	ORW(SFH)	The entire inlet tributary to the Atlantic Ocean
Privateer Creek	Chtn	ORW(SFH)	The entire creek tributary to North Edisto River
Providence Branch	Chke	FW	That portion of the branch below County Road 793 to Cherokee Creek
Pudding Swamp	Clrn, Smtr, Wmbg	FWsp	The entire swamp tributary to Black River (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Pye Branch	Flrn	FWsp	The entire branch tributary to Jeffries Creek (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Rabon Creek	Lrns	FW	That portion of the creek from the confluence of North Rabon Creek and South Rabon Creek, in Lake Rabon, to its confluence with Lake Greenwood
Ralston Creek	Bkly	SFH	The entire creek tributary to Wando River
Ramsey Creek	Ocne	FW	The entire creek tributary to Chauga River
Ramshorn Creek	Bfirt	SFH	The entire creek between New River and Cooper River
Rathall Creek	Chtn	SFH	The entire creek tributary to Wando River
Rawls Creek	Lxtn, Rlnd	FW	The entire creek tributary to Saluda River
Red Bank Creek	Lxtn	FW	The entire creek tributary to Congaree River
Red Bank Creek	Slida	FW	The entire creek tributary to Mine Creek
Reedy Branch	Ocne	FW	The entire branch tributary to Chattooga River
Reedy Cove Creek	Pkns	FW	The entire creek tributary to Eastatoe Creek
Reedy Fork Branch	Lrns	FW	The entire branch tributary to Little River
Reedy River	Gnvl, Lrns	FW	The entire river tributary to Lake Greenwood
Rices Creek	Pkns	FW	The entire creek tributary to Twelvemile Creek

Waterbody Name	County(ies)	Class	Waterbody Description and (Site-Specific Standard)
Richardson Branch	Aldl	FW	The entire branch tributary to Coosawhatchie River
Robb Senn Branch	Lxtn	FW	The entire branch tributary to Saluda River
Rock Creek	Pkns	TN	That portion of the creek within South Carolina
Rocky Bluff Swamp	Lee, Smtr	FWsp	The entire swamp tributary to Scape Ore Swamp (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Rocky Bottom Creek	Pkns	ORW(FW)	The entire creek tributary to Eastatoe Creek
Rocky Branch	Gnvl	TN	The entire branch tributary to Middle Saluda River
Rocky Creek	Cstr	FW	The entire creek (including Little Rocky Creek) tributary to Cedar Creek Reservoir
Rocky Creek	Mcmk	FW	The entire creek tributary to Hard Labor Creek
Rocky Creek (also called Rock Creek)	Gnwd	FW	The entire creek tributary to Coronaca Creek
Rocky River	Abvl, Andn	FW	The entire river tributary to Savannah River
Rose Branch	Drln	FW	The entire branch tributary to Lynches River
Rosemary Creek	Brwl	FW	The entire creek tributary to Salkehatchie River
Running Lake	Rlnd	FW	That portion of the creek outside the boundary of the Congaree National Park
Running Lake	Rlnd	ORW(FW)	That portion of the creek beginning at the boundary of the Congaree National Park to its confluence with Toms Creek
Russel Creek	Chtn	ORW(SFH)	The entire creek tributary to Steamboat Creek
St. Helena Sound	Bfirt, Cltn	SFH	The entire sound tributary to the Atlantic Ocean
Salkehatchie River	Aldl, Bmbg, Brwl, Cltn, Hmpt	FW	That portion of the river from its headwaters to the confluence with the Little Salkehatchie River
Salt Water Creek	Jspr	SB	The entire creek tributary to Wright Creek
Saluda Lake	Gnvl	FW	The entire lake on Saluda River
Saluda River (Main stem)	Abvl, Andn, Gnvl, Grwd, Lrns, Lxtn, Nbry, Pkns, Rlnd, Slda	FW	The entire river tributary to Lake Murray
Saluda River (Main stem)	Lxtn, Rlnd	TPGT sp	That portion from the Lake Murray Dam to the confluence with Broad River (D.O. not less than daily average 5 mg/L, a running thirty day average of 5.5 mg/L, with a low of 4.0 mg/L)
Saluda River (Main stem) Unnamed Tributaries	Lxtn, Rlnd	FW	All tributaries to the main stem of Saluda River from the Lake Murray Dam to the confluence with Broad River
Sampit River	Gtwn	SB	The entire river from saltwater intrusion to Winyah Bay
Sampson Island Creek	Cltn	ORW(SFH)	The entire creek tributary to Mosquito Creek
Sand Creek	Ffld	FW	The entire creek tributary to Jackson Creek
Sand Creek	Lrns	FW	The entire creek tributary to Millers Fork
Sand Creek	Chtn	ORW(SFH)	The entire creek tributary to Steamboat Creek

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Waterbody Name	County(ies)	Class	Waterbody Description and (Site-Specific Standard)
Sanders Branch	Hmpt	FWsp	The entire branch tributary to Coosawatchie River (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Sanders Creek	Krsh	FW	The entire creek tributary to Wateree River
Sandy River	Cstr	FW	The entire creek tributary to Broad River
Santee River	Bkly, Clrn, Gtwn, Wmbg	FW	That portion of the river below Lake Marion to North and South Santee Rivers
Santee River	Clhn, Smtr	FW	From junction of Congaree and Wateree Rivers to Lake Marion
Santee River (North and South)	Bkly, Chtn, Gtwn		See North Santee River and South Santee River (Berkeley, Charleston, and Georgetown Counties)
Savannah Creek	Bmbg, Cltn	FW	The entire creek tributary to Salkehatchie River
Savannah Creek	Hory	FW	The entire creek tributary to Chinners Swamp
Savannah River	Abvl, Andn	TPGT	That portion of the river from Lake Hartwell Dam to the headwaters of Lake Russell
Savannah River	Abvl, Aikn, Aldl, Andn, Brwl, Efld, Hmpt, Mcmk	FW	That portion of the river from the headwaters of Lake Russell to Seaboard Coastline RR
Savannah River	Hmpt, Jspr	SB sp	That portion of the river from Seaboard Coastline RR to Ft. Pulaski (D.O. not less than daily average of 5 mg/L and minimum 4 mg/L)
Savannah River	Jspr	SA	That portion of the river from Ft. Pulaski to the Atlantic Ocean
Sawhead Branch	Ocne	FW	The entire branch tributary to Opossum Creek
Sawmill Branch	Bkly, Dchr	FW	The entire branch tributary to Dorchester Creek
Sawmill Creek	Bftr	ORW(SFH)	The entire creek tributary to Colleton River
Sawney Creek	Abvl, Mcmk	FW	The entire creek tributary to Little River
Sawneys Creek	Ffld, Kshw	FW	The entire creek tributary to Wateree River
Schewbough Branch (also called Skeebo Branch)	Hory	FWsp	The entire branch tributary to the North Carolina line (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Scott Creek	Nbry	FW	The entire creek tributary to Bush River
Scott Creek	Chtn	ORW(SFH)	The entire creek from Big Bay Creek to Jeremy Inlet
Scouter Creek	Lxtn	FW	The entire creek tributary to Congaree Creek
Sea Creek Bay	Gtwn	ORW(SFH)	The entire bay tributary to Old Man Creek
Second Creek	Lxtn	FW	The entire creek tributary to First Creek
Sewee Bay	Chtn	SFH	The entire bay
Shanklin Creek	Andn	FW	The entire creek tributary to Three and Twenty Mile Creek
Shaver Creek (also called Cheves Creek)	Efld	FW	The entire creek tributary to Stevens Creek
Shaw Creek	Aikn, Efld	FW	The entire creek tributary to South Fork Edisto River
Shell Creek	Lrns	FW	The entire creek tributary to Bush River
Shem Creek	Chtn	SB	The entire creek tributary to Charleston Harbor
Shingle Creek	Chtn	ORW(SFH)	The entire creek tributary to St. Pierre Creek

Waterbody Name	County(ies)	Class	Waterbody Description and (Site-Specific Standard)
Shoulder Bone Branch	Ocne	FW	The entire branch tributary to Sawhead Branch
Side of Mountain Creek	Pkns	ORW(FW)	The entire creek tributary to Eastatoe Creek
Silver Brook Creek	Andn	FW	The entire creek tributary to Rocky River
Six Mile Creek	Lxtn	FW	The entire creek tributary to Congaree Creek
Six and Twenty Creek	Andn	FW	The entire creek tributary to Lake Hartwell
Sixty Bass Creek	Gtwn	SFH	That portion of the creek from its confluence with Town Creek to a point 0.4 miles from its confluence with Town Creek
Sixty Bass Creek	Gtwn	ORW(SFH)	That portion of the creek from a point 0.4 miles from its confluence with Town Creek to North Inlet
Skeebo Branch	Hory	FWsp	The entire branch tributary to the North Carolina line (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Slatten Branch	Ocne	ORW(FW)	The entire branch tributary to East Fork Chattooga River
Smeltzer Creek	Ocne	TN	That portion of the creek from its headwaters to Hwy 130
Smeltzer Creek	Ocne	TPGT	That portion of the creek from Hwy 130 to North Fork Little River
Smith Branch	Rlnd	FW	The entire branch tributary to Broad River
Smith Swamp	Marn	FWsp	The entire swamp tributary to Catfish Creek (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
South Creek	Chtn	ORW(SFH)	The entire creek tributary to North Edisto River
South Edisto River	Chtn, Cltn	ORW(SFH)	That portion of the river from Dawho River to Mud Creek
South Edisto River	Chtn, Cltn	SFH	That portion of the river from Mud Creek to the Atlantic Ocean
South Fork Edisto River	Aikn, Bmbg, Brwl, Efld, Orbg	FW	The entire river tributary to North Fork Edisto River
South Fork Kings Creek	Nbry	FW	The entire creek tributary to Enoree River
South Pacolet River	Gnvl	TN	That portion of the river from its headwaters to Hwy 116
South Pacolet River	Gnvl, Spbg	FW	That portion of the river from Hwy 116 to Pacolet River
South Rabon Creek	Gnvl, Lrns	FW	The entire creek tributary to Rabon Creek
South Saluda River	Gnvl, Pkns	ORW(FW)	That portion of the river from its headwaters to Table Rock Reservoir Dam
South Saluda River	Gnvl, Pkns	TPGT	That portion of the river from Table Rock Reservoir Dam to Hwy 8
South Saluda River	Gnvl, Pkns	FW	That portion of the river from Hwy 8 to junction with North Saluda River
South Santee River	Bkly, Chtn. Gtwn	FW	That freshwater portion of the river

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Waterbody Name	County(ies)	Class	Waterbody Description and (Site-Specific Standard)
South Santee River	Bkly, Chtn, Gtwn	SA	That portion of the river from U.S. Hwy 17 to 1000 feet below the Atlantic Intracoastal Waterway
South Santee River	Bkly, Chtn, Gtwn	ORW(SFH)	That portion of the river from U.S. Hwy 17 from 1000 feet below the Atlantic Intracoastal Waterway to the Atlantic Ocean
South Tyger River	Gnvl, Spbg	FW	The entire river tributary to Tyger River
Spain Creek	Gnvl	FW	The entire creek tributary to Saluda River
Sparrow Swamp	Drln, Flrn, Lee	FWsp	The entire swamp tributary to Lynches River (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Spears Creek	Krsh, Rlnd	FW	The entire creek (and its tributaries) from its headwaters to its confluence with Wateree River
St. Pierre Creek	Chtn	ORW(SFH)	The entire creek tributary to South Edisto River
Steamboat Creek	Chtn	ORW(SFH)	The entire creek tributary to North Edisto River
Steele Creek	York	FW	The entire creek tributary to Sugar Creek
Stevens Creek	Efld, Mcmk	FW	The entire creek tributary to Savannah River
Stitt Branch	Ffld	FW	The entire branch tributary to Jackson Creek
Stoddard Creek	Gnvl, Lrns	FW	The entire creek tributary to North Rabon Creek
Stono River	Chtn	SFH	That portion of the river extending eastward to S.C.L. Railroad Bridge
Stono River	Chtn	SFH	That portion of the river from the S.C.L. Railroad Bridge to Abbapoola Creek
Stono River	Chtn	SFH	That portion of the river from Abbapoola Creek to Folly River
Stoops Creek	Lxtn, Rlnd	FW	The entire creek tributary to Saluda River
Store Creek	Chtn	ORW(SFH)	The entire creek tributary to St. Pierre Creek
Story River	Bfrit	SFH	The entire river to Trenchards Inlet and Fripps Inlet
Stuart Creek	Ffld	FW	The entire creek tributary to Jackson Creek
Sugar Creek	Lctr, York	FW	The entire creek tributary to Catawba River
Summerhouse Branch (also called Bartons Branch and Johnsons Swamp)	Gtwn, Wmbg	FWsp	The entire branch tributary to Horse Pen Swamp (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Swaford Creek	Ocne	TN	The entire creek tributary to Whetstone Creek
Sweetwater Branch	Efld	FW	The entire branch tributary to Stevens Creek
Swift Creek	Krsh, Smtr	FW	The entire creek tributary to Wateree River
Swinton Creek	Chtn	ORW(SFH)	The entire creek tributary to Lower Toogoodoo Creek
Tailrace Canal	Bkly	FW	That portion of the canal from Lake Moultrie Dam to Biggin Creek
Tamassee Creek	Ocne	ORW(FW)	That portion of the creek from its headwaters to end of U.S. Forest Service Land
Tamassee Creek	Ocne	FW	That portion of the creek from U.S. Forest Service Land to its confluence with Cheohee Creek
Thicketty Creek	Chke	FW	That portion of the creek below the Cowpens discharge tributary to Broad River
Thompson Creek	Cfld	FW	The entire creek tributary to Pee Dee River

Waterbody Name	County(ies)	Class	Waterbody Description and (Site-Specific Standard)
Thompson River	Ocne	TN	That portion of the river from State Line to Lake Jocassee
Three Creeks	Mrlb	FW	The entire creek tributary to Pee Dee River
Tilly Branch	Ocne	FW	The entire branch tributary to Chattooga River
Timothy Creek	Nbry	FW	The entire creek tributary to Bush River
Tinker Creek	Unin	FW	The entire creek tributary to Tyger River
Tinkers Creek	Cstr	FW	The entire creek tributary to Fishing Creek
Toby Creek	Brwl	FW	The entire creek tributary to Salkehatchie River
Todds Branch	Lctr	FW	The entire branch tributary to Little Lynches River
Tom Point Creek (also called McLeod Creek)	Chtn	ORW(SFH)	The entire creek tributary to Wadmalaw River
Toms Branch	Lxtn	FW	The entire branch tributary to Congaree River
Toms Creek	Rlnd	FW	That portion of the creek outside the boundary of the Congaree National Park
Toms Creek	Rlnd	ORW(FW)	That portion of the creek beginning at the boundary of the Congaree National Park to its confluence with Cedar Creek
Toogoodoo Creek	Chtn	ORW(SFH)	The entire creek tributary to Wadmalaw River
Toomer Creek	Chtn	SFH	The entire creek tributary to Wando River
Town Creek	Crke	FW	The entire creek tributary to Broad Creek
Town Creek	Krsh	FW	The entire creek tributary to Wateree Creek
Town Creek	Pkns	FW	The entire creek tributary to Twelvemile Creek
Town Creek	Gtwn	SB	That portion of the creek from its confluence with No Mans Friend Creek and Oyster Bay to its western confluence with Clambank Creek.
Town Creek	Gtwn	SFH	That portion of the creek from its western confluence with Clambake Creek to its eastern confluence with Clambake Creek
Town Creek	Gtwn	ORW(SFH)	That portion of the creek from its eastern confluence with Clambake Creek to North Inlet
Townes Creek	Ocne	TN	That portion of the creek from the confluence of West Fork and Crane Creek to Lake Cherokee
Townsend River	Chtn	ORW(SFH)	The entire river tributary to Frampton Inlet
Trenchards Inlet	Bfrit	SFH	The entire inlet tributary to the Atlantic Ocean
Tugaloo River	Ocne	FW	That portion of the river from Tugaloo Dam to Lake Hartwell
Turkey Creek	Brwl	FW	The entire creek tributary to Salkehatchie River
Turkey Creek	Cstr, York	FW	The entire creek tributary to Broad River
Turkey Creek	Edfd, Mcmk	FW	The entire creek tributary to Stevens Creek
Turkey Creek	Grwd	FW	The entire creek tributary to Saluda River
Turkey Creek	Smtr	FWsp	The entire creek tributary to Pocatigo River (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Turkey Creek (also called Turkey Quarter Creek)	Lctr	FW	The entire creek tributary to Cane Creek
Turpin Branch	Ocne	FW	The entire branch tributary to Chattooga River
Twelvemile Creek	Lxtn	FW	The entire creek tributary to Saluda River
Twelvemile Creek	Pkns	FW	The entire creek tributary to Lake Hartwell

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Waterbody Name	County(ies)	Class	Waterbody Description and (Site-Specific Standard)
Twentyfive Mile Creek	Krsh	FW	The entire creek tributary to Wateree River
Three and Twenty Creek	Andn	FW	The entire creek tributary to Lake Hartwell
Tyger River (Main Stem)	Nbry, Spbg, Unin	FW	The entire river tributary to Broad River
Unnamed Creek	Gnvl	FW	The unnamed creek which enters Reedy River on the west bank 1 1/4 miles below Conestee Lake
Unnamed Creek	Gnvl		See Langston Creek (Greenville County)
Unnamed Creek	Ocne	FW	The unnamed creek which enters Little River at Newry
Unnamed Creek Mill Creek	Unin	FW	The unnamed creek which originates in Jonesville and flows north-northeast to Mill Creek
Unnamed Creek Tributary to Beaverdam Creek	Gnvl	ORW(FW)	That portion of the creek from its headwaters, including the reservoir, to Secondary Road 22
Unnamed Creek Tributary to Beaverdam Creek	Gnvl	FW	That portion of the creek from Secondary Road 22 to Beaverdam Creek
Unnamed Creek to Mountain Creek	Gnvl	ORW(FW)	That portion of the creek from its headwaters, including Mountain Lake, to Mountain Creek
Unnamed Creek (Located near Altamont Forest Rd) Tributary to an Unnamed Tributary to Mountain Creek	Gnvl	FW	The entire creek
Unnamed Creek (Fripps Island) Tributary to Fripps Inlet	Bfrit	SFH	The entire creek tributary to Fripps Inlet
Unnamed Creek (Old Island) Tributary to Fripps Inlet	Bfrit	SFH	The entire creek tributary to Fripps Inlet
Unnamed Creek (St. Helena Island) Tributary to Harbor River	Bfrit	SFH	The entire creek tributary to Harbor River
Unnamed Creek (Harbor River) Tributary to St. Helena Sound	Bfrit	SFH	The entire creek tributary to St. Helena Sound
Unnamed Creeks, Ponds, or Lakes	Rlnd	FW	Any portions tributary to waters unnamed or named located within the boundary of the Congaree National Park to the boundary of the Congaree National Park

Waterbody Name	County(ies)	Class	Waterbody Description and (Site-Specific Standard)
Unnamed Creeks, Ponds, or Lakes	Rlnd	ORW(FW)	All portions of waters and waters located wholly within the boundary of the Congaree National Park
Unnamed Swamp (Near North, S.C.)	Orbg	FWsp	The entire swamp tributary to North Fork Edisto River (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Vaughn Creek	Gnvl	ORW(FW)	The entire creek tributary to Lake Lanier
Waccamaw River	Gtwn, Hory	FWsp	That portion of the river from North Carolina line to its confluence with Thoroughfare Creek (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Waccamaw River	Gtwn	SA sp	That portion of the river from its confluence with Thoroughfare Creek to Winyah Bay (D.O. not less than 4 mg/L)
Wadmalaw River	Chtn	ORW(SFH)	The entire river from Wadmalaw Sound to North Edisto River
Wadmalaw Sound	Chtn	ORW(SFH)	The entire sound
Wagner Creek	Chtn	SFH	The entire creek tributary to Wando River
Walker Branch	Ffld	FW	The entire branch tributary to Big DutchmanCreek
Wando River	Bkly, Chtn	SFH	That portion from its headwaters to a point 2.5 miles north of its confluence with Cooper River
Wando River	Bkly, Chtn	SA	That portion from a point 2.5 miles north of its confluence with Cooper River to its confluence with Cooper River
Wapoo Creek	Chtn	SB	The entire creek tributary to Stono River
Ward Creek	Bfrit	SFH	The entire creek tributary to Harbor River
Warrior Creek	Lrns	FW	The entire creek tributary to Enoree River
Wateree Lake	Ffld, Krsh, Lctr	FW	The entire lake on Catawba-Wateree River
Wateree River	Cstr, Ffld, Krsh, Lctr, Rlnd, Smtr, York	FW	See Catawba-Wateree
Watts Mill Branch	Lrns	FW	The entire branch tributary to Little River
West Branch Cooper River	Bkly	FW	The entire river from Biggin Creek to its confluence with East Branch Cooper River (the Tee)
West Fork (also called Little Fork Creek)	Cfld	FW	The entire stream tributary to East Fork or Fork Creek
West Fork	Ocne	TN	That portion from its headwaters to its confluence with Crane Creek
Westbank Creek	Chtn	ORW(SFH)	The entire creek tributary to North Edisto River
Weston Lake	Rlnd	ORW(FW)	The entire lake within the boundary of the Congaree National Park
Whale Branch	Bfrit	SFH	The entire branch between Broad River and Coosaw River
Whetstone Creek	Ocne	TN	The entire creek tributary to Chattooga River
White Oak Creek	Krsh	FW	The entire creek tributary to Wateree Lake

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Waterbody Name	County(ies)	Class	Waterbody Description and (Site-Specific Standard)
White Oak Creek	Marn	FWsp	The entire creek tributary to River Swamp of Little Pee Dee River (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
White Oak Creek	Ocne	TN	That portion of the creek from its headwaters to Knox Creek
Whitewater River	Ocne	ORW(TPGT)	That portion of the river from State line to Lake Jocassee
Whitner Creek	Andn	FW	The entire creek tributary to Big Generostee Creek
Whooping Island Creek	Chtn	ORW(SFH)	The entire creek tributary to Sand Creek
Wildcat Creek	Rlnd	FW	The entire creek tributary to Gills Creek
Wildcat Creek	York	FW	The entire creek tributary to Fishing Creek
Wilkerson Creek	Aikn	FW	The entire creek tributary to Horse Creek
Willis Creek	Pkns	ORW(FW)	That portion of the creek from its headwaters to the northern boundary of Table Rock Resort property
Willis Creek	Pkns	TN	That portion of the creek from the northern boundary of Table Rock Resort property to its confluence with Oolenoy River
Willow Swamp	Orbg	FWsp	The entire swamp tributary to Little River (D.O. not less than 4 mg/L, pH 5.0 – 8.5)
Wilson Branch	Abvl, Andn	FW	The entire branch tributary to Rocky River
Wilson Branch	Gnvl	FW	The entire branch tributary to Durbin Creek
Wilson Creek	Gnwd	FW	The entire creek tributary to Saluda River
Windy Hill Creek	Bmbg, Brwl	FW	The entire creek tributary to South Fork Edisto River
Winyah Bay	Gtwn	SB	The entire bay tributary to the Atlantic Ocean
Wise Lake	Rlnd	ORW(FW)	The entire lake within the boundary of the Congaree National Park
Wolf Creek	Pkns	FW	The entire creek tributary to Twelvemile Creek
Wood Creek	Gtwn	ORW(SFH)	The entire creek between Boor Creek and Jones Creek
Wright Creek	Ocne	ORW(TPGT)	The entire creek tributary to Lake Jocassee
Wright River	Jspr	SA	The entire river tributary to the Atlantic Ocean
Zekial Creek	Chke, Spbg	FW	The entire creek tributary to Island Creek

Fiscal Impact Statement:

No costs to the State or significant cost to its political subdivisions as a whole should be incurred by these amendments.

Statement of Need and Reasonableness:

The following presents an analysis of the factors listed in 1976 Code Sections 1-23-115 (c)(1)-(3) and (9)-(11):

DESCRIPTION OF REGULATION: 61-69, Classified Waters.

Purpose: Proposed amendment of R.61-69 will clarify, strengthen, and improve the overall quality of the existing regulation and make appropriate revisions of the State's water quality standards in accordance with 33 U.S.C. Section 303(c)(2)(B) of the federal Clean Water Act ("CWA").

Legal Authority: 1976 Code Sections 48-1-10 et seq.

Plan for Implementation: The DHEC Regulation Development Update (accessible at <http://www.scdhec.gov/Agency/RegulationsAndUpdates/RegulationDevelopmentUpdate/>) provides a summary of and link to this amendment. Additionally, printed copies are available for a fee from the Department's Freedom of Information Office. Upon taking legal effect, Department personnel will take appropriate steps to inform the regulated community of the amendment and any associated information.

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

R.61-69 establishes the State's site-specific water quality standards and provides a listing of all named and specific unnamed waterbodies, their classifications, and locations. The Department's amendments to R.61-69 clarify and correct, as needed, waterbody names, counties, classes, and descriptions.

DETERMINATION OF COSTS AND BENEFITS:

Existing staff and resources will be utilized to implement these amendments to the regulation. No anticipated additional cost will be incurred by the State if the revisions are implemented, and no additional State funding is being requested.

Overall cost impact to the State's political subdivisions or the regulated community as a whole is not likely to be significant. Existing standards would have incurred similar cost. Furthermore, the standards required under the amendments will be substantially consistent with the current guidelines and review guidelines utilized by the Department.

UNCERTAINTIES OF ESTIMATES:

The uncertainties associated with the estimation of benefits and burdens are minimal.

EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH:

Implementation of these amendments will not compromise the protection of the environment or the health and safety of the citizens of the State. The amendments to R.61-69 seek to correct and clarify portions of the list of classified waters in order to provide citizens a more accurate representation of the waters of the State.

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

Failure by the Department to incorporate appropriate revisions to the list of classified waters in R.61-69 will allow an inaccurate representation of the State's waters to persist. This list is the only repository of the State's site-specific water quality standards and is used as the basis for National Pollutant Discharge Elimination System ("NPDES") permit decisions. If not corrected, the inaccuracies in the existing regulation may lead to unnecessary contamination of the waters of the State with detrimental effects on the health of flora and fauna, as well as the citizens of South Carolina.

Statement of Rationale:

Here below is the Statement of Rationale pursuant to S.C. Code Section 1-23-110(A)(3)(h):

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R.61-69 establishes the State's site-specific water quality standards and provides a listing of all named and specific unnamed waterbodies, their classifications, and locations. The Department amends R.61-69 to clarify and correct, as needed, waterbody names, counties, classes, and description.

Document No. 4880

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL CHAPTER 61

Statutory Authority: 1976 Code Section 44-1-140

61-23. Control of Anthrax.

Synopsis:

The Department of Health and Environmental Control ("Department") promulgated R.61-23 in July of 1960 to prevent and/or control the ownership, possession, or transport of anthrax into or through the state. This regulation is obsolete, as the federal government established Select Agent Regulations, at Code of Federal Regulations Title 7, Part 331 and Title 9, Part 121, effective February 7, 2003, setting forth requirements for possession, use, and transfer of select agents and toxins. The Federal Select Agent Program oversees and regulates the possession, use, and transfer of biological agents. The Federal Select Agent Program is jointly comprised of the Centers for Disease Control and Prevention/Division of Select Agents and Toxins, and the Animal and Plant Health Inspection Service/Agriculture Select Agent Services.

The Department had a Notice of Drafting published in the February 22, 2019, *South Carolina State Register*.

Instructions:

Repeal R.61-23, Control of Anthrax, in its entirety in the South Carolina Code of Regulations.

Text:

61-23. [Repealed].

Fiscal Impact Statement:

There are no anticipated additional costs to the state or its political subdivisions.

Statement of Need and Reasonableness:

The following presents an analysis of the factors listed in 1976 Code Section 1-23-115(C)(1)-(3) and (9)-(11):

DESCRIPTION OF REGULATION: 61-23, Control of Anthrax.

Purpose: R.61-23 is no longer needed as the federal government has established federal regulations under the Federal Select Agent Program. The federal program oversees the possession, use, and transfer of biological select agents and toxins, which have the potential to pose a severe threat to public, animal, or plant health or to animal or plant products.

Legal Authority: 1976 Code Section 44-1-140.

Plan for Implementation: The DHEC Regulation Development Update (accessible at <http://www.scdhec.gov/Agency/RegulationsAndUpdates/RegulationDevelopmentUpdate/>) provides a summary of and link to this repeal. Additionally, printed copies are available for a fee from the Department's Freedom of

Information Office. Upon taking legal effect, Department personnel will take appropriate steps to inform the regulated community of the repeal and any associated information.

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

The Department promulgated R.61-23 in 1960. This regulation is no longer needed due to the passage of federal regulations governing the possession, use, and transfer of biological select agents and toxins posing a threat to public, animal, or plant health, or to animal or plant products.

DETERMINATION OF COSTS AND BENEFITS:

There are no costs to the state or its political subdivisions associated with the repeal of R.61-23. The benefit of repealing this regulation is removing an obsolete regulation.

UNCERTAINTIES OF ESTIMATES:

None.

EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH:

Repealing R.61-23 will not compromise the protection of the environment or public health, as the federal government administers anthrax related protections under the Federal Select Agent Program.

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

There is no anticipated detrimental effect on the environment if this regulation is not repealed. Failure to repeal the regulation would merely result in an obsolete regulation remaining in existence.

Statement of Rationale:

R.61-23 is obsolete, as the federal government has established federal regulations under the Federal Select Agent Program. The federal program oversees the possession, use, and transfer of biological select agents and toxins, which have the potential to pose a severe threat to public, animal, or plant health, or to animal or plant products.

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Document No. 4883

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL CHAPTER 61

Statutory Authority: 1976 Code Sections 44-56-10 et seq.

61-79. Hazardous Waste Management Regulations.

Synopsis:

The Department of Health and Environmental Control (“Department”) amends R.61-79 to adopt the “Revisions to the Definition of Solid Waste Rule,” published on January 13, 2015, at 80 FR 1694-1814 and May 30, 2018, at 83 FR 24664-24671. This United States Environmental Protection Agency (“EPA”) rule revised several recycling-related provisions issued under the authority of Subtitle C of the Resource Conservation and Recovery Act. The purpose of these revisions is to encourage recycling of hazardous waste. EPA Checklist 233D2 (2008 DSW exclusions and non-waste determinations, including revisions from 2015 DSW final rule and 2018 DSW final rule) and Checklist 233E (Remanufacturing Exclusion) describe the proposed amendments. These checklists may be found at <https://www.epa.gov/rcra/rule-checklists-applications-state-authorization-under-resource-conservation-and-recovery-act>.

The Department also amends R.61-79 to correct typographical errors, citation errors, and other errors and omissions that have come to the Department’s attention, such as correcting form references, adding language that was erroneously omitted during adoption of previous rules, and other such changes.

The Department had a Notice of Drafting published in the March 22, 2019, *South Carolina State Register*.

Instructions:

Amend R.61-79 pursuant to each individual instruction provided with the text of the amendments below.

Text:

61-79. Hazardous Waste Management Regulations.

Statutory Authority: 1976 Code Ann. Sections 44-56-10 et seq.

Revise 61-79.260. Table of Contents to read:

SUBPART C. Rulemaking Petitions

- 260.20. General.
- 260.21. Petitions for equivalent testing or analytical methods.
- 260.22. Petitions to amend part 261 to exclude a waste produced at a particular facility.
- 260.23. Petitions to amend 40 CFR part 273 to include additional hazardous wastes.
- 260.30. Non-waste determinations and variances from classification as a solid waste.
- 260.31. Standards and criteria for variances from classification as a solid waste.
- 260.32. Variance to be classified as a boiler.
- 260.33. Procedures for variances from classification as a solid waste or, for variances to be classified as a boiler, or for non-waste determinations.
- 260.34. Standards and criteria for non-waste determinations.
- 260.40. Additional regulation of certain hazardous waste recycling activities on a case-by-case basis.
- 260.41. Procedures for case-by-case regulation of hazardous waste recycling activities.
- 260.42. Notification requirement for hazardous secondary materials.
- 260.43. Legitimate recycling of hazardous secondary materials.

Add 61-79.260.2(c) to read:

(c)(1) After August 6, 2014, no claim of business confidentiality may be asserted by any person with respect to information entered on a Hazardous Waste Manifest (EPA Form 8700-22), a Hazardous Waste Manifest Continuation Sheet (EPA Form 8700-22A), or an electronic manifest format that may be prepared and used in accordance with section 262.20(a)(3).

(2) EPA will make any electronic manifest that is prepared and used in accordance with section 262.20(a)(3), or any paper manifest that is submitted to the system under sections 264.71(a)(6) or 265.71(a)(6) available to the public under this section when the electronic or paper manifest is a complete and final document. Electronic manifests and paper manifests submitted to the system are considered by EPA to be complete and final documents and publicly available information after ninety (90) days have passed since the delivery to the designated facility of the hazardous waste shipment identified in the manifest.

Revise 61-79.260.10. to read:

"EPA Identification Number" means the number assigned by the Department to each generator, transporter, and treatment, storage, or disposal facility.

"Facility" means: (1) All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them). (2) For the purpose of implementing corrective action under sections 264.101, all contiguous property under the control of the owner or operator seeking a permit under subtitle C of RCRA. This definition also applies to facilities implementing corrective action under RCRA Section 3008(h). (3) Notwithstanding paragraph (2) of this definition, a remediation waste management site is not a facility that is subject to section 264.101, but is subject to corrective action requirements if the site is located within such a facility.

"Hazardous secondary material generator" means any person whose act or process produces hazardous secondary materials at the generating facility. For purposes of this paragraph, "generating facility" means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator. For the purposes of sections 261.2(a)(2)(ii) and 261.4(a)(23), a facility that collects hazardous secondary materials from other persons is not the hazardous secondary material generator.

"Intermediate facility" means any facility that stores hazardous secondary materials for more than ten (10) days, other than a hazardous secondary material generator or reclaimer of such material.

"Land-based unit" means an area where hazardous secondary materials are placed in or on the land before recycling. This definition does not include land-based production units.

"Remanufacturing" means processing a higher-value hazardous secondary material in order to manufacture a product that serves a similar functional purpose as the original commercial-grade material. For the purpose of this definition, a hazardous secondary material is considered higher-value if it was generated from the use of a commercial-grade material in a manufacturing process and can be remanufactured into a similar commercial-grade material.

"Transfer facility" means any transportation-related facility, including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste or hazardous secondary materials are held during the normal course of transportation.

Revise 61-79.260.30. to read:

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260.30. Non-waste determinations and variances from classification as a solid waste.

In accordance with the standards and criteria in sections 260.31 and 260.34 and the procedures in section 260.33, the Department may determine on a case by case basis that the following recycled materials are not solid wastes:

(a) Materials that are accumulated speculatively without sufficient amounts being recycled (as defined in section 261.1(c)(8));

(b) Materials that are reclaimed and then reused within the original production process in which they were generated;

(c) Materials that have been reclaimed but must be reclaimed further before the materials are completely recovered;

(d) Hazardous secondary materials that are reclaimed in a continuous industrial process; and

(e) Hazardous secondary materials that are indistinguishable in all relevant aspects from a product or intermediate.

Revise 61-79.260.33 to read:

260.33. Procedures for variances from classification as a solid waste, for variances to be classified as a boiler, or for non-waste determinations.

The Department will use the following procedures in evaluating applications for variances from classification as a solid waste, applications to classify particular enclosed controlled flame combustion devices as boilers, or applications for non-waste determinations.

(a) The applicant must apply to the Department for the variance or non-waste determination. The application must address the relevant criteria contained in sections 260.31, 260.32, or 260.34, as applicable.

Add 61-79.260.34 to read:

260.34. Standards and criteria for non-waste determinations.

(a) An applicant may apply to the Department for a formal determination that a hazardous secondary material is not discarded and therefore not a solid waste. The determinations will be based on the criteria contained in paragraphs (b) or (c) of this section, as applicable. If an application is denied, the hazardous secondary material might still be eligible for a solid waste variance or exclusion (for example, one of the solid waste variances under section 260.31).

(b) The Department may grant a non-waste determination for hazardous secondary material which is reclaimed in a continuous industrial process if the applicant demonstrates that the hazardous secondary material is a part of the production process and is not discarded. The determination will be based on whether the hazardous secondary material is legitimately recycled as specified in section 260.43 and on the following criteria:

(1) The extent that the management of the hazardous secondary material is part of the continuous primary production process and is not waste treatment;

(2) Whether the capacity of the production process would use the hazardous secondary material in a reasonable time frame and ensure that the hazardous secondary material will not be abandoned (for example,

based on past practices, market factors, the nature of the hazardous secondary material, or any contractual arrangements);

(3) Whether the hazardous constituents in the hazardous secondary material are reclaimed rather than released to the air, water, or land at significantly higher levels from either a statistical or from a health and environmental risk perspective than would otherwise be released by the production process; and

(4) Other relevant factors that demonstrate the hazardous secondary material is not discarded, including why the hazardous secondary material cannot meet, or should not have to meet, the conditions of an exclusion under sections 261.2 or 261.4.

(c) The Department may grant a non-waste determination for hazardous secondary material which is indistinguishable in all relevant aspects from a product or intermediate if the applicant demonstrates that the hazardous secondary material is comparable to a product or intermediate and is not discarded. The determination will be based on whether the hazardous secondary material is legitimately recycled as specified in section 260.43 and on the following criteria:

(1) Whether market participants treat the hazardous secondary material as a product or intermediate rather than a waste (for example, based on the current positive value of the hazardous secondary material, stability of demand, or any contractual arrangements);

(2) Whether the chemical and physical identity of the hazardous secondary material is comparable to commercial products or intermediates;

(3) Whether the capacity of the market would use the hazardous secondary material in a reasonable time frame and ensure that the hazardous secondary material will not be abandoned (for example, based on past practices, market factors, the nature of the hazardous secondary material, or any contractual arrangements);

(4) Whether the hazardous constituents in the hazardous secondary material are reclaimed rather than released to the air, water, or land at significantly higher levels from either a statistical or from a health and environmental risk perspective than would otherwise be released by the production process; and

(5) Other relevant factors that demonstrate the hazardous secondary material is not discarded, including why the hazardous secondary material cannot meet, or should not have to meet, the conditions of an exclusion under sections 261.2 or 261.4.

Add Subparts F through CC to 61-79.261. Table of Contents to read:

SUBPART F. [Reserved]

SUBPART G. [Reserved]

SUBPART H.

261.140. Applicability.

261.141. Definitions of terms as used in this subpart.

261.142. Cost estimate.

261.143. Financial assurance condition.

261.144. [Reserved]

261.145. [Reserved]

261.146. [Reserved]

261.147. Liability requirements.

261.148. Incapacity of owners or operators, guarantors, or financial institutions.

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261.151. Wording of the instruments.
 261.151. Appendices A-1 through M-2.

Revise 61-79.261.1(c)(4) to read:

(4) A material is "reclaimed" if it is processed to recover a usable product, or if it is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents. In addition, for purposes of sections 261.4(a)(23) and (24), smelting, melting, and refining furnaces are considered to be solely engaged in metals reclamation if the metal recovery from the hazardous secondary materials meets the same requirements as those specified for metals recovery from hazardous waste found in section 266.100(d)(1) through (3), and if the residuals meet the requirements specified in section 266.112.

Revise 61-79.261.2(c)(3) to read:

(3) Reclaimed. Materials noted with an "*" in column 3 of Table 1 are solid wastes when reclaimed unless they meet the requirements of section 261.4(a)(17), or section 261.4(a)(23), 261.4(a)(24), or 261.4(a)(27). Materials noted with a "-" in column 3 of Table 1 are not solid wastes when reclaimed.

Revise 61-79.261.2(c)(4) to read:

(4) Accumulated speculatively. Materials noted with an "*" in column 4 of Table 1 are solid wastes when accumulated speculatively.

261.2 Table 1 Summary of definitions of Solid Waste				
	Use Constituting Disposal (261.2(c)(1))	Energy Recovery/Fuel (261.2(c)(2))	Reclamation (261.2(c)(3)), except as provided in 261.4(a)(17), 261.4(a)(23), 261.4(a)(24), or 261.4(a)(25)	Speculative Accumulation (261.2(c)(4))
	(1)	(2)	(3)	(4)
Spent Materials	(*)	(*)	(*)	(*)
Sludges (listed in sections 261.31 or 261.32)	(*)	(*)	(*)	(*)
Sludges exhibiting a characteristic of hazardous waste	(*)	(*)	-	(*)
By-products exhibiting a characteristic of hazardous waste	(*)	(*)	(*)	(*)
Commercial chemical products listed in section 261.33	(*)	(*)	-	-
Scrap metal that is not excluded under section 261.4(a)(13)	(*)	(*)	(*)	(*)

Note: The terms "spent materials," "sludges," "by-products," "scrap metal," and "processed scrap metal" are defined in section 261.1.

Revise 61-79.261.4(a)(23) to read:

(23) Hazardous secondary material generated and legitimately reclaimed within the United States or its territories and under the control of the generator, provided that the material complies with paragraphs (a)(23)(i) and (ii) of this section:

(i)(A) The hazardous secondary material is generated and reclaimed at the generating facility (for purposes of this definition, generating facility means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator); or

(B) The hazardous secondary material is generated and reclaimed at different facilities, if the reclaiming facility is controlled by the generator or if both the generating facility and the reclaiming facility are controlled by a person as defined in section 260.10, and if the generator provides one of the following certifications: “on behalf of [insert generator facility name], I certify that this facility will send the indicated hazardous secondary material to [insert reclaimer facility name], which is controlled by [insert generator facility name] and that [insert name of either facility] has acknowledged full responsibility for the safe management of the hazardous secondary material,” or “on behalf of [insert generator facility name], I certify that this facility will send the indicated hazardous secondary material to [insert reclaimer facility name], that both facilities are under common control, and that [insert name of either facility] has acknowledged full responsibility for the safe management of the hazardous secondary material.” For purposes of this paragraph, “control” means the power to direct the policies of the facility, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate facilities on behalf of a different person as defined in section 260.10 shall not be deemed to “control” such facilities. The generating and receiving facilities must both maintain at their facilities for no less than three (3) years records of hazardous secondary materials sent or received under this exclusion. In both cases, the records must contain the name of the transporter, the date of the shipment, and the type and quantity of the hazardous secondary material shipped or received under the exclusion. These requirements may be satisfied by routine business records (e.g., financial records, bills of lading, copies of Department of Transportation (DOT) shipping papers, or electronic confirmations); or

(C) The hazardous secondary material is generated pursuant to a written contract between a tolling contractor and a toll manufacturer and is reclaimed by the tolling contractor, if the tolling contractor certifies the following: “On behalf of [insert tolling contractor name], I certify that [insert tolling contractor name] has a written contract with [insert toll manufacturer name] to manufacture [insert name of product or intermediate] which is made from specified unused materials, and that [insert tolling contractor name] will reclaim the hazardous secondary materials generated during this manufacture. On behalf of [insert tolling contractor name], I also certify that [insert tolling contractor name] retains ownership of, and responsibility for, the hazardous secondary materials that are generated during the course of the manufacture, including any releases of hazardous secondary materials that occur during the manufacturing process”. The tolling contractor must maintain at its facility for no less than three (3) years records of hazardous secondary materials received pursuant to its written contract with the tolling manufacturer, and the tolling manufacturer must maintain at its facility for no less than three (3) years records of hazardous secondary materials shipped pursuant to its written contract with the tolling contractor. In both cases, the records must contain the name of the transporter, the date of the shipment, and the type and quantity of the hazardous secondary material shipped or received pursuant to the written contract. These requirements may be satisfied by routine business records (e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations). For purposes of this paragraph, tolling contractor means a person who arranges for the production of a product or intermediate made from specified unused materials through a written contract with a toll manufacturer. Toll manufacturer means a person who produces a product or intermediate made from specified unused materials pursuant to a written contract with a tolling contractor.

(ii)(A) The hazardous secondary material is contained as defined in section 260.10. A hazardous secondary material released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of reclamation. Hazardous secondary material managed in a unit with leaks or other continuing or intermittent unpermitted releases is discarded and a solid waste.

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(B) The hazardous secondary material is not speculatively accumulated, as defined in section 261.1(c)(8).

(C) Notice is provided as required by section 260.42.

(D) The material is not otherwise subject to material-specific management conditions under paragraph (a) of this section when reclaimed, and it is not a spent lead-acid battery (see sections 266.80 and 273.2).

(E) Persons performing the recycling of hazardous secondary materials under this exclusion must maintain documentation of their legitimacy determination on-site. Documentation must be a written description of how the recycling meets all three factors in section 260.43(a) and how the factor in section 260.43(b) was considered. Documentation must be maintained for three (3) years after the recycling operation has ceased.

(F) The emergency preparedness and response requirements found in R.61-79.261 subpart M are met.

Revise 61-79.261.4(a)(24) to read:

(24) Hazardous secondary material that is generated and then transferred to another person for the purpose of reclamation is not a solid waste, provided that:

(i) The material is not speculatively accumulated, as defined in section 261.1(c)(8);

(ii) The material is not handled by any person or facility other than the hazardous secondary material generator, the transporter, an intermediate facility or a reclaimer, and, while in transport, is not stored for more than ten (10) days at a transfer facility, as defined in section 260.10, and is packaged according to applicable DOT regulations at 49 CFR parts 173, 178, and 179 while in transport;

(iii) The material is not otherwise subject to material-specific management conditions under paragraph (a) of this section when reclaimed, and it is not a spent lead-acid battery (see sections 266.80 and 273.2);

(iv) The reclamation of the material is legitimate, as specified under section 260.43;

(v) The hazardous secondary material generator satisfies all of the following conditions:

(A) The material must be contained as defined in section 260.10. A hazardous secondary material released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of recycling. Hazardous secondary material managed in a unit with leaks or other continuing releases is discarded and a solid waste.

(B) Prior to arranging for transport of hazardous secondary materials to a reclamation facility (or facilities) where the management of the hazardous secondary materials is not addressed under a RCRA part B permit (a federally-issued RCRA permit or a hazardous waste permit issued by the Department) or interim status standards, the hazardous secondary material generator must make reasonable efforts to ensure that each reclaimer intends to properly and legitimately reclaim the hazardous secondary material and not discard it, and that each reclaimer will manage the hazardous secondary material in a manner that is protective of human health and the environment. If the hazardous secondary material will be passing through an intermediate facility where the management of the hazardous secondary materials is not addressed under a RCRA part B permit or interim status standards, the hazardous secondary material generator must make contractual arrangements with the intermediate facility to ensure that the hazardous secondary material is sent to the reclamation facility identified by the hazardous secondary material generator, and the hazardous secondary material generator must perform reasonable efforts to ensure that the intermediate facility will manage the hazardous secondary material in a manner that is protective of human health and the environment. Reasonable efforts must be repeated at a minimum of every three (3) years for the hazardous secondary material generator to claim the exclusion and to

send the hazardous secondary materials to each reclaimer and any intermediate facility. In making these reasonable efforts, the generator may use any credible evidence available, including information gathered by the hazardous secondary material generator, provided by the reclaimer or intermediate facility, and/or provided by a third party. The hazardous secondary material generator must affirmatively answer all of the following questions for each reclamation facility and any intermediate facility:

(1) Does the available information indicate that the reclamation process is legitimate pursuant to section 260.43? In answering this question, the hazardous secondary material generator can rely on their existing knowledge of the physical and chemical properties of the hazardous secondary material, as well as information from other sources (e.g., the reclamation facility, audit reports, etc.) about the reclamation process.

(2) Does the publicly available information indicate that the reclamation facility and any intermediate facility that is used by the hazardous secondary material generator notified the appropriate authorities of hazardous secondary materials reclamation activities pursuant to section 260.42 and have they notified the appropriate authorities that the financial assurance condition is satisfied per paragraph (a)(24)(vi)(F) of this section? In answering these questions, the hazardous secondary material generator can rely on the available information documenting the reclamation facility's and any intermediate facility's compliance with the notification requirements per section 260.42, including the requirement in section 260.42(a)(5) to notify the Department whether the reclaimer or intermediate facility has financial assurance.

(3) Does publicly available information indicate that the reclamation facility or any intermediate facility that is used by the hazardous secondary material generator has not had any formal enforcement actions taken against the facility in the previous three (3) years for violations of the South Carolina Hazardous Waste Management Regulations and has not been classified as a significant non-complier with the Department? In answering this question, the hazardous secondary material generator can rely on the publicly available information from EPA or the state. If the reclamation facility or any intermediate facility that is used by the hazardous secondary material generator has had a formal enforcement action taken against the facility in the previous three (3) years for violations of the South Carolina Hazardous Waste Management Regulations and has been classified as a significant non-complier with the Department, does the hazardous secondary material generator have credible evidence that the facilities will manage the hazardous secondary materials properly? In answering this question, the hazardous secondary material generator can obtain additional information from EPA, the state, or the facility itself that the facility has addressed the violations, taken remedial steps to address the violations and prevent future violations, or that the violations are not relevant to the proper management of the hazardous secondary materials.

(4) Does the available information indicate that the reclamation facility and any intermediate facility that is used by the hazardous secondary material generator have the equipment and trained personnel to safely recycle the hazardous secondary material? In answering this question, the generator may rely on a description by the reclamation facility or by an independent third party of the equipment and trained personnel to be used to recycle the generator's hazardous secondary material.

(5) If residuals are generated from the reclamation of the excluded hazardous secondary materials, does the reclamation facility have the permits required (if any) to manage the residuals? If not, does the reclamation facility have a contract with an appropriately permitted facility to dispose of the residuals? If not, does the hazardous secondary material generator have credible evidence that the residuals will be managed in a manner that is protective of human health and the environment? In answering these questions, the hazardous secondary material generator can rely on publicly available information from EPA or the state, or information provided by the facility itself.

(C) The hazardous secondary material generator must maintain for a minimum of three (3) years documentation and certification that reasonable efforts were made for each reclamation facility and, if applicable, intermediate facility where the management of the hazardous secondary materials is not addressed under a RCRA part B permit or interim status standards prior to transferring hazardous secondary material.

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Documentation and certification must be made available upon request by a regulatory authority within seventy-two (72) hours, or within a longer period of time as specified by the regulatory authority. The certification statement must:

(1) Include the printed name and official title of an authorized representative of the hazardous secondary material generator company, the authorized representative's signature, and the date signed;

(2) Incorporate the following language: "I hereby certify in good faith and to the best of my knowledge that, prior to arranging for transport of excluded hazardous secondary materials to [insert name(s) of reclamation facility and any intermediate facility], reasonable efforts were made in accordance with section 261.4(a)(24)(v)(B) to ensure that the hazardous secondary materials would be recycled legitimately, and otherwise managed in a manner that is protective of human health and the environment, and that such efforts were based on current and accurate information."

(D) The hazardous secondary material generator must maintain at the generating facility for no less than three (3) years records of all off-site shipments of hazardous secondary materials. For each shipment, these records must, at a minimum, contain the following information:

(1) Name of the transporter and date of the shipment;

(2) Name and address of each reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent;

(3) The type and quantity of hazardous secondary material in the shipment.

(E) The hazardous secondary material generator must maintain at the generating facility for no less than three (3) years confirmations of receipt from each reclaimer and, if applicable, each intermediate facility for all off-site shipments of hazardous secondary materials. Confirmations of receipt must include the name and address of the reclaimer (or intermediate facility), the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business records (e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt);

(F) The hazardous secondary material generator must comply with the emergency preparedness and response conditions in R.61-79.261 subpart M.

(vi) Reclaimers of hazardous secondary material excluded from regulation under this exclusion and intermediate facilities as defined in section 260.10 satisfy all of the following conditions:

(A) The reclaimer and intermediate facility must maintain at its facility for no less than three (3) years records of all shipments of hazardous secondary material that were received at the facility and, if applicable, for all shipments of hazardous secondary materials that were received and subsequently sent off-site from the facility for further reclamation. For each shipment, these records must at a minimum contain the following information:

(1) Name of the transporter and date of the shipment;

(2) Name and address of the hazardous secondary material generator and, if applicable, the name and address of the reclaimer or intermediate facility from which the hazardous secondary materials were received;

(3) The type and quantity of hazardous secondary material in the shipment; and

(4) For hazardous secondary materials that, after being received by the reclaimer or intermediate facility, were subsequently transferred off-site for further reclamation, the name and address of the (subsequent) reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent.

(B) The intermediate facility must send the hazardous secondary material to the reclaimer(s) designated by the hazardous secondary materials generator.

(C) The reclaimer and intermediate facility must send to the hazardous secondary material generator confirmations of receipt for all off-site shipments of hazardous secondary materials. Confirmations of receipt must include the name and address of the reclaimer (or intermediate facility), the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business records (e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt).

(D) The reclaimer and intermediate facility must manage the hazardous secondary material in a manner that is at least as protective as that employed for analogous raw material and must be contained. An “analogous raw material” is a raw material for which a hazardous secondary material is a substitute and serves the same function and has similar physical and chemical properties as the hazardous secondary material.

(E) Any residuals that are generated from reclamation processes will be managed in a manner that is protective of human health and the environment. If any residuals exhibit a hazardous characteristic according to R.61-79.261 subpart C, or if they themselves are specifically listed in R.6-79.261 subpart D, such residuals are hazardous wastes and must be managed in accordance with the applicable requirements of R.61-79.260 through 272.

(F) The reclaimer and intermediate facility have financial assurance as required under R.61-79.261 subpart H,

(vii) In addition, all persons claiming the exclusion under paragraph (a)(24) of this section must provide notification as required under section 260.42.

Revise 61-79.261.4(a)(25) to read:

(25) Hazardous secondary material that is exported from the United States and reclaimed at a reclamation facility located in a foreign country is not a solid waste, provided that the hazardous secondary material generator complies with the applicable requirements of paragraph (a)(24)(i) through (v) of this section (excepting paragraph (a)(24)(v)(B)(2) of this section for foreign reclaimers and foreign intermediate facilities), and that the hazardous secondary material generator also complies with the following requirements:

(i) Notify EPA of an intended export before the hazardous secondary material is scheduled to leave the United States. A complete notification must be submitted at least sixty (60) days before the initial shipment is intended to be shipped off-site. This notification may cover export activities extending over a twelve (12) month or lesser period. The notification must be in writing, signed by the hazardous secondary material generator, and include the following information:

(A) Name, mailing address, telephone number, and EPA Identification Number (if applicable) of the hazardous secondary material generator;

(B) A description of the hazardous secondary material and the EPA hazardous waste number that would apply if the hazardous secondary material was managed as hazardous waste, and the DOT proper shipping name, hazard class, and ID number (UN/NA) for each hazardous secondary material as identified in 49 CFR parts 171 through 177;

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(C) The estimated frequency or rate at which the hazardous secondary material is to be exported and the period of time over which the hazardous secondary material is to be exported;

(D) The estimated total quantity of hazardous secondary material;

(E) All points of entry to and departure from each foreign country through which the hazardous secondary material will pass;

(F) A description of the means by which each shipment of the hazardous secondary material will be transported (e.g., mode of transportation vehicle (air, highway, rail, water, etc.), and type(s) of container (drums, boxes, tanks, etc.));

(G) A description of the manner in which the hazardous secondary material will be reclaimed in the country of import;

(H) The name and address of the reclaimer, any intermediate facility and any alternate reclaimer and intermediate facilities; and

(I) The name of any countries of transit through which the hazardous secondary material will be sent and a description of the approximate length of time it will remain in such countries and the nature of its handling while there (for purposes of this section, the terms “EPA Acknowledgement of Consent”, “country of import”, and “country of transit” are used as defined in section 262.81 with the exception that the terms in this section refer to hazardous secondary materials, rather than hazardous waste):

(ii) Notifications must be submitted electronically using EPA’s Waste Import Export Tracking System (WIETS), or its successor system.

(iii) Except for changes to the telephone number in paragraph (a)(25)(i)(A) of this section and decreases in the quantity of hazardous secondary material indicated pursuant to paragraph (a)(25)(i)(D) of this section, when the conditions specified on the original notification change (including any exceedance of the estimate of the quantity of hazardous secondary material specified in the original notification), the hazardous secondary material generator must provide EPA with a written renotification of the change. The shipment cannot take place until consent of the country of import to the changes (except for changes to paragraph (a)(25)(i)(I) of this section and in the ports of entry to and departure from countries of transit pursuant to paragraphs (a)(25)(i)(E) of this section) has been obtained and the hazardous secondary material generator receives from EPA an EPA Acknowledgment of Consent reflecting the country of import’s consent to the changes.

(iv) Upon request by EPA, the hazardous secondary material generator shall furnish to EPA any additional information which a country of import requests in order to respond to a notification.

(v) EPA will provide a complete notification to the country of import and any countries of transit. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of paragraph (a)(25)(i) of this section. Where a claim of confidentiality is asserted with respect to any notification information required by paragraph (a)(25)(i) of this section, EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.

(vi) The export of hazardous secondary material under this paragraph (a)(25) is prohibited unless the country of import consents to the intended export. When the country of import consents in writing to the receipt of the hazardous secondary material, EPA will send an EPA Acknowledgment of Consent to the hazardous secondary material generator. Where the country of import objects to receipt of the hazardous secondary material or withdraws a prior consent, EPA will notify the hazardous secondary material generator in writing. EPA will also notify the hazardous secondary material generator of any responses from countries of transit.

(vii) For exports to OECD Member countries, the receiving country may respond to the notification using tacit consent. If no objection has been lodged by any country of import or countries of transit to a notification provided pursuant to paragraph (a)(25)(i) of this section within thirty (30) days after the date of issuance of the acknowledgement of receipt of notification by the competent authority of the country of import, the transboundary movement may commence. In such cases, EPA will send an EPA Acknowledgment of Consent to inform the hazardous secondary material generator that the country of import and any relevant countries of transit have not objected to the shipment, and are thus presumed to have consented tacitly. Tacit consent expires one (1) calendar year after the close of the thirty (30) day period; renotification and renewal of all consents is required for exports after that date.

(viii) A copy of the EPA Acknowledgment of Consent must accompany the shipment. The shipment must conform to the terms of the EPA Acknowledgment of Consent.

(ix) If a shipment cannot be delivered for any reason to the reclaimer, intermediate facility, or the alternate reclaimer or alternate intermediate facility, the hazardous secondary material generator must re-notify EPA of a change in the conditions of the original notification to allow shipment to a new reclaimer in accordance with paragraph (iii) of this section and obtain another EPA Acknowledgment of Consent.

(x) Hazardous secondary material generators must keep a copy of each notification of intent to export and each EPA Acknowledgment of Consent for a period of three (3) years following receipt of the EPA Acknowledgment of Consent. They may satisfy this recordkeeping requirement by retaining electronically submitted notifications or electronically generated Acknowledgements in their account on EPA's Waste Import Export Tracking System (WIETS), or its successor system, provided that such copies are readily available for viewing and production if requested by any EPA or authorized state inspector. No hazardous secondary material generator may be held liable for the inability to produce a notification or Acknowledgement for inspection under this section if they can demonstrate that the inability to produce such copies are due exclusively to technical difficulty with EPA's Waste Import Export Tracking System (WIETS), or its successor system for which the hazardous secondary material generator bears no responsibility.

(xi) Hazardous secondary material generators must file with the Administrator no later than March 1 of each year, a report summarizing the types, quantities, frequency, and ultimate destination of all hazardous secondary materials exported during the previous calendar year. Annual reports must be submitted electronically using EPA's Waste Import Export Tracking System (WIETS), or its successor system. Such reports must include the following information:

(A) Name, mailing and site address, and EPA Identification Number (if applicable) of the hazardous secondary material generator;

(B) The calendar year covered by the report;

(C) The name and site address of each reclaimer and intermediate facility;

(D) By reclaimer and intermediate facility, for each hazardous secondary material exported, a description of the hazardous secondary material and the EPA hazardous waste number that would apply if the hazardous secondary material was managed as hazardous waste, the DOT hazard class, the name and EPA Identification Number (where applicable) for each transporter used, the total amount of hazardous secondary material shipped, and the number of shipments pursuant to each notification;

(E) A certification signed by the hazardous secondary material generator which states: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment."

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(xii) All persons claiming an exclusion under this paragraph (a)(25) must provide notification as required by section 260.42.

Add 61-79.261.4(a)(27) to read:

(27) Hazardous secondary material that is generated and then transferred to another person for the purpose of remanufacturing is not a solid waste, provided that:

(i) The hazardous secondary material consists of one (1) or more of the following spent solvents: Toluene, xylenes, ethylbenzene, 1,2,4-trimethylbenzene, chlorobenzene, n-hexane, cyclohexane, methyl tert-butyl ether, acetonitrile, chloroform, chloromethane, dichloromethane, methyl isobutyl ketone, NN-dimethylformamide, tetrahydrofuran, n-butyl alcohol, ethanol, and/or methanol;

(ii) The hazardous secondary material originated from using one (1) or more of the solvents listed in paragraph (a)(27)(i) of this section in a commercial grade for reacting, extracting, purifying, or blending chemicals (or for rinsing out the process lines associated with these functions) in the pharmaceutical manufacturing (NAICS 325412), basic organic chemical manufacturing (NAICS 325199), plastics and resins manufacturing (NAICS 325211), and/or the paints and coatings manufacturing sectors (NAICS 325510).

(iii) The hazardous secondary material generator sends the hazardous secondary material spent solvents listed in paragraph (a)(27)(i) of this section to a remanufacturer in the pharmaceutical manufacturing (NAICS 325412), basic organic chemical manufacturing (NAICS 325199), plastics and resins manufacturing (NAICS 325211), and/or the paints and coatings manufacturing sectors (NAICS 325510).

(iv) After remanufacturing one (1) or more of the solvents listed in paragraph (a)(27)(i) of this section, the use of the remanufactured solvent shall be limited to reacting, extracting, purifying, or blending chemicals (or for rinsing out the process lines associated with these functions) in the pharmaceutical manufacturing (NAICS 325412), basic organic chemical manufacturing (NAICS 325199), plastics and resins manufacturing (NAICS 325211), and/or the paints and coatings manufacturing sectors (NAICS 325510) or to using them as ingredients in a product. These allowed uses correspond to chemical functional uses enumerated under the Chemical Data Reporting Rule of the Toxic Substances Control Act (40 CFR parts 704, 710, and 711), including Industrial Function Codes U015 (solvents consumed in a reaction to produce other chemicals) and U030 (solvents become part of the mixture);

(v) After remanufacturing one (1) or more of the solvents listed in paragraph (a)(27)(i) of this section, the use of the remanufactured solvent does not involve cleaning or degreasing oil, grease, or similar material from textiles, glassware, metal surfaces, or other articles. (These disallowed continuing uses correspond to chemical functional uses in Industrial Function Code U029 under the Chemical Data Reporting Rule of the Toxics Substances Control Act.); and

(vi) Both the hazardous secondary material generator and the remanufacturer must:

(A) Notify EPA or the Department, if the state is authorized for the program, and update the notification every two (2) years per section 260.42;

(B) Develop and maintain an up-to-date remanufacturing plan which identifies:

(1) The name, address, and EPA Identification Number of the generator(s) and the remanufacturer(s),

(2) The types and estimated annual volumes of spent solvents to be remanufactured,

(3) The processes and industry sectors that generate the spent solvents,

(4) The specific uses and industry sectors for the remanufactured solvents, and

(5) A certification from the remanufacturer stating “on behalf of [insert remanufacturer facility name], I certify that this facility is a remanufacturer under pharmaceutical manufacturing (NAICS 325412), basic organic chemical manufacturing (NAICS 325199), plastics and resins manufacturing (NAICS 325211), and/or the paints and coatings manufacturing sectors (NAICS 325510), and will accept the spent solvent(s) for the sole purpose of remanufacturing into commercial-grade solvent(s) that will be used for reacting, extracting, purifying, or blending chemicals (or for rinsing out the process lines associated with these functions) or for use as product ingredient(s). I also certify that the remanufacturing equipment, vents, and tanks are equipped with and are operating air emission controls in compliance with the appropriate Clean Air Act regulations under 40 CFR part 60, part 61, or part 63, or, absent such Clean Air Act standards for the particular operation or piece of equipment covered by the remanufacturing exclusion, are in compliance with the appropriate standards in R.61-79.261 subparts AA (vents), BB (equipment), and CC (tank storage),”;

(C) Maintain records of shipments and confirmations of receipts for a period of three (3) years from the dates of the shipments;

(D) Prior to remanufacturing, store the hazardous spent solvents in tanks or containers that meet technical standards found in R.61-79.261 subparts I and J, with the tanks and containers being labeled or otherwise having an immediately available record of the material being stored;

(E) During remanufacturing, and during storage of the hazardous secondary materials prior to remanufacturing, the remanufacturer certifies that the remanufacturing equipment, vents, and tanks are equipped with and are operating air emission controls in compliance with the appropriate Clean Air Act regulations under 40 CFR part 60, part 61, or part 63, or, absent such Clean Air Act standards for the particular operation or piece of equipment covered by the remanufacturing exclusion, are in compliance with the appropriate standards in R.61-79.261 subparts AA (vents), BB (equipment), and CC (tank storage); and

(F) Meet the requirements prohibiting speculative accumulation per section 261.1(c)(8).

Revise 61-79.261.6(a)(2) to read:

(2) The following recyclable materials are not subject to the requirements of this section but are regulated under subparts C through N of R.61-79.266 and all applicable provisions in R.61-79.268, 270, and 124.

(i) Recyclable materials used in a manner constituting disposal (R.61-79.266 subpart C);

(ii) Hazardous wastes burned (as defined in section 266.100(a)) in boilers and industrial furnaces that are not regulated under subpart O of R.61-79.264 or 265 (R.61-79.266 subpart H);

(iii) Recyclable materials from which precious metals are reclaimed (R.61-79.266 subpart F);

(iv) Spent lead-acid batteries that are being reclaimed (R.61-79.266 subpart G).

Revise 61-79.261.6(a)(3) to read:

(3) The following recyclable materials are not subject to regulation under R.61-79.124, 262 through 268, or 270 and are not subject to the notification requirements of the South Carolina Hazardous Waste Management Act 44-56-120 and section 3010 RCRA.

Revise 61-79.261.11(c) to read:

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(c) The Department will use the criteria for listing specified in this section to establish the exclusion limits referred to in section 262.13.

Revise 61-79.261.30(d) to read:

(d) The following hazardous wastes listed in section 261.31 are subject to the exclusion limits for acutely hazardous wastes established in section 261.5: EPA Hazardous Wastes Nos. F020, F021, F022, F023, F026 and F027.

Revise 61-79.261.31(b)(4)(i) to read:

(i) Motor vehicle manufacturing is defined to include the manufacture of automobiles and light trucks/utility vehicles (including light duty vans, pick-up trucks, minivans, and sport utility vehicles). Facilities must be engaged in manufacturing complete vehicles (body and chassis or unibody) or chassis only.

Revise 61-79.261.31(b)(4)(ii) to read:

(ii) Generators must maintain in their on-site records documentation and information sufficient to prove that the wastewater treatment sludges to be exempted from the F019 listing meet the conditions of the listing. These records must include: the volume of waste generated and disposed of off site; documentation showing when the waste volumes were generated and sent off site; the name and address of the receiving facility; and documentation confirming receipt of the waste by the receiving facility. Generators must maintain these documents on site for no less than three (3) years. The retention period for the documentation is automatically extended during the course of any enforcement action or as requested by the Department or the state regulatory authority.

Revise 61-79.261.39(d) to read:

(d) Use constituting disposal: Glass from used CRTs that is used in a manner constituting disposal must comply with the requirements of R.61-79.266 subpart C instead of the requirements of this section.

Add and reserve 61-79.261 Subparts F and G to read:

SUBPART F: [Reserved]

SUBPART G: [Reserved]

Add 61-79.261 Subpart H to read:

SUBPART H: Financial Requirements for Management of Excluded Hazardous Secondary Materials

261.140. Applicability.

(a) The requirements of this subpart apply to owners or operators of reclamation and intermediate facilities managing hazardous secondary materials excluded under section 261.4(a)(24), except as provided otherwise in this section.

(b) States and the federal government are exempt from the financial assurance requirements of this subpart.

261.141. Definitions of terms as used in this subpart.

The terms defined in section 265.141(d), (f), (g), and (h) have the same meaning in this subpart as they do in section 265.141.

261.142. Cost estimate.

(a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of disposing of any hazardous secondary material as listed or characteristic hazardous waste, and the potential cost of closing the facility as a treatment, storage, and disposal facility.

(1) The estimate must equal the cost of conducting the activities described in paragraph (a) of this section at the point when the extent and manner of the facility's operation would make these activities the most expensive; and

(2) The cost estimate must be based on the costs to the owner or operator of hiring a third party to conduct these activities. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of parent corporation in section 265.141(d)). The owner or operator may use costs for on-site disposal in accordance with applicable requirements if it can be demonstrated that on-site disposal capacity will exist at all times over the life of the facility.

(3) The cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous secondary materials, or hazardous or non-hazardous wastes if applicable under section 265.5113(d) facility structures or equipment, land, or other assets associated with the facility.

(4) The owner or operator may not incorporate a zero cost for hazardous secondary materials, or hazardous or non-hazardous wastes if applicable under section 265.5113(d) that might have economic value.

(b) During the active life of the facility, the owner or operator must adjust the cost estimate for inflation within sixty (60) days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with section 261.143. For owners and operators using the financial test or corporate guarantee, the cost estimate must be updated for inflation within thirty (30) days after the close of the firm's fiscal year and before submission of updated information to the Department as specified in section 261.143(e)(3). The adjustment may be made by recalculating the cost estimate in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business, as specified in paragraphs (b)(1) and (2) of this section. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

(1) The first adjustment is made by multiplying the cost estimate by the inflation factor. The result is the adjusted cost estimate.

(2) Subsequent adjustments are made by multiplying the latest adjusted cost estimate by the latest inflation factor.

(c) During the active life of the facility, the owner or operator must revise the cost estimate no later than thirty (30) days after a change in the facility's operating plan or design that would increase the costs of conducting the activities described in paragraph (a) or no later than sixty (60) days after an unexpected event which increases the cost of conducting the activities described in paragraph (a) of this section. The revised cost estimate must be adjusted for inflation as specified in paragraph (b) of this section.

(d) The owner or operator must keep the following at the facility during the operating life of the facility: The latest cost estimate prepared in accordance with paragraphs (a) and (c) and, when this estimate has been adjusted in accordance with paragraph (b), the latest adjusted cost estimate.

261.143. Financial assurance condition.

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Per section 261.4(a)(24)(vi)(F), an owner or operator of a reclamation or intermediate facility must have financial assurance as a condition of the exclusion as required under section 261.4(a)(24). They must choose from the options as specified in paragraphs (a) through (e) of this section.

(a) Trust fund.

(1) An owner or operator may satisfy the requirements of this section by establishing a trust fund which conforms to the requirements of this paragraph and submitting an originally signed duplicate of the trust agreement to the Department. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(2) The wording of the trust agreement must be identical to the wording specified in section 261.151(a)(1), and the trust agreement must be accompanied by a formal certification of acknowledgment (for example, see section 261.151(a)(2)). Schedule A of the trust agreement must be updated within sixty (60) days after a change in the amount of the current cost estimate covered by the agreement.

(3) The trust fund must be funded for the full amount of the current cost estimate before it may be relied upon to satisfy the requirements of this section.

(4) Whenever the current cost estimate changes, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within sixty (60) days after the change in the cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current cost estimate, or obtain other financial assurance as specified in this section to cover the difference.

(5) If the value of the trust fund is greater than the total amount of the current cost estimate, the owner or operator may submit a written request to the Department for release of the amount in excess of the current cost estimate.

(6) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the trust fund, a written request may be submitted to the Department for release of the amount in excess of the current cost estimate covered by the trust fund.

(7) Within sixty (60) days after receiving a request from the owner or operator for release of funds as specified in paragraph (a)(5) or (6) of this section, the Department will instruct the trustee to release to the owner or operator such funds as the Department specifies in writing. If the owner or operator begins final closure under subpart G of R.61-79.264 or 265, an owner or operator may request reimbursements for partial or final closure expenditures by submitting itemized bills to the Department. The owner or operator may request reimbursements for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. No later than sixty (60) days after receiving bills for partial or final closure activities, the Department will instruct the trustee to make reimbursements in those amounts as the Department specifies in writing, if the Department determines that the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise justified. If the Department has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, it may withhold reimbursements of such amounts as deemed prudent until it determines, in accordance with section 265.143(i) that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Department does not instruct the trustee to make such reimbursements, it will provide to the owner or operator a detailed written statement of reasons.

(8) The Department will agree to termination of the trust when:

(i) An owner or operator substitutes alternate financial assurance as specified in this section; or

(ii) The Department releases the owner or operator from the requirements of this section in accordance with paragraph (i) of this section.

(b) Surety bond guaranteeing payment into a trust fund.

(1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this paragraph and submitting the bond to the Department. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.

(2) The wording of the surety bond must be identical to the wording specified in section 261.151(b).

(3) The owner or operator who uses a surety bond to satisfy the requirements of this section must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund must meet the requirements specified in paragraph (a) of this section, except that:

(i) An originally signed duplicate of the trust agreement must be submitted to the Department with the surety bond; and

(ii) Until the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:

(A) Payments into the trust fund as specified in paragraph (a) of this section;

(B) Updating of Schedule A of the trust agreement (see section 261.151(a)) to show current cost estimates;

(C) Annual valuations as required by the trust agreement; and

(D) Notices of nonpayment as required by the trust agreement.

(4) The bond must guarantee that the owner or operator will:

(i) Fund the standby trust fund in an amount equal to the penal sum of the bond before loss of the exclusion under section 261.4(a)(24);

(ii) Fund the standby trust fund in an amount equal to the penal sum within fifteen (15) days after an administrative order to begin closure issued by the Department becomes final, or within fifteen (15) days after an order to begin closure is issued by a U.S. district court or other court of competent jurisdiction; or

(iii) Provide alternate financial assurance as specified in this section, and obtain the Department's written approval of the assurance provided, within ninety (90) days after receipt by both the owner or operator and the Department of a notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(6) The penal sum of the bond must be in an amount at least equal to the current cost estimate, except as provided in paragraph (f) of this section.

(7) Whenever the current cost estimate increases to an amount greater than the penal sum, the owner or operator, within sixty (60) days after the increase, must either cause the penal sum to be increased to an amount

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at least equal to the current cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current cost estimate decreases, the penal sum may be reduced to the amount of the current cost estimate following written approval by the Department.

(8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation may not occur, however, during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts.

(9) The owner or operator may cancel the bond if the Department has given prior written consent based on his receipt of evidence of alternate financial assurance as specified in this section.

(c) Letter of credit.

(1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph and submitting the letter to the Department. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(2) The wording of the letter of credit must be identical to the wording specified in section 261.151(c).

(3) An owner or operator who uses a letter of credit to satisfy the requirements of this section must also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Department will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Department. This standby trust fund must meet the requirements of the trust fund specified in paragraph (a) of this section, except that:

(i) An originally signed duplicate of the trust agreement must be submitted to the Department with the letter of credit; and

(ii) Unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:

(A) Payments into the trust fund as specified in paragraph (a) of this section;

(B) Updating of Schedule A of the trust agreement (see section 261.151(a)) to show current cost estimates;

(C) Annual valuations as required by the trust agreement; and

(D) Notices of nonpayment as required by the trust agreement.

(4) The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: The EPA Identification Number (if any issued), name, and address of the facility, and the amount of funds assured for the facility by the letter of credit.

(5) The letter of credit must be irrevocable and issued for a period of at least one (1) year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one (1) year unless, at least one hundred twenty (120) days before the current expiration date, the issuing institution notifies both the owner or operator and the Department by certified mail of a decision not to extend the expiration date.

Under the terms of the letter of credit, the one hundred twenty (120) days will begin on the date when both the owner or operator and the Department have received the notice, as evidenced by the return receipts.

(6) The letter of credit must be issued in an amount at least equal to the current cost estimate, except as provided in paragraph (f) of this section.

(7) Whenever the current cost estimate increases to an amount greater than the amount of the credit, the owner or operator, within sixty (60) days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current cost estimate decreases, the amount of the credit may be reduced to the amount of the current cost estimate following written approval by the Department.

(8) Following a determination by the Department that the hazardous secondary materials do not meet the conditions of the exclusion under section 261.4(a)(24), the Department may draw on the letter of credit.

(9) If the owner or operator does not establish alternate financial assurance as specified in this section and obtain written approval of such alternate assurance from the Department within ninety (90) days after receipt by both the owner or operator and the Department of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Department will draw on the letter of credit. The Department may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last thirty (30) days of any such extension the Department will draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this section and obtain written approval of such assurance from the Department.

(10) The Department will return the letter of credit to the issuing institution for termination when:

(i) An owner or operator substitutes alternate financial assurance as specified in this section; or

(ii) The Department releases the owner or operator from the requirements of this section in accordance with paragraph (i) of this section.

(d) Insurance.

(1) An owner or operator may satisfy the requirements of this section by obtaining insurance which conforms to the requirements of this paragraph and submitting a certificate of such insurance to the Department. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.

(2) The wording of the certificate of insurance must be identical to the wording specified in section 261.151(d).

(3) The insurance policy must be issued for a face amount at least equal to the current cost estimate, except as provided in paragraph (f) of this section. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(4) The insurance policy must guarantee that funds will be available whenever needed to pay the cost of removal of all hazardous secondary materials from the unit, to pay the cost of decontamination of the unit, and to pay the costs of the performance of activities required under subpart G of R.61-79.264 or 265, as applicable, for the facilities covered by this policy. The policy must also guarantee that once funds are needed, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Department, to such party or parties as the Department specifies.

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(5) After beginning partial or final closure under R.61-79.264 or 265, as applicable, an owner or operator or any other authorized person may request reimbursements for closure expenditures by submitting itemized bills to the Department. The owner or operator may request reimbursements only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within sixty (60) days after receiving bills for closure activities, the Department will instruct the insurer to make reimbursements in such amounts as the Department specifies in writing if the Department determines that the expenditures are in accordance with the approved plan or otherwise justified. If the Department has reason to believe that the maximum cost over the remaining life of the facility will be significantly greater than the face amount of the policy, it may withhold reimbursement of such amounts as deemed prudent until it determines, in accordance with paragraph (h) of this section, that the owner or operator is no longer required to maintain financial assurance for the particular facility. If the Department does not instruct the insurer to make such reimbursements, it will provide to the owner or operator a detailed written statement of reasons.

(6) The owner or operator must maintain the policy in full force and effect until the Department consents to termination of the policy by the owner or operator as specified in paragraph (i)(10) of this section. Failure to pay the premium, without substitution of alternate financial assurance as specified in this section, will constitute a significant violation of these regulations warranting such remedy as the Department deems necessary. Such violation will be deemed to begin upon receipt by the Department of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

(7) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

(8) The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the Department. Cancellation, termination, or failure to renew may not occur, however, during the one hundred twenty (120) days beginning with the date of receipt of the notice by both the Department and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:

(i) The Department deems the facility abandoned; or

(ii) Conditional exclusion or interim status is lost, terminated, or revoked; or

(iii) Closure is ordered by the Department or a U.S. district court or other court of competent jurisdiction;

or

(iv) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or

(v) The premium due is paid.

(9) Whenever the current cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within sixty (60) days after the increase, must either cause the face amount to be increased to an amount at least equal to the current cost estimate and submit evidence of such increase to the Department, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current cost estimate decreases, the face amount may be reduced to the amount of the current cost estimate following written approval by the Department.

(10) The Department will give written consent to the owner or operator that the insurance policy may be terminated when:

(i) An owner or operator substitutes alternate financial assurance as specified in this section; or

(ii) The Department releases the owner or operator from the requirements of this section in accordance with paragraph (i) of this section.

(e) Financial test and corporate guarantee.

(1) An owner or operator may satisfy the requirements of this section by demonstrating that they pass a financial test as specified in this paragraph. To pass this test the owner or operator must meet the criteria of either paragraph (e)(1)(i) or (ii) of this section:

(i) The owner or operator must have:

(A) Two of the following three ratios: A ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

(B) Net working capital and tangible net worth each at least six (6) times the sum of the current cost estimates and the current plugging and abandonment cost estimates; and

(C) Tangible net worth of at least ten (10) million dollars; and

(D) Assets located in the United States amounting to at least ninety (90) percent of total assets or at least six (6) times the sum of the current cost estimates and the current plugging and abandonment cost estimates.

(ii) The owner or operator must have:

(A) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

(B) Tangible net worth at least six (6) times the sum of the current cost estimates and the current plugging and abandonment cost estimates; and

(C) Tangible net worth of at least ten (10) million dollars; and

(D) Assets located in the United States amounting to at least ninety (90) percent of total assets or at least six (6) times the sum of the current cost estimates and the current plugging and abandonment cost estimates.

(2) The phrase "current cost estimates" as used in paragraph (e)(1) of this section refers to the cost estimates required to be shown in paragraphs (1) through (4) of the letter from the owner's or operator's chief financial officer (section 261.151(e)). The phrase "current plugging and abandonment cost estimates" as used in paragraph (e)(1) of this section refers to the cost estimates required to be shown in paragraphs (1) through (4) of the letter from the owner's or operator's chief financial officer (40 CFR 144.70(f)).

(3) To demonstrate that they meet this test, the owner or operator must submit the following items to the Department:

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in section 261.151(e); and

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(ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(iii) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies paragraph (e)(1)(i) of this section that are different from the data in the audited financial statements referred to in paragraph (e)(3)(ii) of this section or any other audited financial statement or data filed with the U.S. Securities and Exchange Commission (SEC), then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based on an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of the comparison, and the reasons for any differences.

(4) The owner or operator may obtain an extension of the time allowed for submission of the documents specified in paragraph (e)(3) of this section if the fiscal year of the owner or operator ends during the ninety (90) days prior to the effective date of these regulations and if the year-end financial statements for that fiscal year will be audited by an independent certified public accountant. The extension will end no later than ninety (90) days after the end of the owner's or operator's fiscal year. To obtain the extension, the owner's or operator's chief financial officer must send, by the effective date of these regulations, a letter to the Department. This letter from the chief financial officer must:

(i) Request the extension;

(ii) Certify that they have grounds to believe that the owner or operator meets the criteria of the financial test;

(iii) Specify for each facility to be covered by the test the EPA Identification Number (if any issued), name, address, and current cost estimates to be covered by the test;

(iv) Specify the date ending the owner's or operator's last complete fiscal year before the effective date of these regulations in this subpart;

(v) Specify the date, no later than ninety (90) days after the end of such fiscal year, when the documents specified in paragraph (e)(3) of this section will be submitted; and

(vi) Certify that the year-end financial statements of the owner or operator for such fiscal year will be audited by an independent certified public accountant.

(5) After the initial submission of items specified in paragraph (e)(3) of this section, the owner or operator must send updated information to the Department within ninety (90) days after the close of each succeeding fiscal year. This information must consist of all three (3) items specified in paragraph (e)(3) of this section.

(6) If the owner or operator no longer meets the requirements of paragraph (e)(1) of this section, notice must be sent to the Department of intent to establish alternate financial assurance as specified in this section. The notice must be sent by certified mail within ninety (90) days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide the alternate financial assurance within one hundred twenty (120) days after the end of such fiscal year.

(7) The Department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of paragraph (e)(1) of this section, require reports of financial condition at any time from the owner or operator in addition to those specified in paragraph (e)(3) of this section. If the Department finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of paragraph

(e)(1) of this section, the owner or operator must provide alternate financial assurance as specified in this section within thirty (30) days after notification of such a finding.

(8) The Department may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see paragraph (e)(3)(ii) of this section). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Department will evaluate other qualifications on an individual basis. The owner or operator must provide alternate financial assurance as specified in this section within thirty (30) days after notification of the disallowance.

(9) The owner or operator is no longer required to submit the items specified in paragraph (e)(3) of this section when:

(i) An owner or operator substitutes alternate financial assurance as specified in this section; or

(ii) The Department releases the owner or operator from the requirements of this section in accordance with paragraph (i) of this section.

(10) An owner or operator may meet the requirements of this section by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraphs (e)(1) through (8) of this section and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in section 261.151(g)(1). A certified copy of the guarantee must accompany the items sent to the Department as specified in paragraph (e)(3) of this section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee must provide that:

(i) Following a determination by the Department that the hazardous secondary materials at the owner or operator's facility covered by this guarantee do not meet the conditions of the exclusion under section 261.4(a)(24), the guarantor will dispose of any hazardous secondary material as hazardous waste and close the facility in accordance with closure requirements found in R.61-79.264 or 265, as applicable, or establish a trust fund as specified in paragraph (a) of this section in the name of the owner or operator in the amount of the current cost estimate.

(ii) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation may not occur, however, during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts.

(iii) If the owner or operator fails to provide alternate financial assurance as specified in this section and obtain the written approval of such alternate assurance from the Department within ninety (90) days after receipt by both the owner or operator and the Department of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternate financial assurance in the name of the owner or operator.

(f) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this section by establishing more than one (1) financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds, letters of credit, and insurance. The mechanisms must be as specified in paragraphs (a) through (d) of this section, respectively, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current cost estimate. If

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an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, the trust fund may be used as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two (2) or more mechanisms. The Department may use any or all of the mechanisms to provide for the facility.

(g) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial assurance mechanism specified in this section to meet the requirements of this section for more than one (1) facility. Evidence of financial assurance submitted to the Department must include a list showing, for each facility, the EPA Identification Number (if any issued), name, address, and the amount of funds assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for any of the facilities covered by the mechanism, the Department may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

(h) Removal and Decontamination Plan for Release.

(1) An owner or operator of a reclamation facility or an intermediate facility who wishes to be released from financial assurance obligations under section 261.4(a)(24)(vi)(F) must submit a plan for removing all hazardous secondary material residues to the Department at least one hundred eighty (180) days prior to the date on which operations are expected to cease under the exclusion.

(2) The plan must include, at least:

(i) For each hazardous secondary materials storage unit subject to financial assurance requirements under section 261.4(a)(24)(vi)(F), a description of how all excluded hazardous secondary materials will be recycled or sent for recycling, and how all residues, contaminated containment systems (liners, etc), contaminated soils, subsoils, structures, and equipment will be removed or decontaminated as necessary to protect human health and the environment;

(ii) A detailed description of the steps necessary to remove or decontaminate all hazardous secondary material residues and contaminated containment system components, equipment, structures, and soils including, but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination necessary to protect human health and the environment;

(iii) A detailed description of any other activities necessary to protect human health and the environment during this timeframe, including, but not limited to, leachate collection, run-on and run-off control, etc; and

(iv) A schedule for conducting the activities described which, at a minimum, includes the total time required to remove all excluded hazardous secondary materials for recycling and decontaminate all units subject to financial assurance under section 261.4(a)(24)(vi)(F) and the time required for intervening activities which will allow tracking of the progress of decontamination.

(3) The Department will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the plan and request modifications to the plan no later than thirty (30) days from the date of the notice. The Department will also, in response to a request or at its discretion, hold a public hearing whenever such a hearing might clarify one (1) or more issues concerning the plan. The Department will give public notice of the hearing at least thirty (30) days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two (2) notices may be combined.) The Department will approve, modify, or disapprove the plan within ninety (90) days of its receipt. If the Department does not approve the plan, it shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator must modify the plan or submit a new plan for approval within thirty (30) days after receiving such written statement. The Department

will approve or modify this plan in writing within sixty (60) days. If the Department modifies the plan, this modified plan becomes the approved plan. The Department must assure that the approved plan is consistent with paragraph (h) of this section. A copy of the modified plan with a detailed statement of reasons for the modifications must be mailed to the owner or operator.

(4) Within sixty (60) days of completion of the activities described for each hazardous secondary materials management unit, the owner or operator must submit to the Department, by registered mail, a certification that all hazardous secondary materials have been removed from the unit and the unit has been decontaminated in accordance with the specifications in the approved plan. The certification must be signed by the owner or operator and by a qualified Professional Engineer. Documentation supporting the Professional Engineer's certification must be furnished to the Department upon request, until it releases the owner or operator from the financial assurance requirements for section 261.4(a)(24)(vi)(F).

(i) Release of the owner or operator from the requirements of this section. Within sixty (60) days after receiving certifications from the owner or operator and a qualified Professional Engineer that all hazardous secondary materials have been removed from the facility or a unit at the facility, and the facility or a unit has been decontaminated in accordance with the approved plan per paragraph (h), the Department will notify the owner or operator in writing that they are no longer required under section 261.4(a)(24)(vi)(F) to maintain financial assurance for that facility or a unit at the facility, unless the Department has reason to believe that all hazardous secondary materials have not been removed from the facility or unit at a facility, or that the facility or unit has not been decontaminated in accordance with the approved plan. The Department shall provide the owner or operator a detailed written statement of any such reason to believe that all hazardous secondary materials have not been removed from the unit or that the unit has not been decontaminated in accordance with the approved plan.

261.144. [Reserved]

261.145. [Reserved]

261.146. [Reserved]

261.147. Liability requirements.

(a) Coverage for sudden accidental occurrences. An owner or operator of a hazardous secondary material reclamation facility or an intermediate facility subject to financial assurance requirements under section 261.4(a)(24)(vi)(F), or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least one (1) million dollars per occurrence with an annual aggregate of at least two (2) million dollars, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in paragraphs (a)(1), (2), (3), (4), (5), or (6) of this section:

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this paragraph.

(i) Each insurance policy must be amended by attachment of the Hazardous Secondary Material Facility Liability Endorsement, or evidenced by a Certificate of Liability Insurance. The wording of the endorsement must be identical to the wording specified in section 261.151(h). The wording of the certificate of insurance must be identical to the wording specified in section 261.151(i). The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Department. If requested by a Department, the owner or operator must provide a signed duplicate original of the insurance policy.

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(ii) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one (1) or more states.

(2) An owner or operator may meet the requirements of this section by passing a financial test or using the guarantee for liability coverage as specified in paragraphs (f) and (g) of this section.

(3) An owner or operator may meet the requirements of this section by obtaining a letter of credit for liability coverage as specified in paragraph (h) of this section.

(4) An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in paragraph (i) of this section.

(5) An owner or operator may meet the requirements of this section by obtaining a trust fund for liability coverage as specified in paragraph (j) of this section.

(6) An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amounts required by this section. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this paragraph, the owner or operator shall specify at least one (1) such assurance as “primary” coverage and shall specify other assurance as “excess” coverage.

(7) An owner or operator shall notify the Department in writing within thirty (30) days whenever:

(i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in paragraphs (a)(1) through (a)(6) of this section; or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous secondary material reclamation facility or intermediate facility is entered between the owner or operator and third-party claimant for liability coverage under paragraphs (a)(1) through (a)(6) of this section; or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous secondary material reclamation facility or intermediate facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under paragraphs (a)(1) through (a)(6) of this section.

(b) Coverage for nonsudden accidental occurrences. An owner or operator of a hazardous secondary material reclamation facility or intermediate facility with land-based units, as defined in section 260.10, which are used to manage hazardous secondary materials excluded under section 261.4(a)(24) or a group of such facilities, must demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least three (3) million dollars per occurrence with an annual aggregate of at least \$6 million, exclusive of legal defense costs. An owner or operator who must meet the requirements of this section may combine the required per-occurrence coverage levels for sudden and nonsudden accidental occurrences into a single per-occurrence level, and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and nonsudden accidental occurrences must maintain liability coverage in the amount of at least four (4) million dollars per

occurrence and eight (8) million dollars annual aggregate. This liability coverage may be demonstrated as specified in paragraph (b)(1), (2), (3), (4), (5), or (6) of this section:

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in this paragraph.

(i) Each insurance policy must be amended by attachment of the Hazardous Secondary Material Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement must be identical to the wording specified in section 261.151(h). The wording of the certificate of insurance must be identical to the wording specified in section 261.151(i). The owner or operator must submit a signed duplicate original of the endorsement or the certificate of insurance to the Department. If requested by the Department, the owner or operator must provide a signed duplicate original of the insurance policy.

(ii) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one (1) or more states.

(2) An owner or operator may meet the requirements of this section by passing a financial test or using the guarantee for liability coverage as specified in paragraphs (f) and (g) of this section.

(3) An owner or operator may meet the requirements of this section by obtaining a letter of credit for liability coverage as specified in paragraph (h) of this section.

(4) An owner or operator may meet the requirements of this section by obtaining a surety bond for liability coverage as specified in paragraph (i) of this section.

(5) An owner or operator may meet the requirements of this section by obtaining a trust fund for liability coverage as specified in paragraph (j) of this section.

(6) An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated must total at least the minimum amounts required by this section. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this paragraph, the owner or operator shall specify at least one (1) such assurance as “primary” coverage and shall specify other assurance as “excess” coverage.

(7) An owner or operator shall notify the Department in writing within thirty (30) days whenever:

(i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in paragraphs (b)(1) through (b)(6) of this section; or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous secondary material treatment and/or storage facility is entered between the owner or operator and third-party claimant for liability coverage under paragraphs (b)(1) through (b)(6) of this section; or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous secondary material treatment and/or storage facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under paragraphs (b)(1) through (b)(6) of this section.

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(c) Request for variance. If an owner or operator can demonstrate to the satisfaction of the Department that the levels of financial responsibility required by paragraph (a) or (b) of this section are not consistent with the degree and duration of risk associated with treatment and/or storage at the facility or group of facilities, the owner or operator may obtain a variance from the Department. The request for a variance must be submitted in writing to the Department. If granted, the variance will take the form of an adjusted level of required liability coverage, such level to be based on the Department's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. The Department may require an owner or operator who requests a variance to provide such technical and engineering information as is deemed necessary by the Department to determine a level of financial responsibility other than that required by paragraph (a) or (b) of this section.

(d) Adjustments by the Department. If the Department determines that the levels of financial responsibility required by paragraph (a) or (b) of this section are not consistent with the degree and duration of risk associated with treatment and/or storage at the facility or group of facilities, the Department may adjust the level of financial responsibility required under paragraph (a) or (b) of this section as may be necessary to protect human health and the environment. This adjusted level will be based on the Department's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. In addition, if the Department determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from the operations of a facility that is not a surface impoundment, pile, or land treatment facility, it may require that an owner or operator of the facility comply with paragraph (b) of this section. An owner or operator must furnish to the Department, within a reasonable time, any information which the Department requests to determine whether cause exists for such adjustments of level or type of coverage.

(e) Period of coverage. Within sixty (60) days after receiving certifications from the owner or operator and a qualified Professional Engineer that all hazardous secondary materials have been removed from the facility or a unit at the facility and the facility or a unit has been decontaminated in accordance with the approved plan per section 261.143(h), the Department will notify the owner or operator in writing that they are no longer required under section 261.4(a)(24)(vi)(F) to maintain liability coverage for that facility or a unit at the facility, unless the Department has reason to believe that that all hazardous secondary materials have not been removed from the facility or unit at a facility or that the facility or unit has not been decontaminated in accordance with the approved plan.

(f) Financial test for liability coverage.

(1) An owner or operator may satisfy the requirements of this section by demonstrating that they pass a financial test as specified in this paragraph. To pass this test the owner or operator must meet the criteria of paragraph (f)(1) (i) or (ii) of this section:

(i) The owner or operator must have:

(A) Net working capital and tangible net worth each at least six (6) times the amount of liability coverage to be demonstrated by this test; and

(B) Tangible net worth of at least ten (10) million dollars; and

(C) Assets in the United States amounting to either:

(1) At least ninety (90) percent of their total assets; or

(2) At least six (6) times the amount of liability coverage to be demonstrated by this test.

(ii) The owner or operator must have:

(A) A current rating for their most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's, or Aaa, Aa, A, or Baa as issued by Moody's; and

(B) Tangible net worth of at least ten (10) million dollars; and

(C) Tangible net worth at least six (6) times the amount of liability coverage to be demonstrated by this test; and

(D) Assets in the United States amounting to either:

(1) At least ninety (90) percent of their total assets; or

(2) at least six (6) times the amount of liability coverage to be demonstrated by this test.

(2) The phrase "amount of liability coverage" as used in paragraph (f)(1) of this section refers to the annual aggregate amounts for which coverage is required under paragraphs (a) and (b) of this section and the annual aggregate amounts for which coverage is required under paragraphs (a) and (b) of sections 264.147 and 265.147.

(3) To demonstrate that they meet this test, the owner or operator must submit the following three (3) items to the Department:

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in section 261.151(f). If an owner or operator is using the financial test to demonstrate both assurance as specified by section 261.143(e), and liability coverage, the letter specified in section 261.151(f) must be submitted to cover both forms of financial responsibility; a separate letter as specified in section 261.151(e) is not required.

(ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year.

(iii) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies paragraph (f)(1)(i) of this section that are different from the data in the audited financial statements referred to in paragraph (f)(3)(ii) of this section or any other audited financial statement or data filed with the SEC, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based on an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of the comparison, and the reasons for any difference.

(4) The owner or operator may obtain a one-time extension of the time allowed for submission of the documents specified in paragraph (f)(3) of this section if the fiscal year of the owner or operator ends during the ninety (90) days prior to the effective date of these regulations and if the year-end financial statements for that fiscal year will be audited by an independent certified public accountant. The extension will end no later than ninety (90) days after the end of the owner's or operator's fiscal year. To obtain the extension, the owner's or operator's chief financial officer must send, by the effective date of these regulations, a letter to the Department and to each state agency or Regional Administrator, as appropriate, where the owner's or operator's facilities to be covered by the financial test are located. This letter from the chief financial officer must:

(i) Request the extension;

(ii) Certify that there are grounds to believe that the owner or operator meets the criteria of the financial test;

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(iii) Specify for each facility to be covered by the test the EPA Identification Number, name, address, the amount of liability coverage and, when applicable, current closure and post-closure cost estimates to be covered by the test;

(iv) Specify the date ending the owner's or operator's last complete fiscal year before the effective date of these regulations;

(v) Specify the date, no later than ninety (90) days after the end of such fiscal year, when the documents specified in paragraph (f)(3) of this section will be submitted; and

(vi) Certify that the year-end financial statements of the owner or operator for such fiscal year will be audited by an independent certified public accountant.

(5) After the initial submission of items specified in paragraph (f)(3) of this section, the owner or operator must send updated information to the Department within ninety (90) days after the close of each succeeding fiscal year. This information must consist of all three items specified in paragraph (f)(3) of this section.

(6) If the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, insurance, a letter of credit, a surety bond, a trust fund, or a guarantee for the entire amount of required liability coverage as specified in this section must be obtained. Evidence of liability coverage must be submitted to the Department within ninety (90) days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the test requirements.

(7) The Department may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see paragraph (f)(3)(ii) of this section). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Department will evaluate other qualifications on an individual basis. The owner or operator must provide evidence of assurance for the entire amount of required liability coverage as specified in this section within thirty (30) days after notification of disallowance.

(g) Guarantee for liability coverage.

(1) Subject to paragraph (g)(2) of this section, an owner or operator may meet the requirements of this section by obtaining a written guarantee, hereinafter referred to as "guarantee." The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraphs (f)(1) through (f)(6) of this section. The wording of the guarantee must be identical to the wording specified in section 261.151(g)(2). A certified copy of the guarantee must accompany the items sent to the Department as specified in paragraph (f)(3) of this section. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, this letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee.

(i) If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden or nonsudden accidental occurrences (or both as the case may be), arising from the operation of facilities covered by this corporate guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor will do so up to the limits of coverage.

(ii) [Reserved]

(2)(i) In the case of corporations incorporated in the United States, a guarantee may be used to satisfy the requirements of this section only if the Attorney General or Insurance Commissioner of:

(A) The state in which the guarantor is incorporated; and

(B) Each state in which a facility covered by the guarantee is located have submitted a written statement to the Department that a guarantee executed as described in this section and section 264.151(g)(2) is a legally valid and enforceable obligation in South Carolina

(ii) In the case of corporations incorporated outside the United States, a guarantee may be used to satisfy the requirements of this section only if:

(A) The non-U.S. corporation has identified a registered agent for service of process in each state in which a facility covered by the guarantee is located and in the state in which it has its principal place of business; and if

(B) The Attorney General or Insurance Commissioner of each state in which a facility covered by the guarantee is located and the state in which the guarantor corporation has its principal place of business, has submitted a written statement to the Department that a guarantee executed as described in this section and section 261.151(h)(2) is a legally valid and enforceable obligation in that state.

(h) Letter of credit for liability coverage.

(1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit that conforms to the requirements of this paragraph and submitting a copy of the letter of credit to the Department.

(2) The financial institution issuing the letter of credit must be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency.

(3) The wording of the letter of credit must be identical to the wording specified in section 261.151(j).

(4) An owner or operator who uses a letter of credit to satisfy the requirements of this section may also establish a standby trust fund. Under the terms of such a letter of credit, all amounts paid pursuant to a draft by the trustee of the standby trust will be deposited by the issuing institution into the standby trust in accordance with instructions from the trustee. The trustee of the standby trust fund must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(5) The wording of the standby trust fund must be identical to the wording specified in section 261.151(m).

(i) Surety bond for liability coverage.

(1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond that conforms to the requirements of this paragraph and submitting a copy of the bond to the Department.

(2) The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds in the most recent Circular 570 of the U.S. Department of the Treasury.

(3) The wording of the surety bond must be identical to the wording specified in section 261.151(k) of this chapter.

(4) A surety bond may be used to satisfy the requirements of this section only if the Attorney General or Insurance Commissioner of:

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(i) The state in which the surety is incorporated; and

(ii) Each state in which a facility covered by the surety bond is located have submitted a written statement to the Department that a surety bond executed as described in this section and section 261.151(k) is a legally valid and enforceable obligation in South Carolina.

(j) Trust fund for liability coverage.

(1) An owner or operator may satisfy the requirements of this section by establishing a trust fund that conforms to the requirements of this paragraph and submitting an originally signed duplicate of the trust agreement to the Department.

(2) The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(3) The trust fund for liability coverage must be funded for the full amount of the liability coverage to be provided by the trust fund before it may be relied upon to satisfy the requirements of this section. If at any time after the trust fund is created the amount of funds in the trust fund is reduced below the full amount of the liability coverage to be provided, the owner or operator, by the anniversary date of the establishment of the trust fund, must either add sufficient funds to the trust fund to cause its value to equal the full amount of liability coverage to be provided, or obtain other financial assurance as specified in this section to cover the difference. For purposes of this paragraph, “the full amount of the liability coverage to be provided” means the amount of coverage for sudden and/or nonsudden occurrences required to be provided by the owner or operator by this section, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

(4) The wording of the trust fund must be identical to the wording specified in section 261.151(l).

261.148. Incapacity of owners or operators, guarantors, or financial institutions.

(a) An owner or operator must notify the Department by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within ten (10) days after commencement of the proceeding. A guarantor of a corporate guarantee as specified in section 261.143(e) must make such a notification if named as debtor, as required under the terms of the corporate guarantee.

(b) An owner or operator who fulfills the requirements of section 261.143 or section 261.147 by obtaining a trust fund, surety bond, letter of credit, or insurance policy will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments. The owner or operator must establish other financial assurance or liability coverage within sixty (60) days after such an event.

261.151. Wording of the instruments.

(a)(1) A trust agreement for a trust fund, as specified in section 261.143(a) must be worded as noted in section 261.151 Appendix A-1, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

(2) Section 261.151 Appendix A-2 is an example of the certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in section 261.143(a).

(b) A surety bond guaranteeing payment into a trust fund, as specified in section 261.143(b), must be worded as noted in section 261.151 Appendix B, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

(c) A letter of credit, as specified in section 261.143(c), must be worded as noted in section 261.151 Appendix C, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

(d) A certificate of insurance, as specified in section 261.143(e), must be worded as noted in section 261.151 Appendix D, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

(e) A letter from the chief financial officer, as specified in section 261.143(e), must be worded as noted in section 261.151 Appendix E, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

(f) A letter from the chief financial officer, as specified in section 261.147(f) must be worded as noted in section 261.151 Appendix F, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

(g)(1) A corporate guarantee, as specified in section 261.143(e), must be worded as noted in section 261.151 Appendix G-1, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

(2) A guarantee, as specified in section 261.147(g), must be worded as noted in section 261.151 Appendix G-2, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

(h) A hazardous waste facility liability endorsement as required in section 261.147 must be worded as noted in section 261.151 Appendix H, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

(i) A certificate of liability insurance as required in section 261.147 must be worded as noted in section 261.151 Appendix I, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

(j) A letter of credit, as specified in section 261.147(h), must be worded as noted in section 261.151 Appendix J, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

(k) A surety bond, as specified in section 261.147(i), must be worded as noted in section 261.151 Appendix K, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

(l)(1) A trust agreement, as specified in section 261.147(j), must be worded as noted in section 261.151 Appendix L-1, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

(2) Section 261.151 Appendix L-2 is an example of the certification of acknowledgement which must accompany the trust agreement for a trust fund as specified in section 261.147(j).

(m)(1) A standby trust agreement, as specified in section 261.147(h), must be worded as noted in section 261.151 Appendix M-1, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

(2) Section 261.151 Appendix M-2 is an example of the certification of acknowledgement which must accompany the trust agreement for a standby trust fund as specified in section 261.147(h).

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261.151. APPENDIX A-1

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL BUREAU OF LAND AND WASTE MANAGEMENT TRUST AGREEMENT, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the State of ____" or "a national bank"], the "Trustee."

WHEREAS, the South Carolina Department of Health and Environmental Control, hereafter referred to as the "Department," an agency of South Carolina, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a facility regulated under R.61-79.264 or 265, or satisfying the conditions of the exclusion under section 261.4(a)(24) shall provide assurance that funds will be available if needed for care of the facility under subpart G of R.61-79.264 or 265, as applicable,

WHEREAS, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein,

WHEREAS, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this Agreement, and the Trustee is willing to act as trustee,

NOW, THEREFORE, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and cost estimates identified on attached Schedule A [on Schedule A, for each facility list the EPA Identification Number (if available), name, address, and the current cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Department in the event that the hazardous secondary materials of the Grantor no longer meet the conditions of the exclusion under section 261.4(a)(24). The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Department.

Section 4. Payments from the Fund. The Trustee shall make payments from the Fund as the Department shall direct, in writing, to provide for the payment of the costs of the performance of activities required under subpart G of R.61-79.264 or 265 for the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the Department from the Fund for expenditures for such activities in such amounts as the beneficiary shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Department specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(a) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the federal or state government;

(b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

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(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually, at least thirty (30) days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the Department a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than sixty (60) days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within ninety (90) days after the statement has been furnished to the Grantor and the Department shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the Department, and the present Trustee by certified mail ten (10) days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Department to the Trustee shall be in writing, signed by the Department, or their designees, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Department hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or Department, except as provided for herein.

Section 15. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Department, or by the Trustee and the Department if the Grantor ceases to exist.

Section 16. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Department, or by the Trustee and the Department, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 17. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Department issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 18. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of South Carolina

Section 19. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written: The parties below certify that the wording of this Agreement is identical to the wording specified in section 261.151 Appendix A-1 as such regulations were constituted on the date set forth above.

[Signature of Grantor]		
[Title]		
Attest:		
	[Title]	
	[Seal]	
[Signature of Trustee]		
Attest:		
	[Title]	
	[Seal]	

261.151. APPENDIX A-2

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL BUREAU OF LAND AND WASTE MANAGEMENT

Certificate of Acknowledgement

State of _____

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County of _____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that they reside at [address], that they are [title] of [corporation], the corporation described in and which executed the above instrument; that they know the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that they signed their name thereto by like order.

[Signature of Notary Public]

261.151. APPENDIX B

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL BUREAU OF LAND AND WASTE MANAGEMENT

Financial Guarantee Bond

Date bond executed: _____

Effective date: _____

Principal: [legal name and business address of owner or operator] _____

Type of Organization: [insert "individual," "joint venture," "partnership," or "corporation"] _____

State of incorporation: _____

Surety(ies): [name(s) and business address(es)] _____

EPA Identification Number, name, address, and amount(s) for each facility guaranteed by this bond: _____

Total penal sum of bond: \$ _____

Surety's bond number: _____

Know All Persons By These Presents, That we, the Principal and Surety(ies) are firmly bound to the South Carolina Department of Health and Environmental Control, hereafter referred to as the "Department," in the event that the hazardous secondary materials at the reclamation or intermediate facility listed below no longer meet the conditions of the exclusion under section 261.4(a)(24), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS said Principal is required, under the South Carolina Hazardous Waste Management Regulation to have a permit or interim status in order to own or operate each facility identified above, or to meet conditions under section 261.4(a)(24),

WHEREAS said Principal is required to provide financial assurance as a condition of the permit or interim status or as a condition of an exclusion under R.61-79.261.4(a)(24),

WHEREAS said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance,

NOW, THEREFORE, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of each facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

OR, if the Principal shall satisfy all the conditions established for exclusion of hazardous secondary materials from coverage as solid waste under section 261.4(a)(24),

OR, if the Principal shall fund the standby trust fund in such amount(s) within fifteen (15) days after a final order to begin closure is issued by the Department or a U.S. district court or other court of competent jurisdiction,

OR, if the Principal shall provide alternate financial assurance, as specified in subpart H of R.61-79.261, as applicable, and obtain the Department 's written approval of such assurance, within ninety (90) days after the date notice of cancellation is received by both the Principal and the Department from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the Department that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the Department.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the Department, provided, however, that cancellation shall not occur during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the Principal and the Department, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the Department.

[The following paragraph is an optional rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new amount, provided that the penal sum does not increase by more than twenty (20) percent in any one year, and no decrease in the penal sum takes place without the written permission of the Department.

IN WITNESS WHEREOF, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in section 261.151 Appendix B as such regulations were constituted on the date this bond was executed.

Principal
[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate seal]
Corporate Surety(ies)
[Name and address]
State of incorporation: _____
Liability limit: \$ _____
[Signature(s)]
[Name(s) and title(s)]

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[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$ _____

261.151. APPENDIX C

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL BUREAU OF LAND AND WASTE MANAGEMENT

Irrevocable Standby Letter of Credit

Chief
Bureau of Land and Waste Management
2600 Bull Street
Columbia, SC, 29021

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. ____ in your favor, in the event that the hazardous secondary materials at the covered reclamation or intermediary facility(ies) no longer meet the conditions of the exclusion under section 261.4(a)(24), at the request and for the account of [owner’s or operator’s name and address] up to the aggregate amount of [in words] U.S. dollars \$ ____, available upon presentation of

(1) your sight draft, bearing reference to this letter of credit No. ____, and

(2) your signed statement reading as follows: “I certify that the amount of the draft is payable pursuant to regulations issued under authority of the South Carolina Hazardous Waste Management Act.”

This letter of credit is effective as of [date] and shall expire on [date at least one (1) year later], but such expiration date shall be automatically extended for a period of [at least one (1) year] on [date] and on each successive expiration date, unless, at least one hundred twenty (120) days before the current expiration date, we notify both you and [owner’s or operator’s name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for one hundred twenty (120) days after the date of receipt by both you and [owner’s or operator’s name], as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner’s or operator’s name] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in section 261.151 Appendix C as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution] [Date]

This credit is subject to [insert “the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce,” or “the Uniform Commercial Code”].

261.151. APPENDIX D

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL BUREAU OF LAND AND WASTE MANAGEMENT

Certificate of Insurance

Name and Address of Insurer (herein called the "Insurer"):

Name and Address of Insured (herein called the "Insured"):

Facilities Covered: [List for each facility: The EPA Identification Number (if any issued), name, address, and the amount of insurance for all facilities covered, which must total the face amount shown below.

Face Amount:

Policy Number: _____

Effective Date:

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance so that in accordance with applicable regulations all hazardous secondary materials can be removed from the facility or any unit at the facility, and the facility or any unit at the facility can be decontaminated at the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of section 261.143(d) as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the Department, the Insurer agrees to furnish to the Department a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in section 261.151 Appendix D as such regulations were constituted on the date shown immediately below.

[Authorized signature for Insurer]

[Name of person signing]

[Title of person signing]

Signature of witness or notary: _____

[Date]

261.151. APPENDIX E

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL BUREAU OF LAND AND WASTE MANAGEMENT

Letter from Chief Financial Officer

Chief
Bureau of Land and Waste Management
2600 Bull Street
Columbia, SC 29201

Dear Sir or Madam: I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance, as specified in subpart H of R.61-79.261.

[Fill out the following nine paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number (if any issued), name, address, and current cost estimates.]

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1. This firm is the owner or operator of the following facilities for which financial assurance is demonstrated through the financial test specified in subpart H of R.61-79.261. The current cost estimates covered by the test are shown for each facility: ____.

2. This firm guarantees, through the guarantee specified in subpart H of R.61-79.261, the following facilities owned or operated by the guaranteed party. The current cost estimates so guaranteed are shown for each facility: _____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee ____; or (3) engaged in the following substantial business relationship with the owner or operator ____, and receiving the following value in consideration of this guarantee ____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

3. In states outside of South Carolina, where the Department is not administering the financial requirements of subpart H of R.61-79.261, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in subpart H of R.61-79.261. The current cost estimates covered by such a test are shown for each facility:_____.

4. This firm is the owner or operator of the following hazardous secondary materials management facilities for which financial assurance is not demonstrated to the Department through the financial test or any other financial assurance mechanism specified in subpart H of R.61-79.261 or equivalent or substantially equivalent state mechanisms. The current cost estimates not covered by such financial assurance are shown for each facility:_____.

5. This firm is the owner or operator of the following UIC facilities for which financial assurance for plugging and abandonment is required under 40 CFR part 144. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility:_____.

6. This firm is the owner or operator of the following facilities for which financial assurance for closure or post-closure care is demonstrated through the financial test specified in subpart H of R.61-79.264 and 265. The current closure and/or post-closure cost estimates covered by the test are shown for each facility: _____.

7. This firm guarantees, through the guarantee specified in subpart H of R.61-79.264 and 265, the closure or post-closure care of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: _____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee ____; or (3) engaged in the following substantial business relationship with the owner or operator ____, and receiving the following value in consideration of this guarantee ____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

8. In states outside of South Carolina, where the Department is not administering the financial requirements of subpart H of R.61-79.264 or 265, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in subpart H of R.61-79.264 and 265. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility: _____.

9. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated to the Department through the financial test or any other financial assurance mechanism specified in subpart H of R.61-79.264 and

265 or equivalent or substantially equivalent state mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: ___.

This firm [insert “is required” or “is not required”] to file a Form 10K with the U.S. Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm’s independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Alternative I if the criteria of paragraph (e)(1)(i) of section 261.143 are used. Fill in Alternative II if the criteria of paragraph (e)(1)(ii) of section 261.143(e) are used.]

ALTERNATIVE I

	1.	Sum of current cost estimates [total of all cost estimates shown in the nine paragraphs above]	\$___
*	2.	Total liabilities [if any portion of the cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4]	\$___
*	3.	Tangible net worth	\$___
*	4.	Net worth	\$___
*	5.	Current assets	\$___
*	6.	Current liabilities	\$___
	7.	Net working capital [line 5 minus line 6]	\$___
*	8.	The sum of net income plus depreciation, depletion, and amortization	\$___
*	9.	Total assets in U.S. (required only if less than ninety (90) percent of firm’s assets are located in the U.S.)	\$___
	10.	Is line 3 at least \$10 million?	Yes/No
	11.	Is line 3 at least 6 times line 1?	Yes/No
	12.	Is line 7 at least 6 times line 1?	Yes/No
*	13.	Are at least ninety (90) percent of firm’s assets located in the U.S.? If not, complete line 14	Yes/No
	14.	Is line 9 at least 6 times line 1?	Yes/No
	15.	Is line 2 divided by line 4 less than 2.0?	Yes/No
	16.	Is line 8 divided by line 2 greater than 0.1?	Yes/No
	17.	Is line 5 divided by line 6 greater than 1.5?	Yes/No

ALTERNATIVE II

	1.	Sum of current cost estimates [total of all cost estimates shown in the eight paragraphs above]	\$___
	2.	Current bond rating of most recent issuance of this firm and name of rating service	
	3.	Date of issuance of bond	
	4.	Date of maturity of bond	
*	5.	Tangible net worth [if any portion of the cost estimates is included in “total liabilities” on your firm’s financial statements, you may add the amount of that portion to this line]	\$___
*	6.	Total assets in U.S. (required only if less than 90% of firm’s assets are located in the U.S.)	\$___
	7.	Is line 5 at least \$10 million?	Yes/No

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	8.	Is line 5 at least 6 times line 1?	Yes/No
*	9.	Are at least 90% of firm's assets located in the U.S.? If not, complete line 10	Yes/No
	10.	Is line 6 at least 6 times line 1?	Yes/No

I hereby certify that the wording of this letter is identical to the wording specified in section 261.151 Appendix E as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

261.151. APPENDIX F

Letter from Chief Financial Officer

Chief

Bureau of Land and Waste Management

2600 Bull Street

Columbia, SC 29201

Dear Sir or Madam: I am the chief financial officer of [firm's name and address]. This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage under section 261.147 [insert "and costs assured section 261.143(e)" if applicable] as specified in subpart H of R.61-79.261.

[Fill out the following paragraphs regarding facilities and liability coverage. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number (if any issued), name, and address].

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences is being demonstrated through the financial test specified in subpart H of R.61-79.261: ____

The firm identified above guarantees, through the guarantee specified in subpart H of R.61-79.261, liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences at the following facilities owned or operated by the following: ____ . The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee -____; or (3) engaged in the following substantial business relationship with the owner or operator ____, and receiving the following value in consideration of this guarantee ____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.]

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences is being demonstrated through the financial test specified in subpart H of R.61-79.264 and 265: ____

The firm identified above guarantees, through the guarantee specified in subpart H of R.61-79.264 and 265, liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences at the following facilities owned or operated by the following: ____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee __; or (3) engaged in the following substantial business relationship with the owner or operator

___, and receiving the following value in consideration of this guarantee ____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.]

[If you are using the financial test to demonstrate coverage of both liability and costs assured under section 261.143(e) or closure or post-closure care costs under sections 264.143, 264.145, 265.143, or 265.145, fill in the following nine paragraphs regarding facilities and associated cost estimates. If there are no facilities that belong in a particular paragraph, write “None” in the space indicated. For each facility, include its EPA identification number (if any issued), name, address, and current cost estimates.]

1. This firm is the owner or operator of the following facilities for which financial assurance is demonstrated through the financial test specified in subpart H of R.61-79.261. The current cost estimates covered by the test are shown for each facility:_____.

2. This firm guarantees, through the guarantee specified in subpart H of R.61-79.261, the following facilities owned or operated by the guaranteed party. The current cost estimates so guaranteed are shown for each facility:_____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee____; or (3) engaged in the following substantial business relationship with the owner or operator ____, and receiving the following value in consideration of this guarantee_____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.]

3. In states outside of South Carolina, where the Department is not administering the financial requirements of subpart H of R.61-79.261, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in subpart H of R.61-79.261. The current cost estimates covered by such a test are shown for each facility:_____.

4. This firm is the owner or operator of the following hazardous secondary materials management facilities for which financial assurance is not demonstrated to the Department through the financial test or any other financial assurance mechanism specified in subpart H of R.61-79.261 or equivalent or substantially equivalent state mechanisms. The current cost estimates not covered by such financial assurance are shown for each facility:_____.

5. This firm is the owner or operator of the following UIC facilities for which financial assurance for plugging and abandonment is required under 40 CFR part 144. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility:_____.

6. This firm is the owner or operator of the following facilities for which financial assurance for closure or post-closure care is demonstrated through the financial test specified in subpart H of R.61-79.264 and 265. The current closure and/or post-closure cost estimates covered by the test are shown for each facility: _____.

7. This firm guarantees, through the guarantee specified in subpart H of R.61-79.264 and 265, the closure or post-closure care of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: _____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee ____; or (3) engaged in the following substantial business relationship with the owner or operator ____, and receiving the following value in consideration of this guarantee _____].

[Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.]

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8. In states outside of South Carolina, where the Department is not administering the financial requirements of subpart H of R.61-79.264 or 265, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in subpart H of R.61-79.264 and 265. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility: ____.

9. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated to the Department through the financial test or any other financial assurance mechanism specified in subpart H of R.61-79.264 and 265 or equivalent or substantially equivalent state mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: ____.

This firm [insert “is required” or “is not required”] to file a Form 10K with the U.S. Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm’s independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

Part A. Liability Coverage for Accidental Occurrences

[Fill in Alternative I if the criteria of paragraph (f)(1)(i) of section 261.147 are used. Fill in Alternative II if the criteria of paragraph (f)(1)(ii) of section 261.147 are used.]

ALTERNATIVE I

	1.	Amount of annual aggregate liability coverage to be demonstrated	\$ ____
*	2.	Current assets	\$ ____
*	3.	Current liabilities	\$ ____
	4.	Net working capital (line 2 minus line 3)	\$ ____
*	5.	Tangible net worth	\$ ____
*	6.	If less than ninety (90) percent of assets are located in the U.S., give total U.S. assets	\$ ____
	7.	Is line 5 at least ten (10) million dollars?	Yes/No
	8.	Is line 4 at least six (6) times line 1?	Yes/No
	9.	Is line 5 at least six (6) times line 1?	Yes/No
*	10.	Are at least ninety (90) percent of assets located in the U.S.? If not, complete line 11	Yes/No
	11.	Is line 6 at least six (6) times line 1?	Yes/No

ALTERNATIVE II

	1.	Amount of annual aggregate liability coverage to be demonstrated	\$ ____
	2.	Current bond rating of most recent issuance and name of rating service	
	3.	Date of issuance of bond	
	4.	Date of maturity of bond	
	5.	Tangible net worth	\$ ____
	6.	Total assets in U.S. (required only if less than ninety (90) percent of assets are located in the U.S.)	\$ ____
	7.	Is line 5 at least ten (10) million dollars?	Yes/No
	8.	Is line 5 at least six (6) times line 1?	Yes/No
	9.	Are at least ninety (90) percent of assets located in the U.S.? If not, complete line 10.	Yes/No
	10.	Is line 6 at least six (6) times line 1?	Yes/No

[Fill in part B if you are using the financial test to demonstrate assurance of both liability coverage and costs assured under section 261.143(e) or closure or post-closure care costs under sections 264.143, 264.145, 265.143, or 265.145.]

Part B. Facility Care and Liability Coverage

[Fill in Alternative I if the criteria of paragraphs (e)(1)(i) of section 261.143 and (f)(1)(i) of section 261.147 are used. Fill in Alternative II if the criteria of paragraphs (e)(1)(ii) of section 261.143 and (f)(1)(ii) of section 261.147 are used.]

ALTERNATIVE I

	1.	Sum of current cost estimates (total of all cost estimates listed above)	\$ _____
	2.	Amount of annual aggregate liability coverage to be demonstrated	\$ _____
	3.	Sum of lines 1 and 2	\$ _____
*	4.	Total liabilities (if any portion of your cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6)	\$ _____
*	5.	Tangible net worth	\$ _____
*	6.	Net worth	\$ _____
*	7.	Current assets	\$ _____
*	8.	Current liabilities	\$ _____
	9.	Net working capital (line 7 minus line 8)	\$ _____
*	10.	The sum of net income plus depreciation, depletion, and amortization	\$ _____
*	11.	Total assets in U.S. (required only if less than ninety (90) percent of assets are located in the U.S.)	\$ _____
	12.	Is line 5 at least ten (10) million dollars?	Yes/No
	13.	Is line 5 at least six (6) times line 3?	Yes/No
	14.	Is line 9 at least six (6) times line 3?	Yes/No
*	15.	Are at least ninety (90) percent of assets located in the U.S.? If not, complete line 16.	Yes/No
	16.	Is line 11 at least six (6) times line 3?	Yes/No
	17.	Is line 4 divided by line 6 less than 2.0?	Yes/No
	18.	Is line 10 divided by line 4 greater than 0.1?	Yes/No
	19.	Is line 7 divided by line 8 greater than 1.5?	Yes/No

ALTERNATIVE II

	1.	Sum of current cost estimates (total of all cost estimates listed above)	\$ _____
	2.	Amount of annual aggregate liability coverage to be demonstrated	\$ _____
	3.	Sum of lines 1 and 2	\$ _____
	4.	Current bond rating of most recent issuance and name of rating service	
	5.	Date of issuance of bond	
	6.	Date of maturity of bond	
*	7.	Tangible net worth (if any portion of the cost estimates is included in "total liabilities" on your financial statements you may add that portion to this line)	\$ _____
*	8.	Total assets in the U.S. (required only if less than ninety (90) percent of assets are located in the U.S.)	\$ _____
	9.	Is line 7 at least ten (10) million dollars?	Yes/No
	10.	Is line 7 at least six (6) times line 3?	Yes/No
*	11.	Are at least ninety (90) percent of assets located in the U.S.? If not complete line 12.	Yes/No
	12.	Is line 8 at least six (6) times line 3?	Yes/No

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I hereby certify that the wording of this letter is identical to the wording specified in sections 261.151 Appendix F as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

261.151. APPENDIX G-1

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL BUREAU OF LAND AND WASTE MANAGEMENT

Corporate Guarantee for Facility Care

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of South Carolina, herein referred to as guarantor. This guarantee is made on behalf of the [owner or operator] of [business address], which is [one of the following: “our subsidiary”; “a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary”; or “an entity with which guarantor has a substantial business relationship, as defined in sections 264.141(h) and 265.141(h)” to the South Carolina Department of Health and Environmental Control, hereafter referred to as the “Department.”

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in section 261.143(e).

2. [Owner or operator] owns or operates the following facility(ies) covered by this guarantee: [List for each facility: EPA Identification Number (if any issued), name, and address.]

3. “Closure plans” as used below refer to the plans maintained as required by subpart H of R.61-79.261 for the care of facilities as identified above.

4. For value received from [owner or operator], guarantor guarantees that in the event of a determination by the Department that the hazardous secondary materials at the owner or operator’s facility covered by this guarantee do not meet the conditions of the exclusion under section 261.4(a)(24), the guarantor will dispose of any hazardous secondary material as hazardous waste, and close the facility in accordance with closure requirements found in R.61-79.264 or 265 of this chapter, as applicable, or establish a trust fund as specified in section 261.143(a) in the name of the owner or operator in the amount of the current cost estimate.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within ninety (90) days, by certified mail, notice to the Department and to [owner or operator] that they intend to provide alternate financial assurance as specified in subpart H of R.61-79.261, as applicable, in the name of [owner or operator]. Within one hundred twenty (120) days after the end of such fiscal year, the guarantor shall establish such financial assurance unless [owner or operator] has done so.

6. The guarantor agrees to notify the Department by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within ten (10) days after commencement of the proceeding.

7. Guarantor agrees that within thirty (30) days after being notified by the Department of a determination that guarantor no longer meets the financial test criteria or that they are disallowed from continuing as a guarantor,

they shall establish alternate financial assurance as specified in of R.61-79.264, 265, or subpart H of R.61-79.261, as applicable, in the name of [owner or operator] unless [owner or operator] has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure plan, the extension or reduction of the time of performance, or any other modification or alteration of an obligation of the owner or operator pursuant to R.61-79.264, 265, or subpart H of R.61-79.261.

9. Guarantor agrees to remain bound under this guarantee for as long as [owner or operator] must comply with the applicable financial assurance requirements of R.61-79.264 and 265 or the financial assurance condition of section 261.4(a)(24)(vi)(F) for the above-listed facilities, except as provided in paragraph 10 of this agreement.

10. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]:

Guarantor may terminate this guarantee by sending notice by certified mail to the Department and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the Department approves, alternate coverage complying with section 261.143.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its “substantial business relationship” with the owner or operator]:

Guarantor may terminate this guarantee one hundred twenty (120) days following the receipt of notification, through certified mail, by the Department and by [the owner or operator].

11. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance as specified in R.61-79.264, 265, or subpart H of R.61-79.261, as applicable, and obtain written approval of such assurance from the Department within ninety (90) days after a notice of cancellation by the guarantor is received by the Department from guarantor, guarantor shall provide such alternate financial assurance in the name of [owner or operator].

12. Guarantor expressly waives notice of acceptance of this guarantee by the Department or by [owner or operator]. Guarantor also expressly waives notice of amendments or modifications of the closure plan and of amendments or modifications of the applicable requirements of R.61-79.264, 265, or subpart H of R.61-79.261.

I hereby certify that the wording of this guarantee is identical to the wording specified in section 261.151 Appendix G-1 as such regulations were constituted on the date first above written.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

261.151. APPENDIX G-2

Guarantee for Liability Coverage

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of South Carolina, herein referred to as guarantor. This guarantee is made on behalf of [owner or operator] of [business address], which is one of the following: “our subsidiary”; “a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary”; or “an entity with which guarantor has a

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substantial business relationship, as defined in R.61-79 [either 264.141(h) or 265.141(h)],” to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in section 261.147(g).

2. [Owner or operator] owns or operates the following facility(ies) covered by this guarantee: [List for each facility: EPA Identification Number (if any issued), name, and address; and if guarantor is incorporated outside the United States list the name and address of the guarantor’s registered agent in each state.] This corporate guarantee satisfies RCRA third-party liability requirements for [insert “sudden” or “nonsudden” or “both sudden and nonsudden”] accidental occurrences in above-named owner or operator facilities for coverage in the amount of [insert dollar amount] for each occurrence and [insert dollar amount] annual aggregate.

3. For value received from [owner or operator], guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operations of the facility(ies) covered by this guarantee that in the event that [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [sudden and/or nonsudden] accidental occurrences, arising from the operation of the above-named facilities, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage identified above.

4. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert owner or operator] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert owner or operator] under a workers’ compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator]; or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert owner or operator]. This exclusion applies:

(A) Whether [insert owner or operator] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert owner or operator];

(2) Premises that are sold, given away, or abandoned by [insert owner or operator] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert owner or operator];

(4) Personal property in the care, custody, or control of [insert owner or operator];

(5) That particular part of real property on which [insert owner or operator] or any contractors or subcontractors working directly or indirectly on behalf of [insert owner or operator] are performing operations, if the property damage arises out of these operations.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within ninety (90) days, by certified mail, notice to the Department and to [owner or operator] that they intend to provide alternate liability coverage as specified in R.61-79.261.147, as applicable, in the name of [owner or operator]. Within one hundred twenty (120) days after the end of such fiscal year, the guarantor shall establish such liability coverage unless [owner or operator] has done so.

6. The guarantor agrees to notify the Department by certified mail of a voluntary or involuntary proceeding under title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within ten (10) days after commencement of the proceeding. Guarantor agrees that within thirty (30) days after being notified by the Department of a determination that guarantor no longer meets the financial test criteria or that they are disallowed from continuing as a guarantor, they shall establish alternate liability coverage as specified in R.61-79.261.147 in the name of [owner or operator], unless [owner or operator] has done so.

7. Guarantor reserves the right to modify this agreement to take into account amendment or modification of the liability requirements set by R.61-79.261.147, provided that such modification shall become effective only if the Department does not disapprove the modification within thirty (30) days of receipt of notification of the modification.

8. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable requirements of R.61-79.261.147 for the above-listed facility(ies), except as provided in paragraph 10 of this agreement.

9. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]:

Guarantor may terminate this guarantee by sending notice by certified mail to the Department and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the Department approve, alternate liability coverage complying with R.61-79.261.147.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its “substantial business relationship” with the owner or operator]:

Guarantor may terminate this guarantee one hundred twenty (120) days following receipt of notification, through certified mail, by the Department and by [the owner or operator].

11. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.

12. Guarantor agrees that this guarantee is in addition to and does not affect any other responsibility or liability of the guarantor with respect to the covered facilities.

13. The Guarantor shall satisfy a third-party liability claim only on receipt of one of the following documents:

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(a) Certification from the Principal and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Principal] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Principal's] facility should be paid in the amount of \$[insert amount].

[Signatures]
Principal
(Notary) Date
[Signatures]
Claimant(s)
(Notary) Date

(b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.

14. In the event of combination of this guarantee with another mechanism to meet liability requirements, this guarantee will be considered [insert "primary" or "excess"] coverage.

I hereby certify that the wording of the guarantee is identical to the wording specified in section 261.151 Appendix G-2 as such regulations were constituted on the date shown immediately below.

Effective date:
[Name of guarantor]
[Authorized signature for guarantor]
[Name of person signing]
[Title of person signing]
Signature of witness or notary:

261.151. APPENDIX H

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL BUREAU OF LAND AND WASTE MANAGEMENT

Hazardous Secondary Material Reclamation/Intermediate Facility Liability Endorsement

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with the insured's obligation to demonstrate financial responsibility under section 261.147. The coverage applies at [list EPA Identification Number (if any issued), name, and address for each facility] for [insert "sudden accidental occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental occurrences"]; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability], exclusive of legal defense costs.

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with subsections (a) through (e) of this Paragraph 2 are hereby amended to conform with subsections (a) through (e):

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy to which this endorsement is attached.

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in section 261.147(f).

(c) Whenever requested by the Department, the Insurer agrees to furnish to the Department a signed duplicate original of the policy and all endorsements.

(d) Cancellation of this endorsement, whether by the Insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the facility, will be effective only upon written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the Department.

(e) Any other termination of this endorsement will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the Department.

Attached to and forming part of policy No. __ issued by [name of Insurer], herein called the Insurer, of [address of Insurer] to [name of insured] of [address] this _____ day of _____, 20__. The effective date of said policy is _____ day of _____, 20__.

I hereby certify that the wording of this endorsement is identical to the wording specified in section 261.151 Appendix H as such regulation was constituted on the date set forth above, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.

[Signature of Authorized Representative of Insurer]
[Type name]
[Title], Authorized Representative of [name of Insurer]
[Address of Representative]

261.151. APPENDIX I

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL BUREAU OF LAND AND WASTE MANAGEMENT

Hazardous Secondary Material Reclamation/Intermediate Facility Certificate of Liability Insurance

1. [Name of Insurer], (the “Insurer”), of [address of Insurer] hereby certifies that it has issued liability insurance covering bodily injury and property damage to [name of insured], (the “insured”), of [address of insured] in connection with the insured’s obligation to demonstrate financial responsibility under R.61-79.264, 265, and the financial assurance condition of section 261.4(a)(24)(vi)(F). The coverage applies at [list EPA Identification Number (if any issued), name, and address for each facility] for [insert “sudden accidental occurrences,” “nonsudden accidental occurrences,” or “sudden and nonsudden accidental occurrences”]; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of the “each occurrence” and

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“annual aggregate” limits of the Insurer’s liability], exclusive of legal defense costs. The coverage is provided under policy number, issued on [date]. The effective date of said policy is [date].

2. The Insurer further certifies the following with respect to the insurance described in Paragraph 1:

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy.

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in section 261.147.

(c) Whenever requested by the South Carolina Department of Health and Environmental Control, hereafter referred to as the “Department,” the Insurer agrees to furnish to the Department a signed duplicate original of the policy and all endorsements.

(d) Cancellation of the insurance, whether by the insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility, will be effective only upon written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the Department.

(e) Any other termination of the insurance will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the Department.

I hereby certify that the wording of this instrument is identical to the wording specified in section 261.151 Appendix I as such regulation was constituted on the date set forth above, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.

[Signature of authorized representative of Insurer]
[Type name]
[Title], Authorized Representative of [name of Insurer]
[Address of Representative]

261.151. APPENDIX J

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL BUREAU OF LAND AND WASTE MANAGEMENT

Irrevocable Standby Letter of Credit

Chief
Bureau of Land and Waste Management
2600 Bull Street
Columbia, SC 29201

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. ____ in the favor of [“any and all third-party liability claimants” or insert name of trustee of the standby trust fund], at the request and for the account of [owner or operator’s name and address] for third-party liability awards or settlements up to [in words] U.S. dollars \$____ per occurrence and the annual aggregate amount of [in words] U.S. dollars \$____, for sudden accidental occurrences and/or for third-party liability awards or settlements up to the amount of [in words] U.S. dollars \$____----- per occurrence, and the annual aggregate amount of [in words] U.S. dollars \$____, for nonsudden accidental occurrences available upon presentation of a sight draft bearing reference to

this letter of credit No. _____, and [insert the following language if the letter of credit is being used without a standby trust fund: (1) a signed certificate reading as follows]:

Certificate of Valid Claim

The undersigned, as parties [insert principal] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operations of [principal's] facility should be paid in the amount of \$[insert amount]. We hereby certify that the claim does not apply to any of the following:

(a) Bodily injury or property damage for which [insert principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert principal] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert principal] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert principal] arising from, and in the course of, employment by [insert principal];
or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert principal].

This exclusion applies:

(A) Whether [insert principal] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert principal];

(2) Premises that are sold, given away, or abandoned by [insert principal] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert principal];

(4) Personal property in the care, custody, or control of [insert principal];

(5) That particular part of real property on which [insert principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert principal] are performing operations, if the property damage arises out of these operations.

[Signatures]

Grantor

[Signatures]

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Claimant(s)

or (2) a valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor’s facility or group of facilities.

This letter of credit is effective as of [date] and shall expire on [date at least one year later], but such expiration date shall be automatically extended for a period of [at least one year] on [date and on each successive expiration date, unless, at least one hundred twenty (120) days before the current expiration date, we notify you, the Department, and [owner’s or operator’s name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us.

[Insert the following language if a standby trust fund is not being used: “In the event that this letter of credit is used in combination with another mechanism for liability coverage, this letter of credit shall be considered [insert “primary” or “excess” coverage].”

We certify that the wording of this letter of credit is identical to the wording specified in section 261.151 Appendix J as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution] [Date].

This credit is subject to [insert “the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce,” or “the Uniform Commercial Code”].

261.151. APPENDIX K

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL BUREAU OF LAND AND WASTE MANAGEMENT

Payment Bond

Surety Bond No. [Insert number]

Parties [Insert name and address of owner or operator], Principal, incorporated in [Insert state of incorporation] of [Insert city and state of principal place of business] and [Insert name and address of surety company(ies)], Surety Company(ies), of [Insert surety(ies) place of business].

EPA Identification Number (if any issued), name, and address for each facility guaranteed by this bond:	
Sudden accidental occurrences	Nonsudden accidental occurrences
Penal Sum Per Occurrence	[insert amount] [insert amount]
Annual Aggregate	[insert amount] [insert amount]

Purpose: This is an agreement between the Surety(ies) and the Principal under which the Surety(ies), its(their) successors and assignees, agree to be responsible for the payment of claims against the Principal for bodily injury and/or property damage to third parties caused by [“sudden” and/or “nonsudden”] accidental occurrences

arising from operations of the facility or group of facilities in the sums prescribed herein; subject to the governing provisions and the following conditions.

Governing Provisions:

(1) SC Hazardous Waste Management Act 44-56 et seq. and section 3004 of the Resource Conservation and Recovery Act of 1976, as amended.

(2) Rules and regulations of the U.S. Environmental Protection Agency (EPA), particularly 40 CFR parts 264, 265, and subpart H of 40 CFR part 261 (if applicable).

(3) Rules and regulations of the South Carolina Department of Health and Environmental Control, particularly R.61-79.264, 265, and subpart H of R.61-79.261.

Conditions:

(1) The Principal is subject to the applicable governing provisions that require the Principal to have and maintain liability coverage for bodily injury and property damage to third parties caused by [“sudden” and/or “nonsudden”] accidental occurrences arising from operations of the facility or group of facilities. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which [insert Principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert Principal] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert Principal] under a workers’ compensation, disability benefits, or unemployment compensation law or similar law.

(c) Bodily injury to:

(1) An employee of [insert Principal] arising from, and in the course of, employment by [insert principal];
or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Principal]. This exclusion applies:

(A) Whether [insert Principal] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert Principal];

(2) Premises that are sold, given away, or abandoned by [insert Principal] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert Principal];

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(4) Personal property in the care, custody, or control of [insert Principal];

(5) That particular part of real property on which [insert Principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert Principal] are performing operations, if the property damage arises out of these operations.

(2) This bond assures that the Principal will satisfy valid third party liability claims, as described in condition 1.

(3) If the Principal fails to satisfy a valid third party liability claim, as described above, the Surety(ies) becomes liable on this bond obligation.

(4) The Surety(ies) shall satisfy a third party liability claim only upon the receipt of one of the following documents:

(a) Certification from the Principal and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert name of Principal] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Principal's] facility should be paid in the amount of \$[insert amount].

[Signature]

Principal

[Notary] Date

[Signature(s)]

Claimant(s)

[Notary] Date

or (b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.

(5) In the event of combination of this bond with another mechanism for liability coverage, this bond will be considered [insert "primary" or "excess"] coverage.

(6) The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond. In no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum, provided that the Surety(ies) furnish(es) notice to the Department forthwith of all claims filed and payments made by the Surety(ies) under this bond.

(7) The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and the Department, provided, however, that cancellation shall not occur during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by the Principal and the Department, as evidenced by the return receipt.

(8) The Principal may terminate this bond by sending written notice to the Surety(ies) and to the Department.

(9) The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agree(s) that no such amendment shall in any way alleviate its (their) obligation on this bond.

(10) This bond is effective from [insert date] (12:01 a.m., standard time, at the address of the Principal as stated herein) and shall continue in force until terminated as described above.

IN WITNESS WHEREOF, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in section 261.151 Appendix K, as such regulations were constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate Seal]

CORPORATE SURETY[IES]

[Name and address]
State of incorporation:
Liability Limit: \$
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]
[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]
Bond premium: \$

261.151. APPENDIX L-1

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL BUREAU OF LAND AND WASTE MANAGEMENT

Trust Agreement

Trust Agreement, the “Agreement,” entered into as of [date] by and between [name of the owner or operator] a [name of state] [insert “corporation,” “partnership,” “association,” or “proprietorship”], the “Grantor,” and [name of corporate trustee], [insert, “incorporated in the state of ____” or “a national bank”], the “trustee.”

WHEREAS, the South Carolina Department of Health and Environmental Control, hereafter referred to as the “Department,” an agency of South Carolina, has established certain regulations applicable to the Grantor, requiring that an owner or operator must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

WHEREAS, the Grantor has elected to establish a trust to assure all or part of such financial responsibility for the facilities identified herein.

WHEREAS, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

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NOW, THEREFORE, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term “Grantor” means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term “Trustee” means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities. This agreement pertains to the facilities identified on attached schedule A [on schedule A, for each facility list the EPA Identification Number (if any issued), name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, hereinafter the “Fund,” for the benefit of any and all third parties injured or damaged by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of ____-[up to \$1 million] per occurrence and [up to \$2 million] annual aggregate for sudden accidental occurrences and ____ [up to \$3 million] per occurrence and ____-[up to \$6 million] annual aggregate for nonsudden occurrences, except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which [insert Grantor] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert Grantor] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert Grantor] under a workers’ compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert Grantor] arising from, and in the course of, employment by [insert Grantor];

or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Grantor]. This exclusion applies:

(A) Whether [insert Grantor] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert Grantor];

(2) Premises that are sold, given away, or abandoned by [insert Grantor] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert Grantor];

(4) Personal property in the care, custody, or control of [insert Grantor];

(5) That particular part of real property on which [insert Grantor] or any contractors or subcontractors working directly or indirectly on behalf of [insert Grantor] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the Fund shall be considered [insert “primary” or “excess”] coverage.

The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Department.

Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim by making payments from the Fund only upon receipt of one of the following documents;

(a) Certification from the Grantor and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Grantor] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Grantor’s] facility or group of facilities should be paid in the amount of \$[insert amount].

[Signatures]

Grantor

[Signatures]

Claimant(s)

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor’s facility or group of facilities.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstance then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

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(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held unless they are securities or other obligations of the federal or a state government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common commingled, or collective trust fund created by the Trustee in which the fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 81a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuations. The Trustee shall annually, at least thirty (30) days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the appropriate Department a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than sixty (60) days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within ninety (90) days after the statement has been furnished to the Grantor and the Department shall constitute a conclusively binding assent by the Grantor barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the Department, and the present Trustee by certified mail ten (10) days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Department to the Trustee shall be in writing, signed by the Department, or their designees, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Department hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Department, except as provided for herein.

Section 15. Notice of Nonpayment. If a payment for bodily injury or property damage is made under Section 4 of this trust, the Trustee shall notify the Grantor of such payment and the amount(s) thereof within five (5) days. The Grantor shall, on or before the anniversary date of the establishment of the Fund following such notice, either make payments to the Trustee in amounts sufficient to cause the trust to return to its value immediately prior to the payment of claims under Section 4, or shall provide written proof to the Trustee that other financial assurance for liability coverage has been obtained equaling the amount necessary to return the trust to its value prior to the payment of claims. If the Grantor does not either make payments to the Trustee or provide the Trustee with such proof, the Trustee shall within 10 (ten) working days after the anniversary date of the establishment of the Fund provide a written notice of nonpayment to the Department.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the appropriate Department, or by the Trustee and the appropriate Department if the Grantor ceases to exist.

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Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Department, or by the Trustee and the Department, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

The Department will agree to termination of the Trust when the owner or operator substitutes alternate financial assurance as specified in this section.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Department issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of South Carolina.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date set forth above. The parties below certify that the wording of this Agreement is identical to the wording specified in R.61-79.261.151 Appendix L as such regulations were constituted on the date set forth above.

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

261.151. APPENDIX L-2

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL BUREAU OF LAND AND WASTE MANAGEMENT

State of _____

County of _____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that they reside at [address], that they are [title] of [corporation], the corporation described in and which executed the above instrument; that they know the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that they signed their name thereto by like order.

[Signature of Notary Public]

261.151. APPENDIX M-1

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL BUREAU OF LAND AND WASTE MANAGEMENT

Standby Trust Agreement

Trust Agreement, the “Agreement,” entered into as of [date] by and between [name of the owner or operator] a [name of a state] [insert “corporation,” “partnership,” “association,” or “proprietorship”], the “Grantor,” and [name of corporate trustee], [insert, “incorporated in [name of state] or “a national bank”], the “trustee.”

WHEREAS the South Carolina Department of Health and Environmental Control, hereafter referred to as the “Department,” an agency of South Carolina, has established certain regulations applicable to the Grantor, requiring that an owner or operator must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

WHEREAS, the Grantor has elected to establish a standby trust into which the proceeds from a letter of credit may be deposited to assure all or part of such financial responsibility for the facilities identified herein.

WHEREAS, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

NOW, THEREFORE, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term Grantor means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term Trustee means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities. This Agreement pertains to the facilities identified on attached schedule A [on schedule A, for each facility list the EPA Identification Number (if any issued), name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a standby trust fund, hereafter the “Fund,” for the benefit of any and all third parties injured or damaged by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of ___-[up to \$1 million] per occurrence and ___-[up to \$2 million] annual aggregate for sudden accidental occurrences and ___-[up to \$3 million] per occurrence and ___-[up to \$6 million] annual aggregate for nonsudden occurrences, except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which [insert Grantor] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert Grantor] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert Grantor] under a workers’ compensation, disability benefits, or unemployment compensation law or any similar law.

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(c) Bodily injury to:

(1) An employee of [insert Grantor] arising from, and in the course of, employment by [insert Grantor];
or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Grantor].

This exclusion applies:

(A) Whether [insert Grantor] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert Grantor];

(2) Premises that are sold, given away, or abandoned by [insert Grantor] if the property damage arises out of any part of those premises;

(3) Property loaned by [insert Grantor];

(4) Personal property in the care, custody, or control of [insert Grantor];

(5) That particular part of real property on which [insert Grantor] or any contractors or subcontractors working directly or indirectly on behalf of [insert Grantor] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the Fund shall be considered [insert “primary” or “excess”] coverage.

The Fund is established initially as consisting of the proceeds of the letter of credit deposited into the Fund. Such proceeds and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Department.

Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim by drawing on the letter of credit described in Schedule B and by making payments from the Fund only upon receipt of one of the following documents:

(a) Certification from the Grantor and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Grantor] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Grantor's] facility should be paid in the amount of \$[insert amount]

[Signature]
Grantor
[Signatures]
Claimant(s)

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of the proceeds from the letter of credit drawn upon by the Trustee in accordance with the requirements of section 261.151(k) and Section 4 of this Agreement.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(a) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;

(b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or a state government; and

(c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

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(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements to the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the Department, and the present Trustee by certified mail ten (10) days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee. All orders, requests, certifications of valid claims, and instructions to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Department hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Department, except as provided for herein.

Section 14. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Department, or by the Trustee and the Department if the Grantor ceases to exist.

Section 15. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Department, or by the Trustee and the Department, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be paid to the Grantor.

The Department will agree to termination of the Trust when the owner or operator substitutes alternative financial assurance as specified in this section.

Section 16. Immunity and indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor and the Department issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of South Carolina.

Section 18. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation of the legal efficacy of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date set forth above. The parties below certify that the wording of this Agreement is identical to the wording specified in section 261.151 Appendix M as such regulations were constituted on the date set forth above.

[Signature of Grantor]
[Title]
Attest:
[Title]
[Seal]
[Signature of Trustee]
Attest:
[Title]
[Seal]

261.151. APPENDIX M-2

State of _____

County of _____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that they reside at [address], that they are [title] of [corporation], the corporation described in and which executed the above instrument; that they know the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that they signed their name thereto by like order.

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[Signature of Notary Public]

Add 61-79.261 Subpart I to read:

Subpart I: Use and Management of Containers

261.170. Applicability.

This subpart applies to hazardous secondary materials excluded under the remanufacturing exclusion at section 261.4(a)(27) and stored in containers.

261.171. Condition of containers.

If a container holding hazardous secondary material is not in good condition (e.g., severe rusting, apparent structural defects) or if it begins to leak, the hazardous secondary material must be transferred from this container to a container that is in good condition or managed in some other way that complies with the requirements of this part.

261.172. Compatibility of hazardous secondary materials with containers.

The container must be made of or lined with materials which will not react with, and are otherwise compatible with, the hazardous secondary material to be stored, so that the ability of the container to contain the material is not impaired.

261.173. Management of containers.

(a) A container holding hazardous secondary material must always be closed during storage, except when it is necessary to add or remove the hazardous secondary material.

(b) A container holding hazardous secondary material must not be opened, handled, or stored in a manner which may rupture the container or cause it to leak.

261.175. Containment.

(a) Container storage areas must have a containment system that is designed and operated in accordance with paragraph (b) of this section.

(b) A containment system must be designed and operated as follows:

(1) A base must underlie the containers which is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed;

(2) The base must be sloped or the containment system must be otherwise designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation, unless the containers are elevated or are otherwise protected from contact with accumulated liquids;

(3) The containment system must have sufficient capacity to contain ten (10) percent of the volume of containers or the volume of the largest container, whichever is greater.

(4) Run-on into the containment system must be prevented unless the collection system has sufficient excess capacity in addition to that required in paragraph (b)(3) of this section to contain any run-on which might enter the system; and

(5) Spilled or leaked material and accumulated precipitation must be removed from the sump or collection area in as timely a manner as is necessary to prevent overflow of the collection system.

261.176. Special requirements for ignitable or reactive hazardous secondary material.

Containers holding ignitable or reactive hazardous secondary material must be located at least fifteen (15) meters (50 feet) from the facility's property line.

261.177. Special requirements for incompatible materials.

(a) Incompatible materials must not be placed in the same container.

(b) Hazardous secondary material must not be placed in an unwashed container that previously held an incompatible material.

(c) A storage container holding a hazardous secondary material that is incompatible with any other materials stored nearby must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

261.179. Air emission standards.

The remanufacturer or other person that stores or treats the hazardous secondary material shall manage all hazardous secondary material placed in a container in accordance with the applicable requirements of R.61-79.261 subparts AA, BB, and CC.

Add 61-79.261 Subpart J to read:

SUBPART J: Tank Systems

261.190. Applicability.

(a) The requirements of this subpart apply to tank systems for storing or treating hazardous secondary material excluded under the remanufacturing exclusion at section 261.4(a)(27).

(b) Tank systems, including sumps, as defined in section 260.10, that serve as part of a secondary containment system to collect or contain releases of hazardous secondary materials are exempted from the requirements in section 261.193(a).

261.191. Assessment of existing tank system's integrity.

(a) Tank systems must meet the secondary containment requirements of section 261.193, or the remanufacturer or other person that handles the hazardous secondary material must determine that the tank system is not leaking or is unfit for use. Except as provided in paragraph (c) of this section, a written assessment reviewed and certified by a qualified Professional Engineer must be kept on file at the remanufacturer's facility or other facility that stores or treats the hazardous secondary material that attests to the tank system's integrity.

(b) This assessment must determine that the tank system is adequately designed and has sufficient structural strength and compatibility with the material(s) to be stored or treated, to ensure that it will not collapse, rupture, or fail. At a minimum, this assessment must consider the following:

- (1) Design standard(s), if available, according to which the tank and ancillary equipment were constructed;
- (2) Hazardous characteristics of the material(s) that have been and will be handled;

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- (3) Existing corrosion protection measures;
- (4) Documented age of the tank system, if available (otherwise, an estimate of the age); and
- (5) Results of a leak test, internal inspection, or other tank integrity examination such that:

(i) For non-enterable underground tanks, the assessment must include a leak test that is capable of taking into account the effects of temperature variations, tank end deflection, vapor pockets, and high water table effects; and

(ii) For other than non-enterable underground tanks and for ancillary equipment, this assessment must include either a leak test, as described above, or other integrity examination that is certified by a qualified Professional Engineer that addresses cracks, leaks, corrosion, and erosion.

Note to paragraph (b)(5)(ii): The practices described in the American Petroleum Institute (API) Publication, Guide for Inspection of Refinery Equipment, Chapter XIII, "Atmospheric and Low-Pressure Storage Tanks," 4th edition, 1981, may be used, where applicable, as guidelines in conducting other than a leak test.

(c) If, as a result of the assessment conducted in accordance with paragraph (a) of this section, a tank system is found to be leaking or unfit for use, the remanufacturer or other person that stores or treats the hazardous secondary material must comply with the requirements of section 261.196.

261.192. [Reserved]

261.193. Containment and detection of releases.

(a) Secondary containment systems must be:

(1) Designed, installed, and operated to prevent any migration of materials or accumulated liquid out of the system to the soil, ground water, or surface water at any time during the use of the tank system; and

(2) Capable of detecting and collecting releases and accumulated liquids until the collected material is removed.

Note to paragraph (a): If the collected material is a hazardous waste under R.61-79.261, it is subject to management as a hazardous waste in accordance with all applicable requirements of R.61-79.262 through 265, 266, and 268. If the collected material is discharged through a point source to waters of the United States, it is subject to the requirements of sections 301, 304, and 402 of the Clean Water Act, as amended. If discharged to a Publicly Owned Treatment Works (POTW), it is subject to the requirements of section 307 of the Clean Water Act, as amended. If the collected material is released to the environment, it may be subject to the reporting requirements of 40 CFR part 302.

(b) To meet the requirements of paragraph (a) of this section, secondary containment systems must be at a minimum:

(1) Constructed of or lined with materials that are compatible with the materials(s) to be placed in the tank system and must have sufficient strength and thickness to prevent failure owing to pressure gradients (including static head and external hydrological forces), physical contact with the material to which it is exposed, climatic conditions, and the stress of daily operation (including stresses from nearby vehicular traffic);

(2) Placed on a foundation or base capable of providing support to the secondary containment system, resistance to pressure gradients above and below the system, and capable of preventing failure due to settlement, compression, or uplift;

(3) Provided with a leak-detection system that is designed and operated so that it will detect the failure of either the primary or secondary containment structure or the presence of any release of hazardous secondary material or accumulated liquid in the secondary containment system at the earliest practicable time; and

(4) Sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. Spilled or leaked material and accumulated precipitation must be removed from the secondary containment system within twenty-four (24) hours, or in as timely a manner as is possible to prevent harm to human health and the environment.

(c) Secondary containment for tanks must include one (1) or more of the following devices:

(1) A liner (external to the tank);

(2) A vault; or

(3) A double-walled tank.

(d) In addition to the requirements of paragraphs (a), (b), and (c) of this section, secondary containment systems must satisfy the following requirements:

(1) External liner systems must be:

(i) Designed or operated to contain one hundred (100) percent of the capacity of the largest tank within its boundary;

(ii) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a twenty-five-year, twenty-four-hour rainfall event.

(iii) Free of cracks or gaps; and

(iv) Designed and installed to surround the tank completely and to cover all surrounding earth likely to come into contact with the material if the material is released from the tank(s) (i.e., capable of preventing lateral as well as vertical migration of the material).

(2) Vault systems must be:

(i) Designed or operated to contain one hundred (100) percent of the capacity of the largest tank within its boundary;

(ii) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity must be sufficient to contain precipitation from a twenty-five-year, twenty-four-hour rainfall event;

(iii) Constructed with chemical-resistant water stops in place at all joints (if any);

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(iv) Provided with an impermeable interior coating or lining that is compatible with the stored material and that will prevent migration of material into the concrete;

(v) Provided with a means to protect against the formation of and ignition of vapors within the vault, if the material being stored or treated is ignitable or reactive; and

(vi) Provided with an exterior moisture barrier or be otherwise designed or operated to prevent migration of moisture into the vault if the vault is subject to hydraulic pressure.

(3) Double-walled tanks must be:

(i) Designed as an integral structure (i.e., an inner tank completely enveloped within an outer shell) so that any release from the inner tank is contained by the outer shell;

(ii) Protected, if constructed of metal, from both corrosion of the primary tank interior and of the external surface of the outer shell; and

(iii) Provided with a built-in continuous leak detection system capable of detecting a release within twenty-four (24) hours, or at the earliest practicable time.

Note to paragraph (d)(3): The provisions outlined in the Steel Tank Institute's (STI) "Standard for Dual Wall Underground Steel Storage Tanks" may be used as guidelines for aspects of the design of underground steel double-walled tanks.

(e) [Reserved]

(f) Ancillary equipment must be provided with secondary containment (e.g., trench, jacketing, double-walled piping) that meets the requirements of paragraphs (a) and (b) of this section except for:

(1) Aboveground piping (exclusive of flanges, joints, valves, and other connections) that are visually inspected for leaks on a daily basis;

(2) Welded flanges, welded joints, and welded connections that are visually inspected for leaks on a daily basis;

(3) Sealless or magnetic coupling pumps and sealless valves that are visually inspected for leaks on a daily basis; and

(4) Pressurized aboveground piping systems with automatic shut-off devices (e.g., excess flow check valves, flow metering shutdown devices, loss of pressure actuated shut-off devices) that are visually inspected for leaks on a daily basis.

261.194. General operating requirements.

(a) Hazardous secondary materials or treatment reagents must not be placed in a tank system if they could cause the tank, its ancillary equipment, or the containment system to rupture, leak, corrode, or otherwise fail.

(b) The remanufacturer or other person that stores or treats the hazardous secondary material must use appropriate controls and practices to prevent spills and overflows from tank or containment systems. These include at a minimum:

(1) Spill prevention controls (e.g., check valves, dry disconnect couplings);

(2) Overfill prevention controls (e.g., level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standby tank); and

(3) Maintenance of sufficient freeboard in uncovered tanks to prevent overtopping by wave or wind action or by precipitation.

(c) The remanufacturer or other person that stores or treats the hazardous secondary material must comply with the requirements of section 261.196 if a leak or spill occurs in the tank system.

261.195. [Reserved]

261.196. Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.

A tank system or secondary containment system from which there has been a leak or spill, or which is unfit for use, must be removed from service immediately, and the remanufacturer or other person that stores or treats the hazardous secondary material must satisfy the following requirements:

(a) Cessation of use; prevent flow or addition of materials. The remanufacturer or other person that stores or treats the hazardous secondary material must immediately stop the flow of hazardous secondary material into the tank system or secondary containment system and inspect the system to determine the cause of the release.

(b) Removal of material from tank system or secondary containment system.

(1) If the release was from the tank system, the remanufacturer or other person that stores or treats the hazardous secondary material must, within twenty-four (24) hours after detection of the leak or, if the remanufacturer or other person that stores or treats the hazardous secondary material demonstrates that it is not possible, at the earliest practicable time, remove as much of the material as is necessary to prevent further release of hazardous secondary material to the environment and to allow inspection and repair of the tank system to be performed.

(2) If the material released was to a secondary containment system, all released materials must be removed within twenty-four (24) hours or in as timely a manner as is possible to prevent harm to human health and the environment.

(c) Containment of visible releases to the environment. The remanufacturer or other person that stores or treats the hazardous secondary material must immediately conduct a visual inspection of the release and, based upon that inspection:

(1) Prevent further migration of the leak or spill to soils or surface water; and

(2) Remove, and properly dispose of, any visible contamination of the soil or surface water.

(d) Notifications, reports.

(1) Any release to the environment, except as provided in paragraph (d)(2) of this section, must be reported to the Department within twenty-four (24) hours of its detection. If the release has been reported pursuant to 40 CFR part 302, that report will satisfy this requirement.

(2) A leak or spill of hazardous secondary material is exempted from the requirements of this paragraph if it is:

(i) Less than or equal to a quantity of one (1) pound, and

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(ii) Immediately contained and cleaned up.

(3) Within thirty (30) days of detection of a release to the environment, a report containing the following information must be submitted to the Department:

(i) Likely route of migration of the release;

(ii) Characteristics of the surrounding soil (soil composition, geology, hydrogeology, climate);

(iii) Results of any monitoring or sampling conducted in connection with the release (if available). If sampling or monitoring data relating to the release are not available within thirty (30) days, these data must be submitted to the Department as soon as they become available.

(iv) Proximity to downgradient drinking water, surface water, and populated areas; and

(v) Description of response actions taken or planned.

(e) Provision of secondary containment, repair, or closure.

(1) Unless the remanufacturer or other person that stores or treats the hazardous secondary material satisfies the requirements of paragraphs (e)(2) through (4) of this section, the tank system must cease to operate under the remanufacturing exclusion at section 261.4(a)(27).

(2) If the cause of the release was a spill that has not damaged the integrity of the system, the remanufacturer or other person that stores or treats the hazardous secondary material may return the system to service as soon as the released material is removed and repairs, if necessary, are made.

(3) If the cause of the release was a leak from the primary tank system into the secondary containment system, the system must be repaired prior to returning the tank system to service.

(4) If the source of the release was a leak to the environment from a component of a tank system without secondary containment, the remanufacturer or other person that stores or treats the hazardous secondary material must provide the component of the system from which the leak occurred with secondary containment that satisfies the requirements of section 261.193 before it can be returned to service, unless the source of the leak is an aboveground portion of a tank system that can be inspected visually. If the source is an aboveground component that can be inspected visually, the component must be repaired and may be returned to service without secondary containment as long as the requirements of paragraph (f) of this section are satisfied. Additionally, if a leak has occurred in any portion of a tank system component that is not readily accessible for visual inspection (e.g., the bottom of an inground or onground tank), the entire component must be provided with secondary containment in accordance with section 261.193 of this subpart prior to being returned to use.

(f) Certification of major repairs. If the remanufacturer or other person that stores or treats the hazardous secondary material has repaired a tank system in accordance with paragraph (e) of this section, and the repair has been extensive (e.g., installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the remanufacturer or other person that stores or treats the hazardous secondary material has obtained a certification by a qualified Professional Engineer that the repaired system is capable of handling hazardous secondary materials without release for the intended life of the system. This certification must be kept on file at the facility and maintained until closure of the facility.

Note 1 to section 261.196: EPA may, on the basis of any information received that there is or has been a release of hazardous secondary material or hazardous constituents into the environment, issue an order under RCRA

section 7003(a) requiring corrective action or such other response as deemed necessary to protect human health or the environment.

Note 2 to section 261.196: 40 CFR part 302 may require the owner or operator to notify the National Response Center of certain releases.

261.197. Termination of remanufacturing exclusion.

Hazardous secondary material stored in units more than ninety (90) days after the unit ceases to operate under the remanufacturing exclusion at section 261.4(a)(27) or otherwise ceases to be operated for manufacturing, or for storage of a product or a raw material, then becomes subject to regulation as hazardous waste under R.61-79.124, 261 through 266, 268, 270, and 271, as applicable.

261.198. Special requirements for ignitable or reactive materials.

(a) Ignitable or reactive material must not be placed in tank systems, unless the material is stored or treated in such a way that it is protected from any material or conditions that may cause the material to ignite or react.

(b) The remanufacturer or other person that stores or treats hazardous secondary material which is ignitable or reactive must store or treat the hazardous secondary material in a tank that is in compliance with the requirements for the maintenance of protective distances between the material management area and any public ways, streets, alleys, or an adjoining property line that can be built upon as required in Tables 2-1 through 2-6 of the National Fire Protection Association’s “Flammable and Combustible Liquids Code,” (1977 or 1981), (incorporated by reference, see section 260.11).

261.199. Special requirements for incompatible materials.

(a) Incompatible materials must not be placed in the same tank system.

(b) Hazardous secondary material must not be placed in a tank-system that has not been decontaminated and that previously held an incompatible material.

261.200. Air emission standards.

The remanufacturer or other person that stores or treats the hazardous secondary material shall manage all hazardous secondary material placed in a tank in accordance with the applicable requirements of R.61-79.261 subparts AA, BB, and CC.

Add 61-79.261 Subpart K and reserve:

Subpart K: [Reserved]

Add 61-79.261 Subpart L and reserve:

Subpart L: [Reserved]

Add 61-79.261 Subpart M to read:

SUBPART M: Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials

261.400. Applicability.

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The requirements of this subpart apply to those areas of an entity managing hazardous secondary materials excluded under section 261.4(a)(23) and/or (24) where hazardous secondary materials are generated or accumulated on site.

(a) A generator of hazardous secondary material, or an intermediate or reclamation facility that accumulates six thousand (6000) kilograms or less of hazardous secondary material at any time must comply with sections 261.410 and 261.411.

(b) A generator of hazardous secondary material, or an intermediate or reclamation facility that accumulates more than six thousand (6000) kilograms of hazardous secondary material at any time must comply with sections 261.410 and 261.420.

261.410. Preparedness and prevention.

(a) Maintenance and operation of facility. Facilities generating or accumulating hazardous secondary material must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous secondary materials or hazardous secondary material constituents to air, soil, or surface water which could threaten human health or the environment.

(b) Required equipment. All facilities generating or accumulating hazardous secondary material must be equipped with the following, unless none of the hazards posed by hazardous secondary material handled at the facility could require a particular kind of equipment specified below:

(1) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;

(2) A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or state or local emergency response teams;

(3) Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment, and decontamination equipment; and

(4) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

(c) Testing and maintenance of equipment. All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, must be tested and maintained as necessary to assure its proper operation in time of emergency.

(d) Access to communications or alarm system.

(1) Whenever hazardous secondary material is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required under paragraph (b) of this section.

(2) If there is ever just one (1) employee on the premises while the facility is operating, a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, must be immediately accessible unless such a device is not required under paragraph (b) of this section.

(e) Required aisle space. The hazardous secondary material generator or intermediate or reclamation facility must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

(f) Arrangements with local authorities.

(1) The hazardous secondary material generator or an intermediate or reclamation facility must attempt to make the following arrangements, as appropriate for the type of waste handled at the facility and the potential need for the services of these organizations:

(i) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous secondary material handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes;

(ii) Where more than one (1) police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority;

(iii) Agreements with state emergency response teams, emergency response contractors, and equipment suppliers; and

(iv) Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

(2) Where state or local authorities decline to enter into such arrangements, the hazardous secondary material generator or an intermediate or reclamation facility must document the refusal in the operating record.

261.411. Emergency procedures for facilities generating or accumulating 6000 kilograms or less of hazardous secondary material.

A generator or an intermediate or reclamation facility that generates or accumulates six thousand (6000) kilograms or less of hazardous secondary material must comply with the following requirements:

(a) At all times there must be at least one (1) employee either on the premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures specified in paragraph (d) of this section. This employee is the emergency coordinator.

(b) The generator or intermediate or reclamation facility must post the following information next to the telephone:

- (1) The name and telephone number of the emergency coordinator;
- (2) Location of fire extinguishers and spill control material, and, if present, fire alarm; and
- (3) The telephone number of the fire department, unless the facility has a direct alarm.

(c) The generator or an intermediate or reclamation facility must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies;

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(d) The emergency coordinator or his designee must respond to any emergencies that arise. The applicable responses are as follows:

(1) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher;

(2) In the event of a spill, contain the flow of hazardous waste to the extent possible, and as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil;

(3) In the event of a fire, explosion, or other release which could threaten human health outside the facility or when the generator or an intermediate or reclamation facility has knowledge that a spill has reached surface water, the generator or an intermediate or reclamation facility must immediately notify the National Response Center (using their twenty-four-hour toll free number 800/424-8802). The report must include the following information:

(i) The name, address, and EPA Identification Number of the facility;

(ii) Date, time, and type of incident (e.g., spill or fire);

(iii) Quantity and type of hazardous waste involved in the incident;

(iv) Extent of injuries, if any; and

(v) Estimated quantity and disposition of recovered materials, if any.

261.420. Contingency planning and emergency procedures for facilities generating or accumulating more than 6000 kilograms of hazardous secondary material.

A generator or an intermediate or reclamation facility that generates or accumulates more than six thousand (6000) kilograms of hazardous secondary material must comply with the following requirements:

(a) Purpose and implementation of contingency plan.

(1) Each generator or an intermediate or reclamation facility that accumulates more than six thousand (6000) kilograms of hazardous secondary material must have a contingency plan for his facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous secondary material or hazardous secondary material constituents to air, soil, or surface water.

(2) The provisions of the plan must be carried out immediately whenever there is a fire, explosion, or release of hazardous secondary material or hazardous secondary material constituents which could threaten human health or the environment.

(b) Content of contingency plan.

(1) The contingency plan must describe the actions facility personnel must take to comply with paragraphs (a) and (f) in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous secondary material or hazardous secondary material constituents to air, soil, or surface water at the facility.

(2) If the generator or an intermediate or reclamation facility accumulating more than six thousand (6000) kg of hazardous secondary material has already prepared a Spill Prevention, Control, and Countermeasure (SPCC) Plan in accordance with part 112 of this chapter, or some other emergency or contingency plan, they need only to amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this part. The hazardous secondary material generator or an intermediate or

reclamation facility may develop one (1) contingency plan which meets all regulatory requirements. EPA recommends that the plan be based on the National Response Team’s Integrated Contingency Plan Guidance (“One Plan”). When modifications are made to non-South Carolina Hazardous Waste Management provisions in an integrated contingency plan, the changes do not trigger the need for a South Carolina Hazardous Waste Management permit modification.

(3) The plan must describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and state and local emergency response teams to coordinate emergency services, pursuant to section 262.410(f).

(4) The plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see paragraph (e) of this section), and this list must be kept up-to-date. Where more than one (1) person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.

(5) The plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(6) The plan must include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).

(c) Copies of contingency plan. A copy of the contingency plan and all revisions to the plan must be:

(1) Maintained at the facility; and

(2) Submitted to all local police departments, fire departments, hospitals, and state and local emergency response teams that may be called upon to provide emergency services.

(d) Amendment of contingency plan. The contingency plan must be reviewed, and immediately amended, if necessary, whenever:

(1) Applicable regulations are revised;

(2) The plan fails in an emergency;

(3) The facility changes—in its design, construction, operation, maintenance, or other circumstances—in a way that materially increases the potential for fires, explosions, or releases of hazardous secondary material or hazardous secondary material constituents, or changes the response necessary in an emergency;

(4) The list of emergency coordinators changes; or

(5) The list of emergency equipment changes.

(e) Emergency coordinator. At all times, there must be at least one (1) employee either on the facility premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility’s contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility

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layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan. The emergency coordinator's responsibilities are more specified in paragraph (f). Applicable responsibilities for the emergency coordinator vary, depending on factors such as type and variety of hazardous secondary material(s) handled by the facility, and type and complexity of the facility.

(f) Emergency procedures.

(1) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or the designee when the emergency coordinator is on call) must immediately:

(i) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

(ii) Notify appropriate state or local agencies with designated response roles if their help is needed.

(2) Whenever there is a release, fire, or explosion, the emergency coordinator must immediately identify the character, exact source, amount, and areal extent of any released materials. This may be done by observation or review of facility records or manifests and, if necessary, by chemical analysis.

(3) Concurrently, the emergency coordinator must assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment must consider both direct and indirect effects of the release, fire, or explosion (e.g., the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-offs from water or chemical agents used to control fire and heat-induced explosions).

(4) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment, outside the facility, the findings must be reported as follows:

(i) If the assessment indicates that evacuation of local areas may be advisable, appropriate local authorities must be immediately notified. The emergency coordinator must be available to help appropriate officials decide whether local areas should be evacuated; and

(ii) The government official designated as the on-scene coordinator for that geographical area or the National Response Center (using their twenty-four (24)-hour toll free number 800/424-8802) must be immediately notified. The report must include:

(A) Name and telephone number of reporter;

(B) Name and address of facility;

(C) Time and type of incident (e.g., release, fire);

(D) Name and quantity of material(s) involved, to the extent known;

(E) The extent of injuries, if any; and

(F) The possible hazards to human health, or the environment, outside the facility.

(5) During an emergency, the emergency coordinator must take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous secondary material at the facility. These measures must include, where applicable, stopping processes and operations, collecting and containing released material, and removing or isolating containers.

(6) If the facility stops operations in response to a fire, explosion or release, the emergency coordinator must monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

(7) Immediately after an emergency, the emergency coordinator must provide for treating, storing, or disposing of recovered secondary material, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility. Unless the hazardous secondary material generator can demonstrate, in accordance with section 261.3(c) or (d), that the recovered material is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of R.61-79.262, 263, and 265.

(8) The emergency coordinator must ensure that, in the affected area(s) of the facility:

(i) No secondary material that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed; and

(ii) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(9) The hazardous secondary material generator must note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within fifteen (15) days after the incident, a written report must be submitted on the incident to the Department. The report must include:

(i) Name, address, and telephone number of the hazardous secondary material generator;

(ii) Name, address, and telephone number of the facility;

(iii) Date, time, and type of incident (e.g., fire, explosion);

(iv) Name and quantity of material(s) involved;

(v) The extent of injuries, if any;

(vi) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and

(vii) Estimated quantity and disposition of recovered material that resulted from the incident.

Add 61-79.261 Subparts N to Z and reserve:

Subpart N-Z: [Reserved]

Add 61-79.261 Subpart AA to read:

Subpart AA: Air Emission Standards for Process Vents

261.1030. Applicability.

The regulations in this subpart apply to process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or stream stripping operations that manage hazardous secondary materials excluded under the remanufacturing exclusion at section 261.4(a)(27) with concentrations of at least ten (10) parts per million by weight (ppmw), unless the process vents are equipped with operating air emission controls

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in accordance with the requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63.

261.1031. Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the South Carolina Hazardous Waste Management Act and R.61-79.260 through 266.

“Air stripping operation” is a desorption operation employed to transfer one (1) or more volatile components from a liquid mixture into a gas (air) either with or without the application of heat to the liquid. Packed towers, spray towers, and bubble-cap, sieve, or valve-type plate towers are among the process configurations used for contacting the air and a liquid.

“Bottoms receiver” means a container or tank used to receive and collect the heavier bottoms fractions of the distillation feed stream that remain in the liquid phase.

“Closed-vent system” means a system that is not open to the atmosphere and that is composed of piping, connections, and, if necessary, flow-inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device.

“Condenser” means a heat-transfer device that reduces a thermodynamic fluid from its vapor phase to its liquid phase.

“Connector” means flanged, screwed, welded, or other joined fittings used to connect two (2) pipelines or a pipeline and a piece of equipment. For the purposes of reporting and recordkeeping, connector means flanged fittings that are not covered by insulation or other materials that prevent location of the fittings.

“Continuous recorder” means a data-recording device recording an instantaneous data value at least once every fifteen (15) minutes.

“Control device” means an enclosed combustion device, vapor recovery system, or flare. Any device the primary function of which is the recovery or capture of solvents or other organics for use, reuse, or sale (e.g., a primary condenser on a solvent recovery unit) is not a control device.

“Control device shutdown” means the cessation of operation of a control device for any purpose.

“Distillate receiver” means a container or tank used to receive and collect liquid material (condensed) from the overhead condenser of a distillation unit and from which the condensed liquid is pumped to larger storage tanks or other process units.

“Distillation operation” means an operation, either batch or continuous, separating one (1) or more feed stream(s) into two (2) or more exit streams, each exit stream having component concentrations different from those in the feed stream(s). The separation is achieved by the redistribution of the components between the liquid and vapor phase as they approach equilibrium within the distillation unit.

“Double block and bleed system” means two (2) block valves connected in series with a bleed valve or line that can vent the line between the two (2) block valves.

“Equipment” means each valve, pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, or flange or other connector, and any control devices or systems required by this subpart.

“Flame zone” means the portion of the combustion chamber in a boiler occupied by the flame envelope.

“Flow indicator” means a device that indicates whether gas flow is present in a vent stream.

“First attempt at repair” means to take rapid action for the purpose of stopping or reducing leakage of organic material to the atmosphere using best practices.

“Fractionation operation” means a distillation operation or method used to separate a mixture of several volatile components of different boiling points in successive stages, each stage removing from the mixture some proportion of one (1) of the components.

“Hazardous secondary material management unit shutdown” means a work practice or operational procedure that stops operation of a hazardous secondary material management unit or part of a hazardous secondary material management unit. An unscheduled work practice or operational procedure that stops operation of a hazardous secondary material management unit or part of a hazardous secondary material management unit for less than twenty-four (24) hours is not a hazardous secondary material management unit shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping operation are not hazardous secondary material management unit shutdowns.

“Hot well” means a container for collecting condensate as in a steam condenser serving a vacuum-jet or steam-jet ejector.

“In gas/vapor service” means that the piece of equipment contains or contacts a hazardous secondary material stream that is in the gaseous state at operating conditions.

“In heavy liquid service” means that the piece of equipment is not in gas/vapor service or in light liquid service.

“In light liquid service” means that the piece of equipment contains or contacts a material stream where the vapor pressure of one (1) or more of the organic components in the stream is greater than 0.3 kilopascals (kPa) at twenty degrees Celsius (20°C), the total concentration of the pure organic components having a vapor pressure greater than 0.3 kilopascals (kPa) at twenty degrees Celsius (20°C) is equal to or greater than twenty (20) percent by weight, and the fluid is a liquid at operating conditions.

“In situ sampling systems” means nonextractive samplers or in-line samplers.

“In vacuum service” means that equipment is operating at an internal pressure that is at least five (5) kilopascals (kPa) below ambient pressure.

“Malfunction” means any sudden failure of a control device or a hazardous secondary material management unit, or failure of a hazardous secondary material management unit to operate in a normal or usual manner, so that organic emissions are increased.

“Open-ended valve or line” means any valve, except pressure relief valves, having one (1) side of the valve seat in contact with hazardous secondary material and one (1) side open to the atmosphere, either directly or through open piping.

“Pressure release” means the emission of materials resulting from the system pressure being greater than the set pressure of the pressure relief device.

“Process heater” means a device that transfers heat liberated by burning fuel to fluids contained in tubes, including all fluids except water that are heated to produce steam.

“Process vent” means any open-ended pipe or stack that is vented to the atmosphere either directly, through a vacuum-producing system, or through a tank (e.g., distillate receiver, condenser, bottoms receiver, surge

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control tank, separator tank, or hot well) associated with hazardous secondary material distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations.

“Repaired” means that equipment is adjusted, or otherwise altered, to eliminate a leak.

“Sampling connection system” means an assembly of equipment within a process or material management unit used during periods of representative operation to take samples of the process or material fluid. Equipment used to take non-routine grab samples is not considered a sampling connection system.

“Sensor” means a device that measures a physical quantity or the change in a physical quantity, such as temperature, pressure, flow rate, pH, or liquid level.

“Separator tank” means a device used for separation of two (2) immiscible liquids.

“Solvent extraction operation” means an operation or method of separation in which a solid or solution is contacted with a liquid solvent (the two being mutually insoluble) to preferentially dissolve and transfer one (1) or more components into the solvent.

“Startup” means the setting in operation of a hazardous secondary material management unit or control device for any purpose.

“Steam stripping operation” means a distillation operation in which vaporization of the volatile constituents of a liquid mixture takes place by the introduction of steam directly into the charge.

“Surge control tank” means a large-sized pipe or storage reservoir sufficient to contain the surging liquid discharge of the process tank to which it is connected.

“Thin-film evaporation operation” means a distillation operation that employs a heating surface consisting of a large diameter tube that may be either straight or tapered, horizontal or vertical. Liquid is spread on the tube wall by a rotating assembly of blades that maintain a close clearance from the wall or actually ride on the film of liquid on the wall.

“Vapor incinerator” means any enclosed combustion device that is used for destroying organic compounds and does not extract energy in the form of steam or process heat.

“Vented” means discharged through an opening, typically an open-ended pipe or stack, allowing the passage of a stream of liquids, gases, or fumes into the atmosphere. The passage of liquids, gases, or fumes is caused by mechanical means such as compressors or vacuum-producing systems or by process-related means such as evaporation produced by heating and not caused by tank loading and unloading (working losses) or by natural means such as diurnal temperature changes.

261.1032. Standards: Process vents.

(a) The remanufacturer or other person that stores or treats hazardous secondary materials in hazardous secondary material management units with process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations managing hazardous secondary material with organic concentrations of at least ten (10) parts per million by weight (ppmw) shall either:

(1) Reduce total organic emissions from all affected process vents at the facility below 1.4 kilograms/hour (3 lbs/h) and 2.8 Megagram/year (3.1 tons/yr), or

(2) Reduce, by use of a control device, total organic emissions from all affected process vents at the facility by ninety-five (95) weight percent.

(b) If the remanufacturer or other person that stores or treats the hazardous secondary material installs a closed-vent system and control device to comply with the provisions of paragraph (a) of this section the closed-vent system and control device must meet the requirements of section 261.1033.

(c) Determinations of vent emissions and emission reductions or total organic compound concentrations achieved by add-on control devices may be based on engineering calculations or performance tests. If performance tests are used to determine vent emissions, emission reductions, or total organic compound concentrations achieved by add-on control devices, the performance tests must conform with the requirements of section 261.1034(c).

(d) When a remanufacturer or other person that stores or treats the hazardous secondary material and the Department do not agree on determinations of vent emissions and/or emission reductions or total organic compound concentrations achieved by add-on control devices based on engineering calculations, the procedures in section 261.1034(c) shall be used to resolve the disagreement.

261.1033. Standards: Closed-vent systems and control devices.

(a)(1) The remanufacturer or other person that stores or treats the hazardous secondary materials in hazardous secondary material management units using closed-vent systems and control devices used to comply with provisions of this part shall comply with the provisions of this section.

(2) [Reserved]

(b) A control device involving vapor recovery (e.g., a condenser or adsorber) shall be designed and operated to recover the organic vapors vented to it with an efficiency of ninety-five (95) weight percent or greater unless the total organic emission limits of section 261.1032(a)(1) for all affected process vents can be attained at an efficiency less than ninety-five (95) weight percent.

(c) An enclosed combustion device (e.g., a vapor incinerator, boiler, or process heater) shall be designed and operated to reduce the organic emissions vented to it by ninety-five (95) weight percent or greater; to achieve a total organic compound concentration of twenty (20) ppmv, expressed as the sum of the actual compounds, not carbon equivalents, on a dry basis corrected to three (3) percent oxygen; or to provide a minimum residence time of 0.50 seconds at a minimum temperature of seven hundred and sixty degrees Celsius (760°C). If a boiler or process heater is used as the control device, then the vent stream shall be introduced into the flame zone of the boiler or process heater.

(d)(1) A flare shall be designed for and operated with no visible emissions as determined by the methods specified in paragraph (e)(1) of this section, except for periods not to exceed a total of five (5) minutes during any two (2) consecutive hours.

(2) A flare shall be operated with a flame present at all times, as determined by the methods specified in paragraph (f)(2)(iii) of this section.

(3) A flare shall be used only if the net heating value of the gas being combusted is 11.2 megajoules (MJ)/standard cubic meter (scm) (300 British thermal units (Btu)/standard cubic foot (scf)) or greater if the flare is steam-assisted or air-assisted; or if the net heating value of the gas being combusted is 7.45 MJ/scm (200 Btu/scf) or greater if the flare is nonassisted. The net heating value of the gas being combusted shall be determined by the methods specified in paragraph (e)(2) of this section.

(4)(i) A steam-assisted or nonassisted flare shall be designed for and operated with an exit velocity, as determined by the methods specified in paragraph (e)(3) of this section, less than 18.3 meters/second (60 ft/s), except as provided in paragraphs (d)(4)(ii) and (iii) of this section.

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(ii) A steam-assisted or nonassisted flare designed for and operated with an exit velocity, as determined by the methods specified in paragraph (e)(3) of this section, equal to or greater than 18.3 m/s (60 ft/s) but less than 122 m/s (400 ft/s) is allowed if the net heating value of the gas being combusted is greater than 37.3 MJ/scm (1000 Btu/scf).

(iii) A steam-assisted or nonassisted flare designed for and operated with an exit velocity, as determined by the methods specified in paragraph (e)(3) of this section, less than the velocity, V_{\max} , as determined by the method specified in paragraph (e)(4) of this section and less than 122 m/s (400 ft/s) is allowed.

(5) An air-assisted flare shall be designed and operated with an exit velocity less than the velocity, V_{\max} , as determined by the method specified in paragraph (e)(5) of this section.

(6) A flare used to comply with this section shall be steam-assisted, air-assisted, or nonassisted.

(e)(1) Reference Method 22 in 40 CFR part 60 shall be used to determine the compliance of a flare with the visible emission provisions of this subpart. The observation period is two (2) hours and shall be used according to Method 22.

(2) The net heating value of the gas being combusted in a flare shall be calculated using the following equation:

$$H_T = K[\sum_{i=1}^n C_i H_i]$$

Where:

H_T = Net heating value of the sample, MJ/scm; where the net enthalpy per mole of offgas is based on combustion at twenty-five degrees Celsius (25°C) and 760 millimeters of Mercury (mm Hg), but the standard temperature for determining the volume corresponding to one (1) mol is 20°C;

K = constant, 1.74×10^{-7} (1/ppm) (g mol/scm) (MJ/kcal) where standard temperature for (g mol/scm) is 20°C;

C_i = Concentration of sample component "i" in ppm on a wet basis, as measured for organics by Reference Method 18 in 40 CFR part 60 and measured for hydrogen and carbon monoxide by ASTM D 1946-82 (incorporated by reference as specified in section 260.11); and

H_i = Net heat of combustion of sample component "i", kcal/9 mol at 25°C and 760 mm Hg. The heats of combustion may be determined using ASTM D 2382-83 (incorporated by reference as specified in section 260.11) if published values are not available or cannot be calculated.

(3) The actual exit velocity of a flare shall be determined by dividing the volumetric flow rate (in units of standard temperature and pressure), as determined by Reference Methods 2, 2A, 2C, or 2D in 40 CFR part 60 as appropriate, by the unobstructed (free) cross-sectional area of the flare tip.

(4) The maximum allowed velocity in m/s, V_{\max} , for a flare complying with paragraph (d)(4)(iii) of this section shall be determined by the following equation:

$$\text{Log}_{10}(V_{\max}) = (H_T + 28.8)/31.7$$

Where:

28.8 = constant,

31.7 = constant,

H_T = The net heating value as determined in paragraph (e)(2) of this section.

(5) The maximum allowed velocity in m/s, V_{max} , for an air-assisted flare shall be determined by the following equation:

$$V_{max} = 8.706 + 0.7084 (H_T)$$

Where:

8.706 = constant,

0.7084 = constant,

H_T = The net heating value as determined in paragraph (e)(2) of this section.

(f) The remanufacturer or other person that stores or treats the hazardous secondary material shall monitor and inspect each control device required to comply with this section to ensure proper operation and maintenance of the control device by implementing the following requirements:

(1) Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow indicator that provides a record of vent stream flow from each affected process vent to the control device at least once every hour. The flow indicator sensor shall be installed in the vent stream at the nearest feasible point to the control device inlet but before the point at which the vent streams are combined.

(2) Install, calibrate, maintain, and operate according to the manufacturer's specifications a device to continuously monitor control device operation as specified below:

(i) For a thermal vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall have an accuracy of ± 1 percent of the temperature being monitored in degrees Celsius ($^{\circ}\text{C}$) or ± 0.5 degrees Celsius ($^{\circ}\text{C}$), whichever is greater. The temperature sensor shall be installed at a location in the combustion chamber downstream of the combustion zone.

(ii) For a catalytic vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature at two locations and have an accuracy of ± 1 (one) percent of the temperature being monitored in degrees Celsius ($^{\circ}\text{C}$) or ± 0.5 degrees Celsius ($^{\circ}\text{C}$), whichever is greater. One temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed inlet and a second temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed outlet.

(iii) For a flare, a heat sensing monitoring device equipped with a continuous recorder that indicates the continuous ignition of the pilot flame.

(iv) For a boiler or process heater having a design heat input capacity less than forty-four (44) Megawatts (MW), a temperature monitoring device equipped with a continuous recorder. The device shall have an accuracy of ± 1 (one) percent of the temperature being monitored in degrees Celsius ($^{\circ}\text{C}$) or ± 0.5 degrees Celsius ($^{\circ}\text{C}$), whichever is greater. The temperature sensor shall be installed at a location in the furnace downstream of the combustion zone.

(v) For a boiler or process heater having a design heat input capacity greater than or equal to forty-four (44) MW, a monitoring device equipped with a continuous recorder to measure a parameter(s) that indicates good combustion operating practices are being used.

(vi) For a condenser, either:

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(A) A monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the condenser, or

(B) A temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature with an accuracy of ± 1 (one) percent of the temperature being monitored in degrees Celsius ($^{\circ}\text{C}$) or ± 0.5 degrees Celsius ($^{\circ}\text{C}$), whichever is greater. The temperature sensor shall be installed at a location in the exhaust vent stream from the condenser exit (i.e., product side).

(vii) For a carbon adsorption system that regenerates the carbon bed directly in the control device such as a fixed-bed carbon adsorber, either:

(A) A monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the carbon bed, or

(B) A monitoring device equipped with a continuous recorder to measure a parameter that indicates the carbon bed is regenerated on a regular, predetermined time cycle.

(3) Inspect the readings from each monitoring device required by paragraphs (f)(1) and (2) of this section at least once each operating day to check control device operation and, if necessary, immediately implement the corrective measures necessary to ensure the control device operates in compliance with the requirements of this section.

(g) A remanufacturer or other person that stores or treats hazardous secondary material in a hazardous secondary material management unit using a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly onsite in the control device shall replace the existing carbon in the control device with fresh carbon at a regular, predetermined time interval that is no longer than the carbon service life established as a requirement of section 261.1035(b)(4)(iii)(F).

(h) A remanufacturer or other person that stores or treats hazardous secondary material in a hazardous secondary material management unit using a carbon adsorption system such as a carbon canister that does not regenerate the carbon bed directly onsite in the control device shall replace the existing carbon in the control device with fresh carbon on a regular basis by using one of the following procedures:

(1) Monitor the concentration level of the organic compounds in the exhaust vent stream from the carbon adsorption system on a regular schedule, and replace the existing carbon with fresh carbon immediately when carbon breakthrough is indicated. The monitoring frequency shall be daily or at an interval no greater than twenty (20) percent of the time required to consume the total carbon working capacity established as a requirement of section 261.1035(b)(4)(iii)(G), whichever is longer.

(2) Replace the existing carbon with fresh carbon at a regular, predetermined time interval that is less than the design carbon replacement interval established as a requirement of section 261.1035(b)(4)(iii)(G).

(i) An alternative operational or process parameter may be monitored if it can be demonstrated that another parameter will ensure that the control device is operated in conformance with these standards and the control device's design specifications.

(j) A remanufacturer or other person that stores or treats hazardous secondary material at an affected facility seeking to comply with the provisions of this part by using a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system is required to develop documentation including sufficient information to describe the control device operation and identify the process parameter or parameters that indicate proper operation and maintenance of the control device.

(k) A closed-vent system shall meet either of the following design requirements:

(1) A closed-vent system shall be designed to operate with no detectable emissions, as indicated by an instrument reading of less than five hundred (500) ppmv above background as determined by the procedure in section 261.1034(b) of this subpart, and by visual inspections; or

(2) A closed-vent system shall be designed to operate at a pressure below atmospheric pressure. The system shall be equipped with at least one pressure gauge or other pressure measurement device that can be read from a readily accessible location to verify that negative pressure is being maintained in the closed-vent system when the control device is operating.

(l) The remanufacturer or other person that stores or treats the hazardous secondary material shall monitor and inspect each closed-vent system required to comply with this section to ensure proper operation and maintenance of the closed-vent system by implementing the following requirements:

(1) Each closed-vent system that is used to comply with paragraph (k)(1) of this section shall be inspected and monitored in accordance with the following requirements:

(i) An initial leak detection monitoring of the closed-vent system shall be conducted by the remanufacturer or other person that stores or treats the hazardous secondary material on or before the date that the system becomes subject to this section. The remanufacturer or other person that stores or treats the hazardous secondary material shall monitor the closed-vent system components and connections using the procedures specified in section 261.1034(b) to demonstrate that the closed-vent system operates with no detectable emissions, as indicated by an instrument reading of less than five hundred (500) ppmv above background.

(ii) After initial leak detection monitoring required in paragraph (l)(1)(i) of this section, the remanufacturer or other person that stores or treats the hazardous secondary material shall inspect and monitor the closed-vent system as follows:

(A) Closed-vent system joints, seams, or other connections that are permanently or semi-permanently sealed (e.g., a welded joint between two (2) sections of hard piping or a bolted and gasketed ducting flange) shall be visually inspected at least once per year to check for defects that could result in air pollutant emissions. The remanufacturer or other person that stores or treats the hazardous secondary material shall monitor a component or connection using the procedures specified in section 261.1034(b) of this subpart to demonstrate that it operates with no detectable emissions following any time the component is repaired or replaced (e.g., a section of damaged hard piping is replaced with new hard piping) or the connection is unsealed (e.g., a flange is unbolted).

(B) Closed-vent system components or connections other than those specified in paragraph (l)(1)(ii)(A) of this section shall be monitored annually and at other times as requested by the Department, except as provided for in paragraph (o) of this section, using the procedures specified in section 261.1034(b) to demonstrate that the components or connections operate with no detectable emissions.

(iii) In the event that a defect or leak is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect or leak in accordance with the requirements of paragraph (l)(3) of this section.

(iv) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection and monitoring in accordance with the requirements specified in section 261.1035.

(2) Each closed-vent system that is used to comply with paragraph (k)(2) of this section shall be inspected and monitored in accordance with the following requirements:

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(i) The closed-vent system shall be visually inspected by the remanufacturer or other person that stores or treats the hazardous secondary material to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in ductwork or piping or loose connections.

(ii) The remanufacturer or other person that stores or treats the hazardous secondary material shall perform an initial inspection of the closed-vent system on or before the date that the system becomes subject to this section. Thereafter, the remanufacturer or other person that stores or treats the hazardous secondary material shall perform the inspections at least once every year.

(iii) In the event that a defect or leak is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of paragraph (1)(3) of this section.

(iv) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection and monitoring in accordance with the requirements specified in section 261.1035.

(3) The remanufacturer or other person that stores or treats the hazardous secondary material shall repair all detected defects as follows:

(i) Detectable emissions, as indicated by visual inspection, or by an instrument reading greater than five hundred (500) ppmv above background, shall be controlled as soon as practicable, but not later than fifteen (15) days after the emission is detected, except as provided for in paragraph (1)(3)(ii) of this section.

(ii) A first attempt at repair shall be made no later than five (5) days after the emission is detected.

(iii) Delay of repair of a closed-vent system for which leaks have been detected is allowed if the repair is technically infeasible without a process unit shutdown, or if the remanufacturer or other person that stores or treats the hazardous secondary material determines that emissions resulting from immediate repair would be greater than the fugitive emissions likely to result from delay of repair. Repair of such equipment shall be completed by the end of the next process unit shutdown.

(iv) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the defect repair in accordance with the requirements specified in section 261.1035 of this subpart.

(m) Closed-vent systems and control devices used to comply with provisions of this subpart shall be operated at all times when emissions may be vented to them.

(n) The owner or operator using a carbon adsorption system to control air pollutant emissions shall document that all carbon that is a hazardous waste and that is removed from the control device is managed in one of the following manners, regardless of the average volatile organic concentration of the carbon:

(1) Regenerated or reactivated in a thermal treatment unit that meets one of the following:

(i) The owner or operator of the unit has been issued a final permit under R.61-79.270 which implements the requirements of 40 CFR 261 subpart X; or

(ii) The unit is equipped with and operating air emission controls in accordance with the applicable requirements of subparts AA and CC of either R.61-79.261 or 265; or

(iii) The unit is equipped with and operating air emission controls in accordance with a national emission standard for hazardous air pollutants under 40 CFR part 61 or 40 CFR part 63.

(2) Incinerated in a hazardous waste incinerator for which the owner or operator either:

(i) Has been issued a final permit under R.61-79.270 which implements the requirements of 40 CFR 261 subpart O; or

(ii) Has designed and operates the incinerator in accordance with the interim status requirements of 40 CFR 265 subpart O.

(3) Burned in a boiler or industrial furnace for which the owner or operator either:

(i) Has been issued a final permit under R.61-79.270 which implements the requirements of R.61-79.266 subpart H; or

(ii) Has designed and operates the boiler or industrial furnace in accordance with the interim status requirements of R.61-79.266 subpart H.

(o) Any components of a closed-vent system that are designated, as described in section 261.1035(c)(9) of this subpart, as unsafe to monitor are exempt from the requirements of paragraph (l)(1)(ii)(B) of this section if:

(1) The remanufacturer or other person that stores or treats the hazardous secondary material in a hazardous secondary material management unit using a closed-vent system determines that the components of the closed-vent system are unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with paragraph (l)(1)(ii)(B) of this section; and

(2) The remanufacturer or other person that stores or treats the hazardous secondary material in a hazardous secondary material management unit using a closed-vent system adheres to a written plan that requires monitoring the closed-vent system components using the procedure specified in paragraph (l)(1)(ii)(B) of this section as frequently as practicable during safe-to-monitor times.

261.1034. Test methods and procedures.

(a) Each remanufacturer or other person that stores or treats the hazardous secondary material subject to the provisions of this subpart shall comply with the test methods and procedural requirements provided in this section.

(b) When a closed-vent system is tested for compliance with no detectable emissions, as required in section 261.1033(l) of this subpart, the test shall comply with the following requirements:

(1) Monitoring shall comply with Reference Method 21 in 40 CFR part 60.

(2) The detection instrument shall meet the performance criteria of Reference Method 21.

(3) The instrument shall be calibrated before use on each day of its use by the procedures specified in Reference Method 21.

(4) Calibration gases shall be:

(i) Zero air (less than ten (10) parts per million (ppm) of hydrocarbon in air).

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, ten thousand (10,000) ppm methane or n-hexane.

(5) The background level shall be determined as set forth in Reference Method 21.

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(6) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(7) The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with five hundred (500) ppm for determining compliance.

(c) Performance tests to determine compliance with section 261.1032(a) and with the total organic compound concentration limit of section 261.1033(c) shall comply with the following:

(1) Performance tests to determine total organic compound concentrations and mass flow rates entering and exiting control devices shall be conducted and data reduced in accordance with the following reference methods and calculation procedures:

(i) Method 2 in 40 CFR part 60 for velocity and volumetric flow rate.

(ii) Method 18 or Method 25A in 40 CFR part 60, appendix A, for organic content. If Method 25A is used, the organic HAP used as the calibration gas must be the single organic HAP representing the largest percent by volume of the emissions. The use of Method 25A is acceptable if the response from the high-level calibration gas is at least twenty (20) times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(iii) Each performance test shall consist of three separate runs; each run conducted for at least one (1) hour under the conditions that exist when the hazardous secondary material management unit is operating at the highest load or capacity level reasonably expected to occur. For the purpose of determining total organic compound concentrations and mass flow rates, the average of results of all runs shall apply. The average shall be computed on a time-weighted basis.

(iv) Total organic mass flow rates shall be determined by the following equation:

(A) For sources utilizing Method 18.

$$E_K = Q_{2sd} \left\{ \sum_{i=1}^n C_i MW_i \right\} [0.0416] [10^{-6}]$$

Where:

E_h = Total organic mass flow rate, kg/h;

Q_{2sd} = Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h;

n = Number of organic compounds in the vent gas;

C_i = Organic concentration in ppm, dry basis, of compound "i" in the vent gas, as determined by Method 18;

MW_i = Molecular weight of organic compound "i" in the vent gas, kg/kg-mol;

0.0416 = Conversion factor for molar volume, kg-mol/m³ (@293 K and 760 mm Hg);

10^{-6} = Conversion from ppm.

(B) For sources utilizing Method 25A.

$$E_h = (Q)(C)(MW)(0.0416)(10^{-6})$$

Where:

E_h = Total organic mass flow rate, kg/h;

Q = Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h;

C = Organic concentration in ppm, dry basis, as determined by Method 25A;

MW = Molecular weight of propane, 44;

0.0416 = Conversion factor for molar volume, kg-mol/m³ (@293 K and 760 mm Hg);

10^{-6} = Conversion from ppm.

(v) The annual total organic emission rate shall be determined by the following equation:

$$E_A = (E_h)(H)$$

Where:

E_A = Total organic mass emission rate, kg/y;

E_h = Total organic mass flow rate for the process vent, kg/h;

H = Total annual hours of operations for the affected unit, h.

(vi) Total organic emissions from all affected process vents at the facility shall be determined by summing the hourly total organic mass emission rates (E_h , as determined in paragraph (c)(1)(iv) of this section) and by summing the annual total organic mass emission rates (E_A , as determined in paragraph (c)(1)(v) of this section) for all affected process vents at the facility.

(2) The remanufacturer or other person that stores or treats the hazardous secondary material shall record such process information as may be necessary to determine the conditions of the performance tests. Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test.

(3) The remanufacturer or other person that stores or treats the hazardous secondary material at an affected facility shall provide, or cause to be provided, performance testing facilities as follows:

- (i) Sampling ports adequate for the test methods specified in paragraph (c)(1) of this section.
- (ii) Safe sampling platform(s).
- (iii) Safe access to sampling platform(s).
- (iv) Utilities for sampling and testing equipment.

(4) For the purpose of making compliance determinations, the time-weighted average of the results of the three runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train,

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extreme meteorological conditions, or other circumstances beyond the remanufacturer's or other person's that stores or treats the hazardous secondary material control, compliance may, upon the Department's approval, be determined using the average of the results of the two other runs.

(d) To show that a process vent associated with a hazardous secondary material distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation is not subject to the requirements of this subpart, the remanufacturer or other person that stores or treats the hazardous secondary material must make an initial determination that the time-weighted, annual average total organic concentration of the material managed by the hazardous secondary material management unit is less than ten (10) ppmw using one of the following two (2) methods:

(1) Direct measurement of the organic concentration of the material using the following procedures:

(i) The remanufacturer or other person that stores or treats the hazardous secondary material must take a minimum of four (4) grab samples of material for each material stream managed in the affected unit under process conditions expected to cause the maximum material organic concentration.

(ii) For material generated onsite, the grab samples must be collected at a point before the material is exposed to the atmosphere such as in an enclosed pipe or other closed system that is used to transfer the material after generation to the first affected distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation. For material generated offsite, the grab samples must be collected at the inlet to the first material management unit that receives the material provided the material has been transferred to the facility in a closed system such as a tank truck and the material is not diluted or mixed with other material.

(iii) Each sample shall be analyzed and the total organic concentration of the sample shall be computed using Method 9060A (incorporated by reference under section 260.11) of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, or analyzed for its individual organic constituents.

(iv) The arithmetic mean of the results of the analyses of the four (4) samples shall apply for each material stream managed in the unit in determining the time-weighted, annual average total organic concentration of the material. The time-weighted average is to be calculated using the annual quantity of each material stream processed and the mean organic concentration of each material stream managed in the unit.

(2) Using knowledge of the material to determine that its total organic concentration is less than ten (10) ppmw. Documentation of the material determination is required. Examples of documentation that shall be used to support a determination under this provision include production process information documenting that no organic compounds are used, information that the material is generated by a process that is identical to a process at the same or another facility that has previously been demonstrated by direct measurement to generate a material stream having a total organic content less than ten (10) ppmw, or prior speciation analysis results on the same material stream where it can also be documented that no process changes have occurred since that analysis that could affect the material total organic concentration.

(e) The determination that distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations manage hazardous secondary materials with time-weighted, annual average total organic concentrations less than ten (10) ppmw shall be made as follows:

(1) By the effective date that the facility becomes subject to the provisions of this subpart or by the date when the material is first managed in a hazardous secondary material management unit, whichever is later, and

(2) For continuously generated material, annually, or

(3) Whenever there is a change in the material being managed or a change in the process that generates or treats the material.

(f) When a remanufacturer or other person that stores or treats the hazardous secondary material and the Department do not agree on whether a distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation manages a hazardous secondary material with organic concentrations of at least ten (10) ppmw based on knowledge of the material, the dispute may be resolved by using direct measurement as specified at paragraph (d)(1) of this section.

261.1035. Recordkeeping requirements.

(a)(1) Each remanufacturer or other person that stores or treats the hazardous secondary material subject to the provisions of this subpart shall comply with the recordkeeping requirements of this section.

(2) A remanufacturer or other person that stores or treats the hazardous secondary material of more than one (1) hazardous secondary material management unit subject to the provisions of this subpart may comply with the recordkeeping requirements for these hazardous secondary material management units in one recordkeeping system if the system identifies each record by each hazardous secondary material management unit.

(b) The remanufacturer or other person that stores or treats the hazardous secondary material must keep the following records on-site:

(1) For facilities that comply with the provisions of section 261.1033(a)(2), an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The schedule must also include a rationale of why the installation cannot be completed at an earlier date. The implementation schedule must be kept on-site at the facility by the effective date that the facility becomes subject to the provisions of this subpart.

(2) Up-to-date documentation of compliance with the process vent standards in section 261.1032, including:

(i) Information and data identifying all affected process vents, annual throughput and operating hours of each affected unit, estimated emission rates for each affected vent and for the overall facility (i.e., the total emissions for all affected vents at the facility), and the approximate location within the facility of each affected unit (e.g., identify the hazardous secondary material management units on a facility plot plan).

(ii) Information and data supporting determinations of vent emissions and emission reductions achieved by add-on control devices based on engineering calculations or source tests. For the purpose of determining compliance, determinations of vent emissions and emission reductions must be made using operating parameter values (e.g., temperatures, flow rates, or vent stream organic compounds and concentrations) that represent the conditions that result in maximum organic emissions, such as when the hazardous secondary material management unit is operating at the highest load or capacity level reasonably expected to occur. If the remanufacturer or other person that stores or treats the hazardous secondary material takes any action (e.g., managing a material of different composition or increasing operating hours of affected hazardous secondary material management units) that would result in an increase in total organic emissions from affected process vents at the facility, then a new determination is required.

(3) Where a remanufacturer or other person that stores or treats the hazardous secondary material chooses to use test data to determine the organic removal efficiency or total organic compound concentration achieved by the control device, a performance test plan must be developed and include:

(i) A description of how it is determined that the planned test is going to be conducted when the hazardous secondary material management unit is operating at the highest load or capacity level reasonably expected to

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occur. This shall include the estimated or design flow rate and organic content of each vent stream and define the acceptable operating ranges of key process and control device parameters during the test program.

(ii) A detailed engineering description of the closed-vent system and control device including:

(A) Manufacturer's name and model number of control device.

(B) Type of control device.

(C) Dimensions of the control device.

(D) Capacity.

(E) Construction materials.

(iii) A detailed description of sampling and monitoring procedures, including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.

(4) Documentation of compliance with section 261.1033 shall include the following information:

(i) A list of all information references and sources used in preparing the documentation.

(ii) Records, including the dates, of each compliance test required by section 261.1033(k).

(iii) If engineering calculations are used, a design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI Course 415: Control of Gaseous Emissions" (incorporated by reference as specified in section 260.11) or other engineering texts acceptable to the Department that present basic control device design information. Documentation provided by the control device manufacturer or vendor that describes the control device design in accordance with paragraphs (b)(4)(iii)(A) through (G) of this section may be used to comply with this requirement. The design analysis shall address the vent stream characteristics and control device operation parameters as specified below.

(A) For a thermal vapor incinerator, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average temperature in the combustion zone and the combustion zone residence time.

(B) For a catalytic vapor incinerator, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average temperatures across the catalyst bed inlet and outlet.

(C) For a boiler or process heater, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average flame zone temperatures, combustion zone residence time, and description of method and location where the vent stream is introduced into the combustion zone.

(D) For a flare, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also consider the requirements specified in section 261.1033(d).

(E) For a condenser, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design

outlet organic compound concentration level, design average temperature of the condenser exhaust vent stream, and design average temperatures of the coolant fluid at the condenser inlet and outlet.

(F) For a carbon adsorption system such as a fixed-bed adsorber that regenerates the carbon bed directly onsite in the control device, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design exhaust vent stream organic compound concentration level, number and capacity of carbon beds, type and working capacity of activated carbon used for carbon beds, design total steam flow over the period of each complete carbon bed regeneration cycle, duration of the carbon bed steaming and cooling/drying cycles, design carbon bed temperature after regeneration, design carbon bed regeneration time, and design service life of carbon.

(G) For a carbon adsorption system such as a carbon canister that does not regenerate the carbon bed directly onsite in the control device, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design outlet organic concentration level, capacity of carbon bed, type and working capacity of activated carbon used for carbon bed, and design carbon replacement interval based on the total carbon working capacity of the control device and source operating schedule.

(iv) A statement signed and dated by the remanufacturer or other person that stores or treats the hazardous secondary material certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous secondary material management unit is or would be operating at the highest load or capacity level reasonably expected to occur.

(v) A statement signed and dated by the remanufacturer or other person that stores or treats the hazardous secondary material certifying that the control device is designed to operate at an efficiency of ninety-five (95) percent or greater unless the total organic concentration limit of section 261.1032(a) is achieved at an efficiency less than ninety-five (95) weight percent or the total organic emission limits of section 261.1032(a) for affected process vents at the facility can be attained by a control device involving vapor recovery at an efficiency less than ninety-five (95) weight percent. A statement provided by the control device manufacturer or vendor certifying that the control equipment meets the design specifications may be used to comply with this requirement.

(vi) If performance tests are used to demonstrate compliance, all test results.

(c) Design documentation and monitoring, operating, and inspection information for each closed-vent system and control device required to comply with the provisions of this part shall be recorded and kept up-to-date at the facility. The information shall include:

(1) Description and date of each modification that is made to the closed-vent system or control device design.

(2) Identification of operating parameter, description of monitoring device, and diagram of monitoring sensor location or locations used to comply with section 261.1033 (f)(1) and (2).

(3) Monitoring, operating, and inspection information required by section 261.1033(f) through (k).

(4) Date, time, and duration of each period that occurs while the control device is operating when any monitored parameter exceeds the value established in the control device design analysis as specified below:

(i) For a thermal vapor incinerator designed to operate with a minimum residence time of 0.50 seconds at a minimum temperature of seven hundred and sixty degrees Celsius (760°C), period when the combustion temperature is below 760°C.

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(ii) For a thermal vapor incinerator designed to operate with an organic emission reduction efficiency of ninety-five (95) weight percent or greater, period when the combustion zone temperature is more than twenty-eight degrees Celsius (28°C) below the design average combustion zone temperature established as a requirement of paragraph (b)(4)(iii)(A) of this section.

(iii) For a catalytic vapor incinerator, period when:

(A) Temperature of the vent stream at the catalyst bed inlet is more than twenty-eight degrees Celsius (28°C) below the average temperature of the inlet vent stream established as a requirement of paragraph (b)(4)(iii)(B) of this section, or

(B) Temperature difference across the catalyst bed is less than eighty (80) percent of the design average temperature difference established as a requirement of paragraph (b)(4)(iii)(B) of this section.

(iv) For a boiler or process heater, period when:

(A) Flame zone temperature is more than twenty-eight degrees Celsius (28°C) below the design average flame zone temperature established as a requirement of paragraph (b)(4)(iii)(C) of this section, or

(B) Position changes where the vent stream is introduced to the combustion zone from the location established as a requirement of paragraph (b)(4)(iii)(C) of this section.

(v) For a flare, period when the pilot flame is not ignited.

(vi) For a condenser that complies with section 261.1033(f)(2)(vi)(A), period when the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the condenser are more than twenty (20) percent greater than the design outlet organic compound concentration level established as a requirement of paragraph (b)(4)(iii)(E) of this section.

(vii) For a condenser that complies with section 261.1033(f)(2)(vi)(B), period when:

(A) Temperature of the exhaust vent stream from the condenser is more than six degrees Celsius (6°C) above the design average exhaust vent stream temperature established as a requirement of paragraph (b)(4)(iii)(E) of this section; or

(B) Temperature of the coolant fluid exiting the condenser is more than six degrees Celsius (6°C) above the design average coolant fluid temperature at the condenser outlet established as a requirement of paragraph (b)(4)(iii)(E) of this section.

(viii) For a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly on-site in the control device and complies with section 261.1033(f)(2)(vii)(A), period when the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the carbon bed are more than twenty (20) percent greater than the design exhaust vent stream organic compound concentration level established as a requirement of paragraph (b)(4)(iii)(F) of this section.

(ix) For a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly on-site in the control device and complies with section 261.1033(f)(2)(vii)(B), period when the vent stream continues to flow through the control device beyond the predetermined carbon bed regeneration time established as a requirement of paragraph (b)(4)(iii)(F) of this section.

(5) Explanation for each period recorded under paragraph (c)(4) of the cause for control device operating parameter exceeding the design value and the measures implemented to correct the control device operation.

(6) For a carbon adsorption system operated subject to requirements specified in section 261.1033(g) or (h)(2), date when existing carbon in the control device is replaced with fresh carbon.

(7) For a carbon adsorption system operated subject to requirements specified in section 261.1033(h)(1), a log that records:

(i) Date and time when control device is monitored for carbon breakthrough and the monitoring device reading.

(ii) Date when existing carbon in the control device is replaced with fresh carbon.

(8) Date of each control device startup and shutdown.

(9) A remanufacturer or other person that stores or treats the hazardous secondary material designating any components of a closed-vent system as unsafe to monitor pursuant to section 261.1033(o) of this subpart shall record in a log that is kept at the facility the identification of closed-vent system components that are designated as unsafe to monitor in accordance with the requirements of section 261.1033(o) of this subpart, an explanation for each closed-vent system component stating why the closed-vent system component is unsafe to monitor, and the plan for monitoring each closed-vent system component.

(10) When each leak is detected as specified in section 261.1033(l), the following information shall be recorded:

(i) The instrument identification number, the closed-vent system component identification number, and the operator name, initials, or identification number.

(ii) The date the leak was detected and the date of first attempt to repair the leak.

(iii) The date of successful repair of the leak.

(iv) Maximum instrument reading measured by Method 21 of 40 CFR part 60, appendix A after it is successfully repaired or determined to be nonreparable.

(v) "Repair delayed" and the reason for the delay if a leak is not repaired within fifteen (15) days after discovery of the leak.

(A) The remanufacturer or other person that stores or treats the hazardous secondary material may develop a written procedure that identifies the conditions that justify a delay of repair. In such cases, reasons for delay of repair may be documented by citing the relevant sections of the written procedure.

(B) If delay of repair was caused by depletion of stocked parts, there must be documentation that the spare parts were sufficiently stocked on-site before depletion and the reason for depletion.

(d) Records of the monitoring, operating, and inspection information required by paragraphs (c)(3) through (10) of this section shall be maintained by the owner or operator for at least three (3) years following the date of each occurrence, measurement, maintenance, corrective action, or record.

(e) For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, the Department will specify the appropriate recordkeeping requirements.

(f) Up-to-date information and data used to determine whether or not a process vent is subject to the requirements in section 261.1032, including supporting documentation as required by section 261.1034(d)(2)

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when application of the knowledge of the nature of the hazardous secondary material stream or the process by which it was produced is used, shall be recorded in a log that is kept at the facility.

261.1036. [Reserved]

261.1037. [Reserved]

261.1038. [Reserved]

261.1039. [Reserved]

261.1040. [Reserved]

261.1041. [Reserved]

261.1042. [Reserved]

261.1043. [Reserved]

261.1044. [Reserved]

261.1045. [Reserved]

261.1046. [Reserved]

261.1047. [Reserved]

261.1048. [Reserved]

261.1049. [Reserved]

Add 61-79.261 Subpart BB to read:

Subpart BB: Air Emission Standards for Equipment Leaks

261.1050. Applicability.

The regulations in this subpart apply to equipment that contains hazardous secondary materials excluded under the remanufacturing exclusion at section 261.4(a)(27), unless the equipment operations are subject to the requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63.

261.1051. Definitions.

As used in this subpart, all terms shall have the meaning given them in section 261.1031, the South Carolina Hazardous Waste Management Act and R.61-79.260 through 266.

261.1052. Standards: Pumps in light liquid service.

(a)(1) Each pump in light liquid service shall be monitored monthly to detect leaks by the methods specified in section 261.1063(b), except as provided in paragraphs (d), (e), and (f) of this section.

(2) Each pump in light liquid service shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal.

(b)(1) If an instrument reading of ten thousand (10,000) parts per million (ppm) or greater is measured, a leak is detected.

(2) If there are indications of liquids dripping from the pump seal, a leak is detected.

(c)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than fifteen (15) calendar days after it is detected, except as provided in section 261.1059.

(2) A first attempt at repair (e.g., tightening the packing gland) shall be made no later than five (5) calendar days after each leak is detected.

(d) Each pump equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of paragraph (a) of this section, provided the following requirements are met:

(1) Each dual mechanical seal system must be:

(i) Operated with the barrier fluid at a pressure that is at all times greater than the pump stuffing box pressure, or

(ii) Equipped with a barrier fluid degassing reservoir that is connected by a closed-vent system to a control device that complies with the requirements of section 261.1060, or

(iii) Equipped with a system that purges the barrier fluid into a hazardous secondary material stream with no detectable emissions to the atmosphere.

(2) The barrier fluid system must not be a hazardous secondary material with organic concentrations ten (10) percent or greater by weight.

(3) Each barrier fluid system must be equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.

(4) Each pump must be checked by visual inspection, each calendar week, for indications of liquids dripping from the pump seals.

(5)(i) Each sensor as described in paragraph (d)(3) of this section must be checked daily or be equipped with an audible alarm that must be checked monthly to ensure that it is functioning properly.

(ii) The remanufacturer or other person that stores or treats the hazardous secondary material must determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

(6)(i) If there are indications of liquids dripping from the pump seal or the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined in paragraph (d)(5)(ii) of this section, a leak is detected.

(ii) When a leak is detected, it shall be repaired as soon as practicable, but not later than fifteen (15) calendar days after it is detected, except as provided in section 261.1059.

(iii) A first attempt at repair (e.g., relapping the seal) shall be made no later than five (5) calendar days after each leak is detected.

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(e) Any pump that is designated, as described in section 261.1064(g)(2), for no detectable emissions, as indicated by an instrument reading of less than five hundred (500) ppm above background, is exempt from the requirements of paragraphs (a), (c), and (d) of this section if the pump meets the following requirements:

(1) Must have no externally actuated shaft penetrating the pump housing.

(2) Must operate with no detectable emissions as indicated by an instrument reading of less than five hundred (500) ppm above background as measured by the methods specified in section 261.1063(c).

(3) Must be tested for compliance with paragraph (e)(2) of this section initially upon designation, annually, and at other times as requested by the Department.

(f) If any pump is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal or seals to a control device that complies with the requirements of section 261.1060, it is exempt from the requirements of paragraphs (a) through (e) of this section.

261.1053. Standards: Compressors.

(a) Each compressor shall be equipped with a seal system that includes a barrier fluid system and that prevents leakage of total organic emissions to the atmosphere, except as provided in paragraphs (h) and (i) of this section.

(b) Each compressor seal system as required in paragraph (a) of this section shall be:

(1) Operated with the barrier fluid at a pressure that is at all times greater than the compressor stuffing box pressure;

(2) Equipped with a barrier fluid system that is connected by a closed-vent system to a control device that complies with the requirements of section 261.1060; or

(3) Equipped with a system that purges the barrier fluid into a hazardous secondary material stream with no detectable emissions to atmosphere.

(c) The barrier fluid must not be a hazardous secondary material with organic concentrations ten (10) percent or greater by weight.

(d) Each barrier fluid system as described in paragraphs (a) through (c) of this section shall be equipped with a sensor that will detect failure of the seal system, barrier fluid system, or both.

(e)(1) Each sensor as required in paragraph (d) of this section shall be checked daily or shall be equipped with an audible alarm that must be checked monthly to ensure that it is functioning properly unless the compressor is located within the boundary of an unmanned plant site, in which case the sensor must be checked daily.

(2) The remanufacturer or other person that stores or treats the hazardous secondary material shall determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

(f) If the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined under paragraph (e)(2) of this section, a leak is detected.

(g)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than fifteen (15) calendar days after it is detected, except as provided in section 261.1059.

(2) A first attempt at repair (e.g., tightening the packing gland) shall be made no later than five (5) calendar days after each leak is detected.

(h) A compressor is exempt from the requirements of paragraphs (a) and (b) of this section if it is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal to a control device that complies with the requirements of section 261.1060, except as provided in paragraph (i) of this section.

(i) Any compressor that is designated, as described in section 261.1064(g)(2), for no detectable emissions as indicated by an instrument reading of less than five hundred (500) ppm above background is exempt from the requirements of paragraphs (a) through (h) of this section if the compressor:

(1) Is determined to be operating with no detectable emissions, as indicated by an instrument reading of less than five hundred (500) ppm above background, as measured by the method specified in section 261.1063(c).

(2) Is tested for compliance with paragraph (i)(1) of this section initially upon designation, annually, and at other times as requested by the Department.

261.1054. Standards: Pressure relief devices in gas/vapor service.

(a) Except during pressure releases, each pressure relief device in gas/vapor service shall be operated with no detectable emissions, as indicated by an instrument reading of less than five hundred (500) ppm above background, as measured by the method specified in section 261.1063(c).

(b)(1) After each pressure release, the pressure relief device shall be returned to a condition of no detectable emissions, as indicated by an instrument reading of less than five hundred (500) ppm above background, as soon as practicable, but no later than five (5) calendar days after each pressure release, except as provided in section 261.1059.

(2) No later than five (5) calendar days after the pressure release, the pressure relief device shall be monitored to confirm the condition of no detectable emissions, as indicated by an instrument reading of less than five hundred (500) ppm above background, as measured by the method specified in section 261.1063(c).

(c) Any pressure relief device that is equipped with a closed-vent system capable of capturing and transporting leakage from the pressure relief device to a control device as described in section 261.1060 is exempt from the requirements of paragraphs (a) and (b) of this section.

261.1055. Standards: Sampling connection systems.

(a) Each sampling connection system shall be equipped with a closed-purge, closed-loop, or closed-vent system. This system shall collect the sample purge for return to the process or for routing to the appropriate treatment system. Gases displaced during filling of the sample container are not required to be collected or captured.

(b) Each closed-purge, closed-loop, or closed-vent system as required in paragraph (a) of this section shall meet one (1) of the following requirements:

(1) Return the purged process fluid directly to the process line;

(2) Collect and recycle the purged process fluid; or

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(3) Be designed and operated to capture and transport all the purged process fluid to a material management unit that complies with the applicable requirements of sections 261.1084 through 264.1086 of this subpart or a control device that complies with the requirements of section 261.1060 of this subpart.

(c) In-situ sampling systems and sampling systems without purges are exempt from the requirements of paragraphs (a) and (b) of this section.

261.1056. Standards: Open-ended valves or lines.

(a)(1) Each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve.

(2) The cap, blind flange, plug, or second valve shall seal the open end at all times except during operations requiring hazardous secondary material stream flow through the open-ended valve or line.

(b) Each open-ended valve or line equipped with a second valve shall be operated in a manner such that the valve on the hazardous secondary material stream end is closed before the second valve is closed.

(c) When a double block and bleed system is being used, the bleed valve or line may remain open during operations that require venting the line between the block valves but shall comply with paragraph (a) of this section at all other times.

261.1057. Standards: Valves in gas/vapor service or in light liquid service.

(a) Each valve in gas/vapor or light liquid service shall be monitored monthly to detect leaks by the methods specified in section 261.1063(b) and shall comply with paragraphs (b) through (e) of this section, except as provided in paragraphs (f), (g), and (h) of this section and sections 261.1061 and 261.1062.

(b) If an instrument reading of ten thousand (10,000) ppm or greater is measured, a leak is detected.

(c)(1) Any valve for which a leak is not detected for two successive months may be monitored the first month of every succeeding quarter, beginning with the next quarter, until a leak is detected.

(2) If a leak is detected, the valve shall be monitored monthly until a leak is not detected for two (2) successive months,

(d)(1) When a leak is detected, it shall be repaired as soon as practicable, but no later than fifteen (15) calendar days after the leak is detected, except as provided in section 261.1059.

(2) A first attempt at repair shall be made no later than five (5) calendar days after each leak is detected.

(e) First attempts at repair include, but are not limited to, the following best practices where practicable:

(1) Tightening of bonnet bolts.

(2) Replacement of bonnet bolts.

(3) Tightening of packing gland nuts.

(4) Injection of lubricant into lubricated packing.

(f) Any valve that is designated, as described in section 261.1064(g)(2), for no detectable emissions, as indicated by an instrument reading of less than five hundred (500) ppm above background, is exempt from the requirements of paragraph (a) of this section if the valve:

(1) Has no external actuating mechanism in contact with the hazardous secondary material stream.

(2) Is operated with emissions less than five hundred (500) ppm above background as determined by the method specified in section 261.1063(c).

(3) Is tested for compliance with paragraph (f)(2) of this section initially upon designation, annually, and at other times as requested by the Department.

(g) Any valve that is designated, as described in section 261.1064(h)(1), as an unsafe-to-monitor valve is exempt from the requirements of paragraph (a) of this section if:

(1) The remanufacturer or other person that stores or treats the hazardous secondary material determines that the valve is unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with paragraph (a) of this section.

(2) The remanufacturer or other person that stores or treats the hazardous secondary material adheres to a written plan that requires monitoring of the valve as frequently as practicable during safe-to-monitor times.

(h) Any valve that is designated, as described in section 261.1064(h)(2), as a difficult-to-monitor valve is exempt from the requirements of paragraph (a) of this section if:

(1) The remanufacturer or other person that stores or treats the hazardous secondary material determines that the valve cannot be monitored without elevating the monitoring personnel more than two (2) meters above a support surface.

(2) The hazardous secondary material management unit within which the valve is located was in operation before January 13, 2015.

(3) The owner or operator of the valve follows a written plan that requires monitoring of the valve at least once per calendar year.

261.1058. Standards: Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors.

(a) Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors shall be monitored within five (5) days by the method specified in section 261.1063(b) if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method.

(b) If an instrument reading of ten thousand (10,000) ppm or greater is measured, a leak is detected.

(c)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than fifteen (15) calendar days after it is detected, except as provided in section 261.1059.

(2) The first attempt at repair shall be made no later than five (5) calendar days after each leak is detected.

(d) First attempts at repair include, but are not limited to, the best practices described under section 261.1057(e).

(e) Any connector that is inaccessible or is ceramic or ceramic-lined (e.g., porcelain, glass, or glass-lined) is exempt from the monitoring requirements of paragraph (a) of this section and from the recordkeeping requirements of section 261.1064.

261.1059. Standards: Delay of repair.

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(a) Delay of repair of equipment for which leaks have been detected will be allowed if the repair is technically infeasible without a hazardous secondary material management unit shutdown. In such a case, repair of this equipment shall occur before the end of the next hazardous secondary material management unit shutdown.

(b) Delay of repair of equipment for which leaks have been detected will be allowed for equipment that is isolated from the hazardous secondary material management unit and that does not continue to contain or contact hazardous secondary material with organic concentrations at least ten (10) percent by weight.

(c) Delay of repair for valves will be allowed if:

(1) The remanufacturer or other person that stores or treats the hazardous secondary material determines that emissions of purged material resulting from immediate repair are greater than the emissions likely to result from delay of repair.

(2) When repair procedures are effected, the purged material is collected and destroyed or recovered in a control device complying with section 261.1060.

(d) Delay of repair for pumps will be allowed if:

(1) Repair requires the use of a dual mechanical seal system that includes a barrier fluid system.

(2) Repair is completed as soon as practicable, but not later than six (6) months after the leak was detected.

(e) Delay of repair beyond a hazardous secondary material management unit shutdown will be allowed for a valve if valve assembly replacement is necessary during the hazardous secondary material management unit shutdown, valve assembly supplies have been depleted, and valve assembly supplies had been sufficiently stocked before the supplies were depleted. Delay of repair beyond the next hazardous secondary material management unit shutdown will not be allowed unless the next hazardous secondary material management unit shutdown occurs sooner than six (6) months after the first hazardous secondary material management unit shutdown.

261.1060. Standards: Closed-vent systems and control devices.

(a) The remanufacturer or other person that stores or treats the hazardous secondary material in a hazardous secondary material management units using closed-vent systems and control devices subject to this subpart shall comply with the provisions of section 261.1033.

(b)(1) The remanufacturer or other person that stores or treats the hazardous secondary material at an existing facility who cannot install a closed-vent system and control device to comply with the provisions of this subpart on the effective date that the facility becomes subject to the provisions of this subpart must prepare an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The controls must be installed as soon as possible, but the implementation schedule may allow up to thirty (30) months after the effective date that the facility becomes subject to this subpart for installation and startup.

(2) Any unit that begins operation after July 13, 2015, and is subject to the provisions of this subpart when operation begins, must comply with the rules immediately (i.e., must have control devices installed and operating on startup of the affected unit); the thirty (30)-month implementation schedule does not apply.

(3) The remanufacturer or other person that stores or treats the hazardous secondary material at any facility in existence on the effective date of a statutory or regulatory amendment that renders the facility subject to this subpart shall comply with all requirements of this subpart as soon as practicable but no later than thirty (30)

months after the amendment's effective date. When control equipment required by this subpart cannot be installed and begin operation by the effective date of the amendment, the facility owner or operator shall prepare an implementation schedule that includes the following information: Specific calendar dates for award of contracts or issuance of purchase orders for the control equipment, initiation of on-site installation of the control equipment, completion of the control equipment installation, and performance of any testing to demonstrate that the installed equipment meets the applicable standards of this subpart. The remanufacturer or other person that stores or treats the hazardous secondary material shall keep a copy of the implementation schedule at the facility.

(4) Remanufacturers or other persons that store or treat the hazardous secondary materials at facilities and units that become newly subject to the requirements of this subpart after January 13, 2015, due to an action other than those described in paragraph (b)(3) of this section, must comply with all applicable requirements immediately (i.e., must have control devices installed and operating on the date the facility or unit becomes subject to this subpart; the thirty (30)-month implementation schedule does not apply).

261.1061. Alternative standards for valves in gas/vapor service or in light liquid service: percentage of valves allowed to leak.

(a) A remanufacturer or other person that stores or treats the hazardous secondary material subject to the requirements of section 261.1057 may elect to have all valves within a hazardous secondary material management unit comply with an alternative standard that allows no greater than two (2) percent of the valves to leak.

(b) The following requirements shall be met if a remanufacturer or other person that stores or treats the hazardous secondary material decides to comply with the alternative standard of allowing two (2) percent of valves to leak:

(1) A performance test as specified in paragraph (c) of this section shall be conducted initially upon designation, annually, and at other times requested by the Department.

(2) If a valve leak is detected, it shall be repaired in accordance with section 261.1057(d) and (e).

(c) Performance tests shall be conducted in the following manner:

(1) All valves subject to the requirements in section 261.1057 within the hazardous secondary material management unit shall be monitored within one (1) week by the methods specified in section 261.1063(b).

(2) If an instrument reading of ten thousand (10,000) ppm or greater is measured, a leak is detected.

(3) The leak percentage shall be determined by dividing the number of valves subject to the requirements in section 261.1057 for which leaks are detected by the total number of valves subject to the requirements in section 261.1057 within the hazardous secondary material management unit.

261.1062. Alternative standards for valves in gas/vapor service or in light liquid service: skip period leak detection and repair.

(a) A remanufacturer or other person that stores or treats the hazardous secondary material subject to the requirements of section 261.1057 may elect for all valves within a hazardous secondary material management unit to comply with one (1) of the alternative work practices specified in paragraphs (b)(2) and (3) of this section.

(b)(1) A remanufacturer or other person that stores or treats the hazardous secondary material shall comply with the requirements for valves, as described in section 261.1057, except as described in paragraphs (b)(2) and (3) of this section.

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(2) After two (2) consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than two (2) percent, a remanufacturer or other person that stores or treats the hazardous secondary material may begin to skip one (1) of the quarterly leak detection periods (i.e., monitor for leaks once every six (6) months) for the valves subject to the requirements in section 261.1057 of this subpart.

(3) After five (5) consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than two (2) percent, a remanufacturer or other person that stores or treats the hazardous secondary material may begin to skip three (3) of the quarterly leak detection periods (i.e., monitor for leaks once every year) for the valves subject to the requirements in section 261.1057 of this subpart.

(4) If the percentage of valves leaking is greater than two (2) percent, the remanufacturer or other person that stores or treats the hazardous secondary material shall monitor monthly in compliance with the requirements in section 261.1057, but may again elect to use this section after meeting the requirements of section 261.1057(c)(1).

261.1063. Test methods and procedures.

(a) Each remanufacturer or other person that stores or treats the hazardous secondary material subject to the provisions of this subpart shall comply with the test methods and procedures requirements provided in this section.

(b) Leak detection monitoring, as required in sections 261.1052 through 261.1062, shall comply with the following requirements:

(1) Monitoring shall comply with Reference Method 21 in 40 CFR part 60.

(2) The detection instrument shall meet the performance criteria of Reference Method 21.

(3) The instrument shall be calibrated before use on each day of its use by the procedures specified in Reference Method 21.

(4) Calibration gases shall be:

(i) Zero air (less than ten (10) ppm of hydrocarbon in air).

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, ten thousand (10,000) ppm methane or n-hexane.

(5) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(c) When equipment is tested for compliance with no detectable emissions, as required in sections 261.1052(e), 261.1053(i), 261.1054, and 261.1057(f), the test shall comply with the following requirements:

(1) The requirements of paragraphs (b)(1) through (4) of this section shall apply.

(2) The background level shall be determined as set forth in Reference Method 21.

(3) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(4) The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with five hundred (500) ppm for determining compliance.

(d) A remanufacturer or other person that stores or treats the hazardous secondary material must determine, for each piece of equipment, whether the equipment contains or contacts a hazardous secondary material with organic concentration that equals or exceeds ten (10) percent by weight using the following:

(1) Methods described in ASTM Methods D 2267-88, E 169-87, E 168-88, E 260-85 (incorporated by reference under section 260.11);

(2) Method 9060A (incorporated by reference under section 260.11) of "Test Methods for Evaluating Solid Waste," EPA Publication SW-846, for computing total organic concentration of the sample, or analyzed for its individual organic constituents; or

(3) Application of the knowledge of the nature of the hazardous secondary material stream or the process by which it was produced. Documentation of a material determination by knowledge is required. Examples of documentation that shall be used to support a determination under this provision include production process information documenting that no organic compounds are used, information that the material is generated by a process that is identical to a process at the same or another facility that has previously been demonstrated by direct measurement to have a total organic content less than ten (10) percent, or prior speciation analysis results on the same material stream where it can also be documented that no process changes have occurred since that analysis that could affect the material total organic concentration.

(e) If a remanufacturer or other person that stores or treats the hazardous secondary material determines that a piece of equipment contains or contacts a hazardous secondary material with organic concentrations at least ten (10) percent by weight, the determination can be revised only after following the procedures in paragraph (d)(1) or (2) of this section.

(f) When a remanufacturer or other person that stores or treats the hazardous secondary material and the Department do not agree on whether a piece of equipment contains or contacts a hazardous secondary material with organic concentrations at least ten (10) percent by weight, the procedures in paragraph (d)(1) or (2) of this section can be used to resolve the dispute.

(g) Samples used in determining the percent organic content shall be representative of the highest total organic content hazardous secondary material that is expected to be contained in or contact the equipment.

(h) To determine if pumps or valves are in light liquid service, the vapor pressures of constituents may be obtained from standard reference texts or may be determined by ASTM D-2879-86 (incorporated by reference under section 260.11).

(i) Performance tests to determine if a control device achieves ninety-five (95) weight percent organic emission reduction shall comply with the procedures of section 261.1034(c)(1) through (4).

261.1064. Recordkeeping requirements.

(a)(1) Each remanufacturer or other person that stores or treats the hazardous secondary material subject to the provisions of this subpart shall comply with the recordkeeping requirements of this section.

(2) A remanufacturer or other person that stores or treats the hazardous secondary material in more than one (1) hazardous secondary material management unit subject to the provisions of this subpart may comply with the recordkeeping requirements for these hazardous secondary material management units in one (1) recordkeeping system if the system identifies each record by each hazardous secondary material management unit.

(b) Remanufacturer's and other person's that store or treat the hazardous secondary material must record and keep the following information at the facility:

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(1) For each piece of equipment to which R.61-79.261 subpart BB applies:

(i) Equipment identification number and hazardous secondary material management unit identification.

(ii) Approximate locations within the facility (e.g., identify the hazardous secondary material management unit on a facility plot plan).

(iii) Type of equipment (e.g., a pump or pipeline valve).

(iv) Percent-by-weight total organics in the hazardous secondary material stream at the equipment.

(v) Hazardous secondary material state at the equipment (e.g., gas/vapor or liquid).

(vi) Method of compliance with the standard (e.g., “monthly leak detection and repair” or “equipped with dual mechanical seals”).

(2) For facilities that comply with the provisions of section 261.1033(a)(2), an implementation schedule as specified in section 261.1033(a)(2).

(3) Where a remanufacturer or other person that stores or treats the hazardous secondary material chooses to use test data to demonstrate the organic removal efficiency or total organic compound concentration achieved by the control device, a performance test plan as specified in section 261.1035(b)(3).

(4) Documentation of compliance with section 261.1060, including the detailed design documentation or performance test results specified in section 261.1035(b)(4).

(c) When each leak is detected as specified in sections 261.1052, 261.1053, 261.1057, and 261.1058, the following requirements apply:

(1) A weatherproof and readily visible identification, marked with the equipment identification number, the date evidence of a potential leak was found in accordance with section 261.1058(a), and the date the leak was detected, shall be attached to the leaking equipment.

(2) The identification on equipment, except on a valve, may be removed after it has been repaired.

(3) The identification on a valve may be removed after it has been monitored for two (2) successive months as specified in section 261.1057(c) and no leak has been detected during those two (2) months.

(d) When each leak is detected as specified in sections 261.1052, 261.1053, 261.1057, and 261.1058, the following information shall be recorded in an inspection log and shall be kept at the facility:

(1) The instrument and operator identification numbers and the equipment identification number.

(2) The date evidence of a potential leak was found in accordance with section 261.1058(a).

(3) The date the leak was detected and the dates of each attempt to repair the leak.

(4) Repair methods applied in each attempt to repair the leak.

(5) “Above 10,000” if the maximum instrument reading measured by the methods specified in section 261.1063(b) after each repair attempt is equal to or greater than ten thousand (10,000) ppm.

(6) "Repair delayed" and the reason for the delay if a leak is not repaired within fifteen (15) calendar days after discovery of the leak.

(7) Documentation supporting the delay of repair of a valve in compliance with section 261.1059(c).

(8) The signature of the remanufacturer or other person that stores or treats the hazardous secondary material (or designate) whose decision it was that repair could not be effected without a hazardous secondary material management unit shutdown.

(9) The expected date of successful repair of the leak if a leak is not repaired within fifteen (15) calendar days.

(10) The date of successful repair of the leak.

(e) Design documentation and monitoring, operating, and inspection information for each closed-vent system and control device required to comply with the provisions of section 261.1060 shall be recorded and kept up-to-date at the facility as specified in section 261.1035(c). Design documentation is specified in section 261.1035(c)(1) and (2) and monitoring, operating, and inspection information in section 261.1035(c)(3) through (8).

(f) For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, the Department will specify the appropriate recordkeeping requirements.

(g) The following information pertaining to all equipment subject to the requirements in sections 261.1052 through 261.1060 shall be recorded in a log that is kept at the facility:

(1) A list of identification numbers for equipment (except welded fittings) subject to the requirements of this subpart.

(2)(i) A list of identification numbers for equipment that the remanufacturer or other person that stores or treats the hazardous secondary material elects to designate for no detectable emissions, as indicated by an instrument reading of less than five hundred (500) ppm above background, under the provisions of sections 261.1052(e), 261.1053(i), and 261.1057(f).

(ii) The designation of this equipment as subject to the requirements of sections 261.1052(e), 261.1053(i), or 261.1057(f) shall be signed by the remanufacturer or other person that stores or treats the hazardous secondary material.

(3) A list of equipment identification numbers for pressure relief devices required to comply with section 261.1054(a).

(4)(i) The dates of each compliance test required in sections 261.1052(e), 261.1053(i), 261.1054, and 261.1057(f).

(ii) The background level measured during each compliance test.

(iii) The maximum instrument reading measured at the equipment during each compliance test.

(5) A list of identification numbers for equipment in vacuum service.

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(6) Identification, either by list or location (area or group) of equipment that contains or contacts hazardous secondary material with an organic concentration of at least ten (10) percent by weight for less than three hundred (300) hours per calendar year.

(h) The following information pertaining to all valves subject to the requirements of section 261.1057(g) and (h) shall be recorded in a log that is kept at the facility:

(1) A list of identification numbers for valves that are designated as unsafe to monitor, an explanation for each valve stating why the valve is unsafe to monitor, and the plan for monitoring each valve.

(2) A list of identification numbers for valves that are designated as difficult to monitor, an explanation for each valve stating why the valve is difficult to monitor, and the planned schedule for monitoring each valve.

(i) The following information shall be recorded in a log that is kept at the facility for valves complying with section 261.1062:

(1) A schedule of monitoring.

(2) The percent of valves found leaking during each monitoring period.

(j) The following information shall be recorded in a log that is kept at the facility:

(1) Criteria required in sections 261.1052(d)(5)(ii) and 261.1053(e)(2) and an explanation of the design criteria.

(2) Any changes to these criteria and the reasons for the changes.

(k) The following information shall be recorded in a log that is kept at the facility for use in determining exemptions as provided in the applicability section of this subpart and other specific subparts:

(1) An analysis determining the design capacity of the hazardous secondary material management unit.

(2) A statement listing the hazardous secondary material influent to and effluent from each hazardous secondary material management unit subject to the requirements in sections 261.1052 through 261.1060 and an analysis determining whether these hazardous secondary materials are heavy liquids.

(3) An up-to-date analysis and the supporting information and data used to determine whether or not equipment is subject to the requirements in sections 261.1052 through 261.1060. The record shall include supporting documentation as required by section 261.1063(d)(3) when application of the knowledge of the nature of the hazardous secondary material stream or the process by which it was produced is used. If the remanufacturer or other person that stores or treats the hazardous secondary material takes any action (e.g., changing the process that produced the material) that could result in an increase in the total organic content of the material contained in or contacted by equipment determined not to be subject to the requirements in sections 261.1052 through 261.1060, then a new determination is required.

(l) Records of the equipment leak information required by paragraph (d) of this section and the operating information required by paragraph (e) of this section need be kept only three (3) years.

(m) The remanufacturer or other person that stores or treats the hazardous secondary material at a facility with equipment that is subject to this subpart and to regulations at 40 CFR part 60, part 61, or part 63 may elect to determine compliance with this subpart either by documentation pursuant to section 261.1064, or by documentation of compliance with the regulations at 40 CFR part 60, part 61, or part 63 pursuant to the relevant

provisions of the regulations at 40 part 60, part 61, or part 63. The documentation of compliance under regulations at 40 CFR part 60, part 61, or part 63 shall be kept with or made readily available at the facility.

261.1065. [Reserved]

261.1066. [Reserved]

261.1067. [Reserved]

261.1068. [Reserved]

261.1069. [Reserved]

261.1070. [Reserved]

261.1071. [Reserved]

261.1072. [Reserved]

261.1073. [Reserved]

261.1074. [Reserved]

261.1075. [Reserved]

261.1076. [Reserved]

261.1077. [Reserved]

261.1078. [Reserved]

261.1079. [Reserved]

Add 61-79.261 Subpart CC to read:

Subpart CC: Air Emission Standards for Tanks and Containers

261.1080. Applicability.

(a) The regulations in this subpart apply to tanks and containers that contain hazardous secondary materials excluded under the remanufacturing exclusion at section 261.4(a)(27), unless the tanks and containers are equipped with and operating air emission controls in accordance with the requirements of applicable Clean Air Act regulations codified under 40 CFR part 60, part 61, or part 63.

(b) [Reserved]

261.1081. Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given to them in the South Carolina Hazardous Waste Management Act and R.61-79.260 through 266.

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“Average volatile organic concentration or average VO concentration” means the mass-weighted average volatile organic concentration of a hazardous secondary material as determined in accordance with the requirements of section 261.1084.

“Closure device” means a cap, hatch, lid, plug, seal, valve, or other type of fitting that blocks an opening in a cover such that when the device is secured in the closed position it prevents or reduces air pollutant emissions to the atmosphere. Closure devices include devices that are detachable from the cover (e.g., a sampling port cap), manually operated (e.g., a hinged access lid or hatch), or automatically operated (e.g., a spring-loaded pressure relief valve).

“Continuous seal” means a seal that forms a continuous closure that completely covers the space between the edge of the floating roof and the wall of a tank. A continuous seal may be a vapor-mounted seal, liquid-mounted seal, or metallic shoe seal. A continuous seal may be constructed of fastened segments so as to form a continuous seal.

“Cover” means a device that provides a continuous barrier over the hazardous secondary material managed in a unit to prevent or reduce air pollutant emissions to the atmosphere. A cover may have openings (such as access hatches, sampling ports, gauge wells) that are necessary for operation, inspection, maintenance, and repair of the unit on which the cover is used. A cover may be a separate piece of equipment which can be detached and removed from the unit or a cover may be formed by structural features permanently integrated into the design of the unit.

“Empty hazardous secondary material container” means:

(1) A container from which all hazardous secondary materials have been removed that can be removed using the practices commonly employed to remove materials from that type of container, e.g., pouring, pumping, and aspirating, and no more than 2.5 centimeters (one inch) of residue remain on the bottom of the container or inner liner;

(2) A container that is less than or equal to one hundred nineteen (119) gallons in size and no more than three (3) percent by weight of the total capacity of the container remains in the container or inner liner; or

(3) A container that is greater than one hundred nineteen (119) gallons in size and no more than 0.3 percent by weight of the total capacity of the container remains in the container or inner liner.

“Enclosure” means a structure that surrounds a tank or container, captures organic vapors emitted from the tank or container, and vents the captured vapors through a closed-vent system to a control device.

“External floating roof” means a pontoon-type or double-deck type cover that rests on the surface of the material managed in a tank with no fixed roof.

“Fixed roof” means a cover that is mounted on a unit in a stationary position and does not move with fluctuations in the level of the material managed in the unit.

“Floating membrane cover” means a cover consisting of a synthetic flexible membrane material that rests upon and is supported by the hazardous secondary material being managed in a surface impoundment.

“Floating roof” means a cover consisting of a double deck, pontoon single deck, or internal floating cover which rests upon and is supported by the material being contained, and is equipped with a continuous seal.

“Hard-piping” means pipe or tubing that is manufactured and properly installed in accordance with relevant standards and good engineering practices.

“In light material service” means the container is used to manage a material for which both of the following conditions apply: The vapor pressure of one (1) or more of the organic constituents in the material is greater than 0.3 kilopascals (kPa) at twenty degrees Celsius (20°C); and the total concentration of the pure organic constituents having a vapor pressure greater than 0.3 kilopascals (kPa) at 20°C is equal to or greater than twenty (20) percent by weight.

“Internal floating roof” means a cover that rests or floats on the material surface (but not necessarily in complete contact with it) inside a tank that has a fixed roof.

“Liquid-mounted seal” means a foam or liquid-filled primary seal mounted in contact with the hazardous secondary material between the tank wall and the floating roof continuously around the circumference of the tank.

“Malfunction” means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

“Material determination” means performing all applicable procedures in accordance with the requirements of section 261.1084 to determine whether a hazardous secondary material meets standards specified in this subpart. Examples of a material determination include performing the procedures in accordance with the requirements of section 261.1084 of this subpart to determine the average VO concentration of a hazardous secondary material at the point of material origination; the average VO concentration of a hazardous secondary material at the point of material treatment and comparing the results to the exit concentration limit specified for the process used to treat the hazardous secondary material; the organic reduction efficiency and the organic biodegradation efficiency for a biological process used to treat a hazardous secondary material and comparing the results to the applicable standards; or the maximum volatile organic vapor pressure for a hazardous secondary material in a tank and comparing the results to the applicable standards.

“Maximum organic vapor pressure” means the sum of the individual organic constituent partial pressures exerted by the material contained in a tank, at the maximum vapor pressure-causing conditions (i.e., temperature, agitation, pH effects of combining materials, etc.) reasonably expected to occur in the tank. For the purpose of this subpart, maximum organic vapor pressure is determined using the procedures specified in section 261.1084(c).

“Metallic shoe seal” means a continuous seal that is constructed of metal sheets which are held vertically against the wall of the tank by springs, weighted levers, or other mechanisms and is connected to the floating roof by braces or other means. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

“No detectable organic emissions” means no escape of organics to the atmosphere as determined using the procedure specified in section 261.1084(d).

“Point of material origination” means as follows:

(1) When the remanufacturer or other person that stores or treats the hazardous secondary material is the generator of the hazardous secondary material, the point of material origination means the point where a material produced by a system, process, or material management unit is determined to be a hazardous secondary material excluded under section 261.4(a)(27).

Note to paragraph (1) of the definition of “Point of material origination”: In this case, this term is being used in a manner similar to the use of the term “point of generation” in air standards established under authority of the Clean Air Act in 40 CFR parts 60, 61, and 63.

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(2) When the remanufacturer or other person that stores or treats the hazardous secondary material is not the generator of the hazardous secondary material, point of material origination means the point where the remanufacturer or other person that stores or treats the hazardous secondary material accepts delivery or takes possession of the hazardous secondary material.

“Safety device” means a closure device such as a pressure relief valve, frangible disc, fusible plug, or any other type of device which functions exclusively to prevent physical damage or permanent deformation to a unit or its air emission control equipment by venting gases or vapors directly to the atmosphere during unsafe conditions resulting from an unplanned, accidental, or emergency event. For the purpose of this subpart, a safety device is not used for routine venting of gases or vapors from the vapor headspace underneath a cover such as during filling of the unit or to adjust the pressure in this vapor headspace in response to normal daily diurnal ambient temperature fluctuations. A safety device is designed to remain in a closed position during normal operations and open only when the internal pressure, or another relevant parameter, exceeds the device threshold setting applicable to the air emission control equipment as determined by the remanufacturer or other person that stores or treats the hazardous secondary material based on manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials.

“Single-seal system” means a floating roof having one (1) continuous seal. This seal may be vapor-mounted, liquid-mounted, or a metallic shoe seal.

“Vapor-mounted seal” means a continuous seal that is mounted such that there is a vapor space between the hazardous secondary material in the unit and the bottom of the seal.

“Volatile organic concentration” or **“VO concentration”** means the fraction by weight of the volatile organic compounds contained in a hazardous secondary material expressed in terms of parts per million by weight (ppmw) as determined by direct measurement or by knowledge of the material in accordance with the requirements of section 261.1084. For the purpose of determining the VO concentration of a hazardous secondary material, organic compounds with a Henry’s law constant value of at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in the liquid-phase (0.1 Y/X) (which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m³) at twenty-five degrees Celsius (25°C) must be included.

261.1082. Standards: General.

(a) This section applies to the management of hazardous secondary material in tanks and containers subject to this subpart.

(b) The remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from each hazardous secondary material management unit in accordance with standards specified in sections 261.1084 through 261.1087, as applicable to the hazardous secondary material management unit, except as provided for in paragraph (c) of this section.

(c) A tank or container is exempt from standards specified in sections 261.1084 through 261.1087, as applicable, provided that the hazardous secondary material management unit is a tank or container for which all hazardous secondary material entering the unit has an average VO concentration at the point of material origination of less than five hundred (500) parts per million by weight (ppmw). The average VO concentration shall be determined using the procedures specified in section 261.1083(a) of this subpart. The remanufacturer or other person that stores or treats the hazardous secondary material shall review and update, as necessary, this determination at least once every twelve (12) months following the date of the initial determination for the hazardous secondary material streams entering the unit.

261.1083. Material determination procedures.

(a) Material determination procedure to determine average volatile organic (VO) concentration of a hazardous secondary material at the point of material origination.

(1) Determining average VO concentration at the point of material origination. A remanufacturer or other person that stores or treats the hazardous secondary material shall determine the average VO concentration at the point of material origination for each hazardous secondary material placed in a hazardous secondary material management unit exempted under the provisions of section 261.1082(c)(1) from using air emission controls in accordance with standards specified in sections 261.1084 through 261.1087, as applicable to the hazardous secondary material management unit.

(i) An initial determination of the average VO concentration of the material stream shall be made before the first time any portion of the material in the hazardous secondary material stream is placed in a hazardous secondary material management unit exempted under the provisions of section 261.1082(c)(1) of this subpart from using air emission controls, and thereafter an initial determination of the average VO concentration of the material stream shall be made for each averaging period that a hazardous secondary material is managed in the unit; and

(ii) Perform a new material determination whenever changes to the source generating the material stream are reasonably likely to cause the average VO concentration of the hazardous secondary material to increase to a level that is equal to or greater than the applicable VO concentration limits specified in section 261.1082.

(2) Determination of average VO concentration using direct measurement or knowledge. For a material determination that is required by paragraph (a)(1) of this section, the average VO concentration of a hazardous secondary material at the point of material origination shall be determined using either direct measurement as specified in paragraph (a)(3) of this section or by knowledge as specified in paragraph (a)(4) of this section.

(3) Direct measurement to determine average VO concentration of a hazardous secondary material at the point of material origination—

(i) Identification. The remanufacturer or other person that stores or treats the hazardous secondary material shall identify and record in a log that is kept at the facility the point of material origination for the hazardous secondary material.

(ii) Sampling. Samples of the hazardous secondary material stream shall be collected at the point of material origination in a manner such that volatilization of organics contained in the material and in the subsequent sample is minimized and an adequately representative sample is collected and maintained for analysis by the selected method.

(A) The averaging period to be used for determining the average VO concentration for the hazardous secondary material stream on a mass-weighted average basis shall be designated and recorded. The averaging period can represent any time interval that the remanufacturer or other person that stores or treats the hazardous secondary material determines is appropriate for the hazardous secondary material stream but shall not exceed one (1) year.

(B) A sufficient number of samples, but no less than four (4) samples, shall be collected and analyzed for a hazardous secondary material determination. All of the samples for a given material determination shall be collected within a one-hour period. The average of the four or more sample results constitutes a material determination for the material stream. One (1) or more material determinations may be required to represent the complete range of material compositions and quantities that occur during the entire averaging period due to normal variations in the operating conditions for the source or process generating the hazardous secondary material stream. Examples of such normal variations are seasonal variations in material quantity or fluctuations in ambient temperature.

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(C) All samples shall be collected and handled in accordance with written procedures prepared by the remanufacturer or other person that stores or treats the hazardous secondary material and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the hazardous secondary material stream are collected such that a minimum loss of organics occurs throughout the sample collection and handling process, and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained at the facility. An example of acceptable sample collection and handling procedures for a total volatile organic constituent concentration may be found in Method 25D in 40 CFR part 60, appendix A.

(D) Sufficient information, as specified in the “site sampling plan” required under paragraph (a)(3)(ii)(C) of this section, shall be prepared and recorded to document the material quantity represented by the samples and, as applicable, the operating conditions for the source or process generating the hazardous secondary material represented by the samples.

(iii) Analysis. Each collected sample shall be prepared and analyzed in accordance with Method 25D in 40 CFR part 60, appendix A for the total concentration of volatile organic constituents, or using one (1) or more methods when the individual organic compound concentrations are identified and summed and the summed material concentration accounts for and reflects all organic compounds in the material with Henry’s law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m³] at twenty-five degrees Celsius (25°C). At the discretion of the remanufacturer or other person that stores or treats the hazardous secondary material, the test data obtained may be adjusted by any appropriate method to discount any contribution to the total volatile organic concentration that is a result of including a compound with a Henry’s law constant value of less than 0.1 Y/X at 25°C). To adjust these data, the measured concentration of each individual chemical constituent contained in the material is multiplied by the appropriate constituent-specific adjustment factor (f_{m25D}). If the remanufacturer or other person that stores or treats the hazardous secondary material elects to adjust the test data, the adjustment must be made to all individual chemical constituents with a Henry’s law constant value greater than or equal to 0.1 Y/X at 25°C) contained in the material. Constituent-specific adjustment factors (f_{m25D}) can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711. Other test methods may be used if they meet the requirements in paragraph (a)(3)(iii)(A) or (B) of this section and provided the requirement to reflect all organic compounds in the material with Henry’s law constant values greater than or equal to 0.1 Y/X [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m³] at 25°C), is met.

(A) Any EPA standard method that has been validated in accordance with “Alternative Validation Procedure for EPA Waste and Wastewater Methods,” 40 CFR part 63, appendix D.

(B) Any other analysis method that has been validated in accordance with the procedures specified in Section 5.1 or Section 5.3, and the corresponding calculations in Section 6.1 or Section 6.3, of Method 301 in 40 CFR part 63, appendix A. The data are acceptable if they meet the criteria specified in Section 6.1.5 or Section 6.3.3 of Method 301. If correction is required under section 6.3.3 of Method 301, the data are acceptable if the correction factor is within the range 0.7 to 1.30. Other sections of Method 301 are not required.

(iv) Calculations.

(A) The average VO concentration (C) on a mass-weighted basis shall be calculated by using the results for all material determinations conducted in accordance with paragraphs (a)(3)(ii) and (iii) of this section and the following equation

$$\bar{C} = \frac{1}{Q_T} \times \sum_{i=1}^n (Q_i \times C_i)$$

Where:

\bar{C} = Average VO concentration of the hazardous secondary material at the point of material origination on a mass-weighted basis, ppmw.

i = Individual material determination “i” of the hazardous secondary material.

n = Total number of material determinations of the hazardous secondary material conducted for the averaging period (not to exceed one (1) year).

Q_i = Mass quantity of hazardous secondary material stream represented by C_i , kg/hr.

Q_T = Total mass quantity of hazardous secondary material during the averaging period, kg/hr.

C_i = Measured VO concentration of material determination “i” as determined in accordance with the requirements of paragraph (a)(3)(iii) of this section (i.e., the average of the four or more samples specified in paragraph (a)(3)(ii)(B) of this section), ppmw.

(B) For the purpose of determining C_i , for individual material samples analyzed in accordance with paragraph (a)(3)(iii) of this section, the remanufacturer or other person that stores or treats the hazardous secondary material shall account for VO concentrations determined to be below the limit of detection of the analytical method by using the following VO concentration:

(1) If Method 25D in 40 CFR part 60, appendix A is used for the analysis, one-half the blank value determined in the method at section 4.4 of Method 25D in 40 CFR part 60, appendix A.

(2) If any other analytical method is used, one-half the sum of the limits of detection established for each organic constituent in the material that has a Henry’s law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/ m^3] at twenty-five degrees Celsius (25°C).

(4) Use of knowledge by the remanufacturer or other person that stores or treats the hazardous secondary material to determine average VO concentration of a hazardous secondary material at the point of material origination.

(i) Documentation shall be prepared that presents the information used as the basis for the knowledge by the remanufacturer or other person that stores or treats the hazardous secondary material of the hazardous secondary material stream’s average VO concentration. Examples of information that may be used as the basis for knowledge include: Material balances for the source or process generating the hazardous secondary material stream; constituent-specific chemical test data for the hazardous secondary material stream from previous testing that are still applicable to the current material stream; previous test data for other locations managing the same type of material stream; or other knowledge based on information included in shipping papers or material certification notices.

(ii) If test data are used as the basis for knowledge, then the remanufacturer or other person that stores or treats the hazardous secondary material shall document the test method, sampling protocol, and the means by which sampling variability and analytical variability are accounted for in the determination of the average VO concentration. For example, a remanufacturer or other person that stores or treats the hazardous secondary material may use organic concentration test data for the hazardous secondary material stream that are validated in accordance with Method 301 in 40 CFR part 63, appendix A as the basis for knowledge of the material.

(iii) A remanufacturer or other person that stores or treats the hazardous secondary material using chemical constituent-specific concentration test data as the basis for knowledge of the hazardous secondary material may adjust the test data to the corresponding average VO concentration value which would have been obtained had the material samples been analyzed using Method 25D in 40 CFR part 60, appendix A. To adjust

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these data, the measured concentration for each individual chemical constituent contained in the material is multiplied by the appropriate constituent-specific adjustment factor (f_{m25D}).

(iv) In the event that the Department and the remanufacturer or other person that stores or treats the hazardous secondary material disagree on a determination of the average VO concentration for a hazardous secondary material stream using knowledge, then the results from a determination of average VO concentration using direct measurement as specified in paragraph (a)(3) of this section shall be used to establish compliance with the applicable requirements of this subpart. The Department may perform or request that the remanufacturer or other person that stores or treats the hazardous secondary material perform this determination using direct measurement. The remanufacturer or other person that stores or treats the hazardous secondary material may choose one (1) or more appropriate methods to analyze each collected sample in accordance with the requirements of paragraph (a)(3)(iii) of this section.

(b) [Reserved]

(c) Procedure to determine the maximum organic vapor pressure of a hazardous secondary material in a tank.

(1) A remanufacturer or other person that stores or treats the hazardous secondary material shall determine the maximum organic vapor pressure for each hazardous secondary material placed in a tank using Tank Level 1 controls in accordance with standards specified in section 261.1084(c).

(2) A remanufacturer or other person that stores or treats the hazardous secondary material shall use either direct measurement as specified in paragraph (c)(3) of this section or knowledge of the waste as specified by paragraph (c)(4) of this section to determine the maximum organic vapor pressure which is representative of the hazardous secondary material composition stored or treated in the tank.

(3) Direct measurement to determine the maximum organic vapor pressure of a hazardous secondary material.

(i) Sampling. A sufficient number of samples shall be collected to be representative of the hazardous secondary material contained in the tank. All samples shall be collected and handled in accordance with written procedures prepared by the remanufacturer or other person that stores or treats the hazardous secondary material and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the hazardous secondary material are collected such that a minimum loss of organics occurs throughout the sample collection and handling process and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained at the facility. An example of acceptable sample collection and handling procedures may be found in Method 25D in 40 CFR part 60, appendix A.

(ii) Analysis. Any one (1) of the appropriate following methods may be used to analyze the samples and compute the maximum organic vapor pressure of the hazardous secondary material:

(A) Method 25E in 40 CFR part 60 appendix A;

(B) Methods described in American Petroleum Institute Publication 2517, Third Edition, February 1989, "Evaporative Loss from External Floating-Roof Tanks," (incorporated by reference—refer to section 260.11 of this chapter);

(C) Methods obtained from standard reference texts;

(D) ASTM Method 2879-92 (incorporated by reference—refer to section 260.11); and

(E) Any other method approved by the Department.

(4) Use of knowledge to determine the maximum organic vapor pressure of the hazardous secondary material. Documentation shall be prepared and recorded that presents the information used as the basis for the knowledge by the remanufacturer or other person that stores or treats the hazardous secondary material that the maximum organic vapor pressure of the hazardous secondary material is less than the maximum vapor pressure limit listed in section 261.1085(b)(1)(i) for the applicable tank design capacity category. An example of information that may be used is documentation that the hazardous secondary material is generated by a process for which at other locations it previously has been determined by direct measurement that the hazardous secondary material's waste maximum organic vapor pressure is less than the maximum vapor pressure limit for the appropriate tank design capacity category.

(d) Procedure for determining no detectable organic emissions for the purpose of complying with this subpart:

(1) The test shall be conducted in accordance with the procedures specified in Method 21 of 40 CFR part 60, appendix A. Each potential leak interface (i.e., a location where organic vapor leakage could occur) on the cover and associated closure devices shall be checked. Potential leak interfaces that are associated with covers and closure devices include, but are not limited to: The interface of the cover and its foundation mounting; the periphery of any opening on the cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure relief valve.

(2) The test shall be performed when the unit contains a hazardous secondary material having an organic concentration representative of the range of concentrations for the hazardous secondary material expected to be managed in the unit. During the test, the cover and closure devices shall be secured in the closed position.

(3) The detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the organic constituents in the hazardous secondary material placed in the hazardous secondary management unit, not for each individual organic constituent.

(4) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 CFR part 60, appendix A.

(5) Calibration gases shall be as follows:

(i) Zero air (less than ten (10) ppmv hydrocarbon in air), and

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, ten thousand (10,000) ppmv methane or n-hexane.

(6) The background level shall be determined according to the procedures in Method 21 of 40 CFR part 60, appendix A.

(7) Each potential leak interface shall be checked by traversing the instrument probe around the potential leak interface as close to the interface as possible, as described in Method 21 of 40 CFR part 60, appendix A. In the case when the configuration of the cover or closure device prevents a complete traverse of the interface, all accessible portions of the interface shall be sampled. In the case when the configuration of the closure device prevents any sampling at the interface and the device is equipped with an enclosed extension or horn (e.g., some pressure relief devices), the instrument probe inlet shall be placed at approximately the center of the exhaust area to the atmosphere.

(8) The arithmetic difference between the maximum organic concentration indicated by the instrument and the background level shall be compared with the value of five hundred (500) ppmv except when monitoring a seal around a rotating shaft that passes through a cover opening, in which case the comparison shall be as

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specified in paragraph (d)(9) of this section. If the difference is less than five hundred (500) ppmv, then the potential leak interface is determined to operate with no detectable organic emissions.

(9) For the seals around a rotating shaft that passes through a cover opening, the arithmetic difference between the maximum organic concentration indicated by the instrument and the background level shall be compared with the value of ten thousand (10,000) ppmw. If the difference is less than ten thousand (10,000) ppmw, then the potential leak interface is determined to operate with no detectable organic emissions.

261.1084. Standards: Tanks.

(a) The provisions of this section apply to the control of air pollutant emissions from tanks for which section 261.1082(b) subpart references the use of this section for such air emission control.

(b) The remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from each tank subject to this section in accordance with the following requirements as applicable:

(1) For a tank that manages hazardous secondary material that meets all of the conditions specified in paragraphs (b)(1)(i) through (iii) of this section, the remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from the tank in accordance with the Tank Level 1 controls specified in paragraph (c) of this section or the Tank Level 2 controls specified in paragraph (d) of this section.

(i) The hazardous secondary material in the tank has a maximum organic vapor pressure which is less than the maximum organic vapor pressure limit for the tank's design capacity category as follows:

(A) For a tank design capacity equal to or greater than one hundred fifty-one cubic meters (151 m³), the maximum organic vapor pressure limit for the tank is 5.2 kilopascals (kPa).

(B) For a tank design capacity equal to or greater than seventy-five (75) m³ but less than one hundred fifty-one (151) m³, the maximum organic vapor pressure limit for the tank is 27.6 kPa.

(C) For a tank design capacity less than seventy-five (75) m³, the maximum organic vapor pressure limit for the tank is 76.6 kPa.

(ii) The hazardous secondary material in the tank is not heated by the remanufacturer or other person that stores or treats the hazardous secondary material to a temperature that is greater than the temperature at which the maximum organic vapor pressure of the hazardous secondary material is determined for the purpose of complying with paragraph (b)(1)(i) of this section.

(2) For a tank that manages hazardous secondary material that does not meet all of the conditions specified in paragraphs (b)(1)(i) through (iii) of this section, the remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from the tank by using Tank Level 2 controls in accordance with the requirements of paragraph (d) of this section. An example of tanks required to use Tank Level 2 controls is a tank for which the hazardous secondary material in the tank has a maximum organic vapor pressure that is equal to or greater than the maximum organic vapor pressure limit for the tank's design capacity category as specified in paragraph (b)(1)(i) of this section.

(c) Remanufacturers or other persons that store or treats the hazardous secondary material controlling air pollutant emissions from a tank using Tank Level 1 controls shall meet the requirements specified in paragraphs (c)(1) through (4) of this section:

(1) The remanufacturer or other person that stores or treats that hazardous secondary material shall determine the maximum organic vapor pressure for a hazardous secondary material to be managed in the tank using Tank Level 1 controls before the first time the hazardous secondary material is placed in the tank. The maximum organic vapor pressure shall be determined using the procedures specified in section 261.1083(c) of this subpart. Thereafter, the remanufacturer or other person that stores or treats the hazardous secondary material shall perform a new determination whenever changes to the hazardous secondary material managed in the tank could potentially cause the maximum organic vapor pressure to increase to a level that is equal to or greater than the maximum organic vapor pressure limit for the tank design capacity category specified in paragraph (b)(1)(i) of this section, as applicable to the tank.

(2) The tank shall be equipped with a fixed roof designed to meet the following specifications:

(i) The fixed roof and its closure devices shall be designed to form a continuous barrier over the entire surface area of the hazardous secondary material in the tank. The fixed roof may be a separate cover installed on the tank (e.g., a removable cover mounted on an open-top tank) or may be an integral part of the tank structural design (e.g., a horizontal cylindrical tank equipped with a hatch).

(ii) The fixed roof shall be installed in a manner such that there are no visible cracks, holes, gaps, or other open spaces between roof section joints or between the interface of the roof edge and the tank wall.

(iii) Each opening in the fixed roof, and any manifold system associated with the fixed roof, shall be either:

(A) Equipped with a closure device designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the opening and the closure device; or

(B) Connected by a closed-vent system that is vented to a control device. The control device shall remove or destroy organics in the vent stream, and shall be operating whenever hazardous secondary material is managed in the tank, except as provided for in paragraphs (c)(2)(iii)(B)(1) and (2) of this section.

(1) During periods when it is necessary to provide access to the tank for performing the activities of paragraph (c)(2)(iii)(B)(2) of this section, venting of the vapor headspace underneath the fixed roof to the control device is not required, opening of closure devices is allowed, and removal of the fixed roof is allowed. Following completion of the activity, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, and resume operation of the control device.

(2) During periods of routine inspection, maintenance, or other activities needed for normal operations, and for removal of accumulated sludge or other residues from the bottom of the tank.

(iv) The fixed roof and its closure devices shall be made of suitable materials that will minimize exposure of the hazardous secondary material to the atmosphere, to the extent practical, and will maintain the integrity of the fixed roof and closure devices throughout their intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices shall include: organic vapor permeability, the effects of any contact with the hazardous secondary material or its vapors managed in the tank; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the tank on which the fixed roof is installed.

(3) Whenever a hazardous secondary material is in the tank, the fixed roof shall be installed with each closure device secured in the closed position except as follows:

(i) Opening of closure devices or removal of the fixed roof is allowed at the following times:

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(A) To provide access to the tank for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample the liquid in the tank, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the tank.

(B) To remove accumulated sludge or other residues from the bottom of tank.

(ii) Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the tank internal pressure in accordance with the tank design specifications. The device shall be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the tank internal pressure is within the internal pressure operating range determined by the remanufacturer or other person that stores or treats the hazardous secondary material based on the tank manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the tank internal pressure exceeds the internal pressure operating range for the tank as a result of loading operations or diurnal ambient temperature fluctuations.

(iii) Opening of a safety device, as defined in section 261.1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect the air emission control equipment in accordance with the following requirements.

(i) The fixed roof and its closure devices shall be visually inspected by the remanufacturer or other person that stores or treats the hazardous secondary material to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the tank wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The remanufacturer or other person that stores or treats the hazardous secondary material shall perform an initial inspection of the fixed roof and its closure devices on or before the date that the tank becomes subject to this section. Thereafter, the remanufacturer or other person that stores or treats the hazardous secondary material shall perform the inspections at least once every year except under the special conditions provided for in paragraph (l) of this section.

(iii) In the event that a defect is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of paragraph (k) of this section.

(iv) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection in accordance with the requirements specified in section 261.1089(b) of this subpart.

(d) Remanufacturers or other persons that store or treat the hazardous secondary material controlling air pollutant emissions from a tank using Tank Level 2 controls shall use one (1) of the following tanks:

(1) A fixed-roof tank equipped with an internal floating roof in accordance with the requirements specified in paragraph (e) of this section;

(2) A tank equipped with an external floating roof in accordance with the requirements specified in paragraph (f) of this section;

(3) A tank vented through a closed-vent system to a control device in accordance with the requirements specified in paragraph (g) of this section;

(4) A pressure tank designed and operated in accordance with the requirements specified in paragraph (h) of this section; or

(5) A tank located inside an enclosure that is vented through a closed-vent system to an enclosed combustion control device in accordance with the requirements specified in paragraph (i) of this section.

(e) The remanufacturer or other person that stores or treats the hazardous secondary material who controls air pollutant emissions from a tank using a fixed roof with an internal floating roof shall meet the requirements specified in paragraphs (e)(1) through (3) of this section.

(1) The tank shall be equipped with a fixed roof and an internal floating roof in accordance with the following requirements:

(i) The internal floating roof shall be designed to float on the liquid surface except when the floating roof must be supported by the leg supports.

(ii) The internal floating roof shall be equipped with a continuous seal between the wall of the tank and the floating roof edge that meets either of the following requirements:

(A) A single continuous seal that is either a liquid-mounted seal or a metallic shoe seal, as defined in section 261.1081; or

(B) Two (2) continuous seals mounted one above the other. The lower seal may be a vapor-mounted seal.

(iii) The internal floating roof shall meet the following specifications:

(A) Each opening in a noncontact internal floating roof except for automatic bleeder vents (vacuum breaker vents) and the rim space vents is to provide a projection below the liquid surface.

(B) Each opening in the internal floating roof shall be equipped with a gasketed cover or a gasketed lid except for leg sleeves, automatic bleeder vents, rim space vents, column wells, ladder wells, sample wells, and stub drains.

(C) Each penetration of the internal floating roof for the purpose of sampling shall have a slit fabric cover that covers at least ninety (90) percent of the opening.

(D) Each automatic bleeder vent and rim space vent shall be gasketed.

(E) Each penetration of the internal floating roof that allows for passage of a ladder shall have a gasketed sliding cover.

(F) Each penetration of the internal floating roof that allows for passage of a column supporting the fixed roof shall have a flexible fabric sleeve seal or a gasketed sliding cover.

(2) The remanufacturer or other person that stores or treats the hazardous secondary material shall operate the tank in accordance with the following requirements:

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(i) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be completed as soon as practical.

(ii) Automatic bleeder vents are to be set closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the leg supports.

(iii) Prior to filling the tank, each cover, access hatch, gauge float well or lid on any opening in the internal floating roof shall be bolted or fastened closed (i.e., no visible gaps). Rim space vents are to be set to open only when the internal floating roof is not floating or when the pressure beneath the rim exceeds the manufacturer's recommended setting.

(3) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect the internal floating roof in accordance with the procedures specified as follows:

(i) The floating roof and its closure devices shall be visually inspected by the remanufacture or other person that stores or treats the hazardous secondary material to check for defects that could result in air pollutant emissions. Defects include, but are not limited to: The internal floating roof is not floating on the surface of the liquid inside the tank; liquid has accumulated on top of the internal floating roof; any portion of the roof seals have detached from the roof rim; holes, tears, or other openings are visible in the seal fabric; the gaskets no longer close off the hazardous secondary material surface from the atmosphere; or the slotted membrane has more than ten (10) percent open area.

(ii) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect the internal floating roof components as follows except as provided in paragraph (e)(3)(iii) of this section:

(A) Visually inspect the internal floating roof components through openings on the fixed-roof (e.g., manholes and roof hatches) at least once every twelve (12) months after initial fill, and

(B) Visually inspect the internal floating roof, primary seal, secondary seal (if one is in service), gaskets, slotted membranes, and sleeve seals (if any) each time the tank is emptied and degassed and at least every ten (10) years.

(iii) As an alternative to performing the inspections specified in paragraph (e)(3)(ii) of this section for an internal floating roof equipped with two (2) continuous seals mounted one above the other, the remanufacturer or other person that stores or treats the hazardous secondary material may visually inspect the internal floating roof, primary and secondary seals, gaskets, slotted membranes, and sleeve seals (if any) each time the tank is emptied and degassed and at least every five (5) years.

(iv) Prior to each inspection required by paragraph (e)(3)(ii) or (iii) of this section, the remanufacturer or other person that stores or treats the hazardous secondary material shall notify the Department in advance of each inspection to provide the Department with the opportunity to have an observer present during the inspection. The remanufacturer or other person that stores or treats the hazardous secondary material shall notify the Department of the date and location of the inspection as follows:

(A) Prior to each visual inspection of an internal floating roof in a tank that has been emptied and degassed, written notification shall be prepared and sent by the remanufacturer or other person that stores or treats the hazardous secondary material so that it is received by the Department at least thirty (30) calendar days before refilling the tank except when an inspection is not planned as provided for in paragraph (e)(3)(iv)(B) of this section.

(B) When a visual inspection is not planned and the remanufacturer or other person that stores or treats the hazardous secondary material could not have known about the inspection thirty (30) calendar days before refilling the tank, the remanufacturer or other person that stores or treats the hazardous secondary material shall

notify the Department as soon as possible, but no later than seven (7) calendar days before refilling of the tank. This notification may be made by telephone and immediately followed by a written explanation for why the inspection is unplanned. Alternatively, written notification, including the explanation for the unplanned inspection, may be sent so that it is received by the Department at least seven (7) calendar days before refilling the tank.

(v) In the event that a defect is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of paragraph (k) of this section.

(vi) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection in accordance with the requirements specified in section 261.1089(b).

(4) Safety devices, as defined in section 261.1081, may be installed and operated as necessary on any tank complying with the requirements of paragraph (e) of this section.

(f) The remanufacturer or other person that stores or treats the hazardous secondary material who controls air pollutant emissions from a tank using an external floating roof shall meet the requirements specified in paragraphs (f)(1) through (3) of this section.

(1) The remanufacturer or other person that stores or treats the hazardous secondary material shall design the external floating roof in accordance with the following requirements:

(i) The external floating roof shall be designed to float on the liquid surface except when the floating roof must be supported by the leg supports.

(ii) The floating roof shall be equipped with two (2) continuous seals, one above the other, between the wall of the tank and the roof edge. The lower seal is referred to as the primary seal, and the upper seal is referred to as the secondary seal.

(A) The primary seal shall be a liquid-mounted seal or a metallic shoe seal, as defined in section 261.1081. The total area of the gaps between the tank wall and the primary seal shall not exceed two hundred twelve square centimeters (212 cm²) per meter of tank diameter, and the width of any portion of these gaps shall not exceed 3.8 centimeters (cm). If a metallic shoe seal is used for the primary seal, the metallic shoe seal shall be designed so that one end extends into the liquid in the tank and the other end extends a vertical distance of at least sixty-one (61) cm above the liquid surface.

(B) The secondary seal shall be mounted above the primary seal and cover the annular space between the floating roof and the wall of the tank. The total area of the gaps between the tank wall and the secondary seal shall not exceed 21.2 cm² per meter of tank diameter, and the width of any portion of these gaps shall not exceed 1.3 cm.

(iii) The external floating roof shall meet the following specifications:

(A) Except for automatic bleeder vents (vacuum breaker vents) and rim space vents, each opening in a noncontact external floating roof shall provide a projection below the liquid surface.

(B) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof shall be equipped with a gasketed cover, seal, or lid.

(C) Each access hatch and each gauge float well shall be equipped with a cover designed to be bolted or fastened when the cover is secured in the closed position.

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(D) Each automatic bleeder vent and each rim space vent shall be equipped with a gasket.

(E) Each roof drain that empties into the liquid managed in the tank shall be equipped with a slotted membrane fabric cover that covers at least ninety (90) percent of the area of the opening.

(F) Each unslotted and slotted guide pole well shall be equipped with a gasketed sliding cover or a flexible fabric sleeve seal.

(G) Each unslotted guide pole shall be equipped with a gasketed cap on the end of the pole.

(H) Each slotted guide pole shall be equipped with a gasketed float or other device which closes off the liquid surface from the atmosphere.

(I) Each gauge hatch and each sample well shall be equipped with a gasketed cover.

(2) The remanufacturer or other person that stores or treats the hazardous secondary material shall operate the tank in accordance with the following requirements:

(i) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be completed as soon as practical.

(ii) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof shall be secured and maintained in a closed position at all times except when the closure device must be open for access.

(iii) Covers on each access hatch and each gauge float well shall be bolted or fastened when secured in the closed position.

(iv) Automatic bleeder vents shall be set closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the leg supports.

(v) Rim space vents shall be set to open only at those times that the roof is being floated off the roof leg supports or when the pressure beneath the rim seal exceeds the manufacturer's recommended setting.

(vi) The cap on the end of each unslotted guide pole shall be secured in the closed position at all times except when measuring the level or collecting samples of the liquid in the tank.

(vii) The cover on each gauge hatch or sample well shall be secured in the closed position at all times except when the hatch or well must be opened for access.

(viii) Both the primary seal and the secondary seal shall completely cover the annular space between the external floating roof and the wall of the tank in a continuous fashion except during inspections.

(3) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect the external floating roof in accordance with the procedures specified as follows:

(i) The remanufacturer or other person that stores or treats the hazardous secondary material shall measure the external floating roof seal gaps in accordance with the following requirements:

(A) The remanufacturer or other person that stores or treats the hazardous secondary material shall perform measurements of gaps between the tank wall and the primary seal within sixty (60) calendar days after initial operation of the tank following installation of the floating roof and, thereafter, at least once every five (5) years.

(B) The remanufacturer or other person that stores or treats the hazardous secondary material shall perform measurements of gaps between the tank wall and the secondary seal within sixty (60) calendar days after initial operation of the tank following installation of the floating roof and, thereafter, at least once every year.

(C) If a tank ceases to hold hazardous secondary material for a period of one (1) year or more, subsequent introduction of hazardous secondary material into the tank shall be considered an initial operation for the purposes of paragraphs (f)(3)(i)(A) and (B) of this section.

(D) The remanufacturer or other person that stores or treats the hazardous secondary material shall determine the total surface area of gaps in the primary seal and in the secondary seal individually using the following procedure:

(1) The seal gap measurements shall be performed at one (1) or more floating roof levels when the roof is floating off the roof supports.

(2) Seal gaps, if any, shall be measured around the entire perimeter of the floating roof in each place where a 0.32-centimeter (cm) diameter uniform probe passes freely (without forcing or binding against the seal) between the seal and the wall of the tank and measure the circumferential distance of each such location.

(3) For a seal gap measured under paragraph (f)(3) of this section, the gap surface area shall be determined by using probes of various widths to measure accurately the actual distance from the tank wall to the seal and multiplying each such width by its respective circumferential distance.

(4) The total gap area shall be calculated by adding the gap surface areas determined for each identified gap location for the primary seal and the secondary seal individually, and then dividing the sum for each seal type by the nominal diameter of the tank. These total gap areas for the primary seal and secondary seal are then compared to the respective standards for the seal type as specified in paragraph (f)(1)(ii) of this section.

(E) In the event that the seal gap measurements do not conform to the specifications in paragraph (f)(1)(ii) of this section, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of paragraph (k) of this section.

(F) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection in accordance with the requirements specified in section 261.1089(b).

(ii) The remanufacturer or other person that stores or treats the hazardous secondary material shall visually inspect the external floating roof in accordance with the following requirements:

(A) The floating roof and its closure devices shall be visually inspected by the remanufacturer or other person that stores or treats the hazardous secondary material to check for defects that could result in air pollutant emissions. Defects include, but are not limited to: Holes, tears, or other openings in the rim seal or seal fabric of the floating roof; a rim seal detached from the floating roof; all or a portion of the floating roof deck being submerged below the surface of the liquid in the tank; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(B) The remanufacturer or other person that stores or treats the hazardous secondary material shall perform an initial inspection of the external floating roof and its closure devices on or before the date that the tank becomes subject to this section. Thereafter, the remanufacturer or other person that stores or treats the hazardous secondary material shall perform the inspections at least once every year except for the special conditions provided for in paragraph (l) of this section.

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(C) In the event that a defect is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of paragraph (k) of this section.

(D) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection in accordance with the requirements specified in section 261.1089(b).

(iii) Prior to each inspection required by paragraph (f)(3)(i) or (ii) of this section, the remanufacturer or other person that stores or treats the hazardous secondary material shall notify the Department in advance of each inspection to provide the Department with the opportunity to have an observer present during the inspection. The remanufacturer or other person that stores or treats the hazardous secondary material shall notify the Department of the date and location of the inspection as follows:

(A) Prior to each inspection to measure external floating roof seal gaps as required under paragraph (f)(3)(i) of this section, written notification shall be prepared and sent by the remanufacturer or other person that stores or treats the hazardous secondary material so that it is received by the Department at least thirty (30) calendar days before the date the measurements are scheduled to be performed.

(B) Prior to each visual inspection of an external floating roof in a tank that has been emptied and degassed, written notification shall be prepared and sent by the remanufacturer or other person that stores or treats the hazardous secondary material so that it is received by the Department at least thirty (30) calendar days before refilling the tank except when an inspection is not planned as provided for in paragraph (f)(3)(iii)(C) of this section.

(C) When a visual inspection is not planned and the remanufacturer or other person that stores or treats the hazardous secondary material could not have known about the inspection thirty (30) calendar days before refilling the tank, the owner or operator shall notify the Department as soon as possible, but no later than seven (7) calendar days before refilling of the tank. This notification may be made by telephone and immediately followed by a written explanation for why the inspection is unplanned. Alternatively, written notification, including the explanation for the unplanned inspection, may be sent so that it is received by the Department at least seven (7) calendar days before refilling the tank.

(4) Safety devices, as defined in section 261.1081, may be installed and operated as necessary on any tank complying with the requirements of paragraph (f) of this section.

(g) The remanufacturer or other person that stores or treats the hazardous secondary material who controls air pollutant emissions from a tank by venting the tank to a control device shall meet the requirements specified in paragraphs (g)(1) through (3) of this section.

(1) The tank shall be covered by a fixed roof and vented directly through a closed-vent system to a control device in accordance with the following requirements:

(i) The fixed roof and its closure devices shall be designed to form a continuous barrier over the entire surface area of the liquid in the tank.

(ii) Each opening in the fixed roof not vented to the control device shall be equipped with a closure device. If the pressure in the vapor headspace underneath the fixed roof is less than atmospheric pressure when the control device is operating, the closure devices shall be designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device. If the pressure in the vapor headspace underneath the fixed roof is equal to or greater than atmospheric pressure when the control device is operating, the closure device shall be designed to operate with no detectable organic emissions.

(iii) The fixed roof and its closure devices shall be made of suitable materials that will minimize exposure of the hazardous secondary material to the atmosphere, to the extent practical, and will maintain the integrity of the fixed roof and closure devices throughout their intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices shall include: Organic vapor permeability, the effects of any contact with the liquid and its vapor managed in the tank; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the tank on which the fixed roof is installed.

(iv) The closed-vent system and control device shall be designed and operated in accordance with the requirements of section 261.1087.

(2) Whenever a hazardous secondary material is in the tank, the fixed roof shall be installed with each closure device secured in the closed position and the vapor headspace underneath the fixed roof vented to the control device except as follows:

(i) Venting to the control device is not required, and opening of closure devices or removal of the fixed roof is allowed at the following times:

(A) To provide access to the tank for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample liquid in the tank, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the tank.

(B) To remove accumulated sludge or other residues from the bottom of a tank.

(ii) Opening of a safety device, as defined in section 261.1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(3) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect and monitor the air emission control equipment in accordance with the following procedures:

(i) The fixed roof and its closure devices shall be visually inspected by the remanufacturer or other person that stores or treats the hazardous secondary material to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the tank wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The closed-vent system and control device shall be inspected and monitored by the remanufacturer or other person that stores or treats the hazardous secondary material in accordance with the procedures specified in section 261.1087.

(iii) The remanufacturer or other person that stores or treats the hazardous secondary material shall perform an initial inspection of the air emission control equipment on or before the date that the tank becomes subject to this section. Thereafter, the remanufacturer or other person that stores or treats the hazardous secondary material shall perform the inspections at least once every year except for the special conditions provided for in paragraph (l) of this section.

(iv) In the event that a defect is detected, the remanufacture or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of paragraph (k) of this section.

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(v) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection in accordance with the requirements specified in section 261.1089(b).

(h) The remanufacturer or other person that stores or treats the hazardous secondary material who controls air pollutant emissions by using a pressure tank shall meet the following requirements.

(1) The tank shall be designed not to vent to the atmosphere as a result of compression of the vapor headspace in the tank during filling of the tank to its design capacity.

(2) All tank openings shall be equipped with closure devices designed to operate with no detectable organic emissions as determined using the procedure specified in section 261.1083(d).

(3) Whenever a hazardous secondary material is in the tank, the tank shall be operated as a closed system that does not vent to the atmosphere except under either or the following conditions as specified in paragraph (h)(3)(i) or (h)(3)(ii) of this section.

(i) At those times when opening of a safety device, as defined in section 261.1081, is required to avoid an unsafe condition.

(ii) At those times when purging of inerts from the tank is required and the purge stream is routed to a closed-vent system and control device designed and operated in accordance with the requirements of section 261.1087.

(i) The remanufacturer or other person that stores or treats the hazardous secondary material who controls air pollutant emissions by using an enclosure vented through a closed-vent system to an enclosed combustion control device shall meet the requirements specified in paragraphs (i)(1) through (4) of this section.

(1) The tank shall be located inside an enclosure. The enclosure shall be designed and operated in accordance with the criteria for a permanent total enclosure as specified in “Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure” under 40 CFR 52.741, appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of material into or out of the enclosure by conveyor, vehicles, or other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow into the enclosure. The remanufacturer or other person that stores or treats the hazardous secondary material shall perform the verification procedure for the enclosure as specified in Section 5.0 to “Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure” initially when the enclosure is first installed and, thereafter, annually.

(2) The enclosure shall be vented through a closed-vent system to an enclosed combustion control device that is designed and operated in accordance with the standards for either a vapor incinerator, boiler, or process heater specified in section 261.1087.

(3) Safety devices, as defined in section 261.1081, may be installed and operated as necessary on any enclosure, closed-vent system, or control device used to comply with the requirements of paragraphs (i)(1) and (2) of this section.

(4) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect and monitor the closed-vent system and control device as specified in section 261.1087.

(j) The remanufacturer or other person that stores or treats the hazardous secondary material shall transfer hazardous secondary material to a tank subject to this section in accordance with the following requirements:

(1) Transfer of hazardous secondary material, except as provided in paragraph (j)(2) of this section, to the tank from another tank subject to this section shall be conducted using continuous hard-piping or another closed

system that does not allow exposure of the hazardous secondary material to the atmosphere. For the purpose of complying with this provision, an individual drain system is considered to be a closed system when it meets the requirements of 40 CFR part 63, subpart RR—National Emission Standards for Individual Drain Systems.

(2) The requirements of paragraph (j)(1) of this section do not apply when transferring a hazardous secondary material to the tank under any of the following conditions:

(i) The hazardous secondary material meets the average VO concentration conditions specified in section 261.1082(c)(1) at the point of material origination.

(ii) The hazardous secondary material has been treated by an organic destruction or removal process to meet the requirements in section 261.1082(c)(2).

(iii) The hazardous secondary material meets the requirements of section 261.1082(c)(4).

(k) The remanufacturer or other person that stores or treats the hazardous secondary material shall repair each defect detected during an inspection performed in accordance with the requirements of paragraph (c)(4), (e)(3), (f)(3), or (g)(3) of this section as follows:

(1) The remanufacturer or other person that stores or treats the hazardous secondary material shall make first efforts at repair of the defect no later than five (5) calendar days after detection, and repair shall be completed as soon as possible but no later than forty-five (45) calendar days after detection except as provided in paragraph (k)(2) of this section.

(2) Repair of a defect may be delayed beyond forty-five (45) calendar days if the remanufacturer or other person that stores or treats the hazardous secondary material determines that repair of the defect requires emptying or temporary removal from service of the tank and no alternative tank capacity is available at the site to accept the hazardous secondary material normally managed in the tank. In this case, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect the next time the process or unit that is generating the hazardous secondary material managed in the tank stops operation. Repair of the defect shall be completed before the process or unit resumes operation.

(l) Following the initial inspection and monitoring of the cover as required by the applicable provisions of this subpart, subsequent inspection and monitoring may be performed at intervals longer than one (1) year under the following special conditions:

(1) In the case when inspecting or monitoring the cover would expose a worker to dangerous, hazardous, or other unsafe conditions, then the remanufacturer or other person that stores or treats the hazardous secondary material may designate a cover as an “unsafe to inspect and monitor cover” and comply with all of the following requirements:

(i) Prepare a written explanation for the cover stating the reasons why the cover is unsafe to visually inspect or to monitor, if required.

(ii) Develop and implement a written plan and schedule to inspect and monitor the cover, using the procedures specified in the applicable section of this subpart, as frequently as practicable during those times when a worker can safely access the cover.

(2) In the case when a tank is buried partially or entirely underground, a remanufacturer or other person that stores or treats the hazardous secondary material is required to inspect and monitor, as required by the applicable provisions of this section, only those portions of the tank cover and those connections to the tank (e.g., fill ports, access hatches, gauge wells, etc.) that are located on or above the ground surface.

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261.1085. [Reserved]

261.1086. Standards: Containers.

(a) Applicability. The provisions of this section apply to the control of air pollutant emissions from containers for which section 261.1082(b) references the use of this section for such air emission control.

(b) General requirements.

(1) The remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from each container subject to this section in accordance with the following requirements, as applicable to the container.

(i) For a container having a design capacity greater than 0.1 cubic meters (m³) and less than or equal to 0.46 m³, the remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from the container in accordance with the Container Level 1 standards specified in paragraph (c) of this section.

(ii) For a container having a design capacity greater than 0.46 m³ that is not in light material service, the remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from the container in accordance with the Container Level 1 standards specified in paragraph (c) of this section.

(iii) For a container having a design capacity greater than 0.46 m³ that is in light material service, the remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from the container in accordance with the Container Level 2 standards specified in paragraph (d) of this section.

(2) [Reserved]

(c) Container Level 1 standards.

(1) A container using Container Level 1 controls is one of the following:

(i) A container that meets the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as specified in paragraph (f) of this section.

(ii) A container equipped with a cover and closure devices that form a continuous barrier over the container openings such that when the cover and closure devices are secured in the closed position there are no visible holes, gaps, or other open spaces into the interior of the container. The cover may be a separate cover installed on the container (e.g., a lid on a drum or a suitably secured tarp on a roll-off box) or may be an integral part of the container structural design (e.g., a “portable tank” or bulk cargo container equipped with a screw-type cap).

(iii) An open-top container in which an organic-vapor suppressing barrier is placed on or over the hazardous secondary material in the container such that no hazardous secondary material is exposed to the atmosphere. One example of such a barrier is application of a suitable organic-vapor suppressing foam.

(2) A container used to meet the requirements of paragraph (c)(1)(ii) or (iii) of this section shall be equipped with covers and closure devices, as applicable to the container, that are composed of suitable materials to minimize exposure of the hazardous secondary material to the atmosphere and to maintain the equipment integrity, for as long as the container is in service. Factors to be considered in selecting the materials of construction and designing the cover and closure devices shall include: Organic vapor permeability; the effects

of contact with the hazardous secondary material or its vapor managed in the container; the effects of outdoor exposure of the closure device or cover material to wind, moisture, and sunlight; and the operating practices for which the container is intended to be used.

(3) Whenever a hazardous secondary material is in a container using Container Level 1 controls, the remanufacturer or other person that stores or treats the hazardous secondary material shall install all covers and closure devices for the container, as applicable to the container, and secure and maintain each closure device in the closed position except as follows:

(i) Opening of a closure device or cover is allowed for the purpose of adding hazardous secondary material or other material to the container as follows:

(A) In the case when the container is filled to the intended final level in one continuous operation, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.

(B) In the case when discrete quantities or batches of material intermittently are added to the container over a period of time, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within fifteen (15) minutes; the person performing the loading operation leaving the immediate vicinity of the container; or the shutdown of the process generating the hazardous secondary material being added to the container, whichever condition occurs first.

(ii) Opening of a closure device or cover is allowed for the purpose of removing hazardous secondary material from the container as follows:

(A) For the purpose of meeting the requirements of this section, an empty hazardous secondary material container may be open to the atmosphere at any time (i.e., covers and closure devices on such a container are not required to be secured in the closed position).

(B) In the case when discrete quantities or batches of material are removed from the container, but the container is not an empty hazardous secondary material container, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within fifteen (15) minutes or the person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.

(iii) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of hazardous secondary material. Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in the container, or when a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.

(iv) Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the internal pressure of the container in accordance with the container design specifications. The device shall be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the internal pressure of the container is within the internal pressure operating range determined by the remanufacturer or other persons that stores or treats the hazardous secondary material based

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on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the internal pressure of the container exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

(v) Opening of a safety device, as defined in section 261.1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The remanufacturer or other person that stores or treats the hazardous secondary material using containers with Container Level 1 controls shall inspect the containers and their covers and closure devices as follows:

(i) In the case when a hazardous secondary material already is in the container at the time the remanufacturer or other person that stores or treats the hazardous secondary material first accepts possession of the container at the facility and the container is not emptied within twenty-four (24) hours after the container is accepted at the facility (i.e., is not an empty hazardous secondary material container) the remanufacturer or other person that stores or treats the hazardous secondary material shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility (i.e., the date the container becomes subject to the subpart CC container standards).

(ii) In the case when a container used for managing hazardous secondary material remains at the facility for a period of one (1) year or more, the remanufacturer or other person that stores or treats the hazardous secondary material shall visually inspect the container and its cover and closure devices initially and thereafter, at least once every twelve (12) months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of paragraph (c)(4)(iii) of this section.

(iii) When a defect is detected for the container, cover, or closure devices, the remanufacturer or other person that stores or treats the hazardous secondary material shall make first efforts at repair of the defect no later than twenty-four (24) hours after detection and repair shall be completed as soon as possible but no later than five (5) calendar days after detection. If repair of a defect cannot be completed within five (5) calendar days, then the hazardous secondary material shall be removed from the container and the container shall not be used to manage hazardous secondary material until the defect is repaired.

(5) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain at the facility a copy of the procedure used to determine that containers with capacity of 0.46 m³ or greater, which do not meet applicable DOT regulations as specified in paragraph (f) of this section, are not managing hazardous secondary material in light material service.

(d) Container Level 2 standards.

(1) A container using Container Level 2 controls is one of the following:

(i) A container that meets the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as specified in paragraph (f) of this section.

(ii) A container that operates with no detectable organic emissions as defined in section 261.1081 and determined in accordance with the procedure specified in paragraph (g) of this section.

(iii) A container that has been demonstrated within the preceding twelve (12) months to be vapor-tight by using 40 CFR part 60, appendix A, Method 27 in accordance with the procedure specified in paragraph (h) of this section.

(2) Transfer of hazardous secondary material in or out of a container using Container Level 2 controls shall be conducted in such a manner as to minimize exposure of the hazardous secondary material to the atmosphere, to the extent practical, considering the physical properties of the hazardous secondary material and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other hazardous materials. Examples of container loading procedures that the EPA considers to meet the requirements of this paragraph include using any one of the following: a submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous secondary material is filled and subsequently purging the transfer line before removing it from the container opening.

(3) Whenever a hazardous secondary material is in a container using Container Level 2 controls, the remanufacturer or other person that stores or treats the hazardous secondary material shall install all covers and closure devices for the container, and secure and maintain each closure device in the closed position except as follows:

(i) Opening of a closure device or cover is allowed for the purpose of adding hazardous secondary material or other material to the container as follows:

(A) In the case when the container is filled to the intended final level in one continuous operation, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.

(B) In the case when discrete quantities or batches of material intermittently are added to the container over a period of time, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within fifteen (15) minutes; the person performing the loading operation leaving the immediate vicinity of the container; or the shutdown of the process generating the material being added to the container, whichever condition occurs first.

(ii) Opening of a closure device or cover is allowed for the purpose of removing hazardous secondary material from the container as follows:

(A) For the purpose of meeting the requirements of this section, an empty hazardous secondary material container may be open to the atmosphere at any time (i.e., covers and closure devices are not required to be secured in the closed position on an empty container).

(B) In the case when discrete quantities or batches of material are removed from the container, but the container is not an empty hazardous secondary materials container, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within fifteen (15) minutes or the person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.

(iii) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of hazardous secondary material. Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in the container, or

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when a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.

(iv) Opening of a spring-loaded, pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the internal pressure of the container in accordance with the container design specifications. The device shall be designed to operate with no detectable organic emission when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the internal pressure of the container is within the internal pressure operating range determined by the remanufacturer or other person that stores or treats the hazardous secondary material based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the internal pressure of the container exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

(v) Opening of a safety device, as defined in section 261.1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The remanufacture or other person that stores or treats the hazardous secondary material using containers with Container Level 2 controls shall inspect the containers and their covers and closure devices as follows:

(i) In the case when a hazardous secondary material already is in the container at the time the remanufacturer or other person that stores or treats the hazardous secondary material first accepts possession of the container at the facility and the container is not emptied within twenty-four (24) hours after the container is accepted at the facility (i.e., is not an empty hazardous secondary material container), the remanufacturer or other person that stores or treats the hazardous secondary material shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility (i.e., the date the container becomes subject to the subpart CC container standards).

(ii) In the case when a container used for managing hazardous secondary material remains at the facility for a period of one (1) year or more, the remanufacturer or other person that stores or treats the hazardous secondary material shall visually inspect the container and its cover and closure devices initially and thereafter, at least once every twelve (12) months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of paragraph (d)(4)(iii) of this section.

(iii) When a defect is detected for the container, cover, or closure devices, the remanufacturer or other person that stores or treats the hazardous secondary material shall make first efforts at repair of the defect no later than twenty-four (24) hours after detection, and repair shall be completed as soon as possible but no later than five (5) calendar days after detection. If repair of a defect cannot be completed within five (5) calendar days, then the hazardous secondary material shall be removed from the container and the container shall not be used to manage hazardous secondary material until the defect is repaired.

(e) Container Level 3 standards.

(1) A container using Container Level 3 controls is one of the following:

(i) A container that is vented directly through a closed-vent system to a control device in accordance with the requirements of paragraph (e)(2)(ii) of this section.

(ii) A container that is vented inside an enclosure which is exhausted through a closed-vent system to a control device in accordance with the requirements of paragraphs (e)(2)(i) and (ii) of this section.

(2) The remanufacturer or other person that stores or treats the hazardous secondary material shall meet the following requirements, as applicable to the type of air emission control equipment selected by the remanufacturer or other person that stores or treats the hazardous secondary material:

(i) The container enclosure shall be designed and operated in accordance with the criteria for a permanent total enclosure as specified in “Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure” under 40 CFR 52.741, appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of containers through the enclosure by conveyor or other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow into the enclosure. The remanufacturer or other person that stores or treats the hazardous secondary material shall perform the verification procedure for the enclosure as specified in Section 5.0 to “Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure” initially when the enclosure is first installed and, thereafter, annually.

(ii) The closed-vent system and control device shall be designed and operated in accordance with the requirements of section 261.1087.

(3) Safety devices, as defined in section 261.1081, may be installed and operated as necessary on any container, enclosure, closed-vent system, or control device used to comply with the requirements of paragraph (e)(1) of this section.

(4) Remanufacturers or other persons that store or treat the hazardous secondary material using Container Level 3 controls in accordance with the provisions of this subpart shall inspect and monitor the closed-vent systems and control devices as specified in section 261.1087.

(5) Remanufacturers or other persons that store or treat the hazardous secondary material that use Container Level 3 controls in accordance with the provisions of this subpart shall prepare and maintain the records specified in section 261.1089(d).

(6) Transfer of hazardous secondary material in or out of a container using Container Level 3 controls shall be conducted in such a manner as to minimize exposure of the hazardous secondary material to the atmosphere, to the extent practical, considering the physical properties of the hazardous secondary material and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other hazardous materials. Examples of container loading procedures that the EPA considers to meet the requirements of this paragraph include using any one of the following: a submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous secondary material is filled and subsequently purging the transfer line before removing it from the container opening.

(f) For the purpose of compliance with paragraph (c)(1)(i) or (d)(1)(i) of this section, containers shall be used that meet the applicable DOT regulations on packaging hazardous materials for transportation as follows:

(1) The container meets the applicable requirements specified in 49 CFR part 178 or part 179.

(2) Hazardous secondary material is managed in the container in accordance with the applicable requirements specified in 49 CFR part 107, subpart B and 49 CFR parts 172, 173, and 180.

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(3) For the purpose of complying with this subpart, no exceptions to the 49 CFR part 178 or part 179 regulations are allowed.

(g) To determine compliance with the no detectable organic emissions requirement of paragraph (d)(1)(ii) of this section, the procedure specified in section 261.1083(d) shall be used.

(1) Each potential leak interface (i.e., a location where organic vapor leakage could occur) on the container, its cover, and associated closure devices, as applicable to the container, shall be checked. Potential leak interfaces that are associated with containers include, but are not limited to: the interface of the cover rim and the container wall; the periphery of any opening on the container or container cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure-relief valve.

(2) The test shall be performed when the container is filled with a material having a volatile organic concentration representative of the range of volatile organic concentrations for the hazardous secondary materials expected to be managed in this type of container. During the test, the container cover and closure devices shall be secured in the closed position.

(h) Procedure for determining a container to be vapor-tight using Method 27 of 40 CFR part 60, appendix A for the purpose of complying with paragraph (d)(1)(iii) of this section.

(1) The test shall be performed in accordance with Method 27 of 40 CFR part 60, appendix A of this chapter.

(2) A pressure measurement device shall be used that has a precision of ± 2.5 mm water and that is capable of measuring above the pressure at which the container is to be tested for vapor tightness.

(3) If the test results determined by Method 27 indicate that the container sustains a pressure change less than or equal to 750 Pascals within five (5) minutes after it is pressurized to a minimum of 4,500 Pascals, then the container is determined to be vapor-tight.

261.1087. Standards: Closed-vent systems and control devices.

(a) This section applies to each closed-vent system and control device installed and operated by the remanufacturer or other person who stores or treats the hazardous secondary material to control air emissions in accordance with standards of this subpart.

(b) The closed-vent system shall meet the following requirements:

(1) The closed-vent system shall route the gases, vapors, and fumes emitted from the hazardous secondary material in the hazardous secondary material management unit to a control device that meets the requirements specified in paragraph (c) of this section.

(2) The closed-vent system shall be designed and operated in accordance with the requirements specified in section 261.1033(k).

(3) In the case when the closed-vent system includes bypass devices that could be used to divert the gas or vapor stream to the atmosphere before entering the control device, each bypass device shall be equipped with either a flow indicator as specified in paragraph (b)(3)(i) of this section or a seal or locking device as specified in paragraph (b)(3)(ii) of this section. For the purpose of complying with this paragraph, low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, spring loaded pressure relief valves, and other fittings used for safety purposes are not considered to be bypass devices.

(i) If a flow indicator is used to comply with paragraph (b)(3) of this section, the indicator shall be installed at the inlet to the bypass line used to divert gases and vapors from the closed-vent system to the

atmosphere at a point upstream of the control device inlet. For this paragraph, a flow indicator means a device which indicates the presence of either gas or vapor flow in the bypass line.

(ii) If a seal or locking device is used to comply with paragraph (b)(3) of this section, the device shall be placed on the mechanism by which the bypass device position is controlled (e.g., valve handle, damper lever) when the bypass device is in the closed position such that the bypass device cannot be opened without breaking the seal or removing the lock. Examples of such devices include, but are not limited to, a car-seal or a lock-and-key configuration valve. The remanufacturer or other person that stores or treats the hazardous secondary material shall visually inspect the seal or closure mechanism at least once every month to verify that the bypass mechanism is maintained in the closed position.

(4) The closed-vent system shall be inspected and monitored by the remanufacturer or other person that stores or treats the hazardous secondary material in accordance with the procedure specified in section 261.1033(l).

(c) The control device shall meet the following requirements:

(1) The control device shall be one of the following devices:

(i) A control device designed and operated to reduce the total organic content of the inlet vapor stream vented to the control device by at least ninety-five (95) percent by weight;

(ii) An enclosed combustion device designed and operated in accordance with the requirements of section 261.1033(c); or

(iii) A flare designed and operated in accordance with the requirements of section 261.1033(d).

(2) The remanufacturer or other person that stores or treats the hazardous secondary material who elects to use a closed-vent system and control device to comply with the requirements of this section shall comply with the requirements specified in paragraphs (c)(2)(i) through (vi) of this section.

(i) Periods of planned routine maintenance of the control device, during which the control device does not meet the specifications of paragraph (c)(1)(i), (ii), or (iii) of this section, as applicable, shall not exceed two hundred forty (240) hours per year.

(ii) The specifications and requirements in paragraphs (c)(1)(i) through (iii) of this section for control devices do not apply during periods of planned routine maintenance.

(iii) The specifications and requirements in paragraphs (c)(1)(i) through (iii) of this section for control devices do not apply during a control device system malfunction.

(iv) The remanufacturer or other person that stores or treats the hazardous secondary material shall demonstrate compliance with the requirements of paragraph (c)(2)(i) of this section (i.e., planned routine maintenance of a control device, during which the control device does not meet the specifications of paragraph (c)(1)(i), (ii), or (iii) of this section, as applicable, shall not exceed two hundred forty (240) hours per year) by recording the information specified in section 261.1089(e)(1)(v).

(v) The remanufacturer or other person that stores or treats the hazardous secondary material shall correct control device system malfunctions as soon as practicable after their occurrence in order to minimize excess emissions of air pollutants.

(vi) The remanufacturer or other person that stores or treats the hazardous secondary material shall operate the closed-vent system such that gases, vapors, or fumes are not actively vented to the control device

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during periods of planned maintenance or control device system malfunction (i.e., periods when the control device is not operating or not operating normally) except in cases when it is necessary to vent the gases, vapors, and/or fumes to avoid an unsafe condition or to implement malfunction corrective actions or planned maintenance actions.

(3) The remanufacturer or other person that stores or treats the hazardous secondary material using a carbon adsorption system to comply with paragraph (c)(1) of this section shall operate and maintain the control device in accordance with the following requirements:

(i) Following the initial startup of the control device, all activated carbon in the control device shall be replaced with fresh carbon on a regular basis in accordance with the requirements of section 261.1033(g) or (h) of this part.

(ii) All carbon that is hazardous waste and that is removed from the control device shall be managed in accordance with the requirements of section 261.1033(n), regardless of the average volatile organic concentration of the carbon.

(4) A remanufacturer or other person that stores or treats the hazardous secondary material using a control device other than a thermal vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system to comply with paragraph (c)(1) of this section shall operate and maintain the control device in accordance with the requirements of section 261.1033(j).

(5) The remanufacturer or other person that stores or treats the hazardous secondary material shall demonstrate that a control device achieves the performance requirements of paragraph (c)(1) of this section as follows:

(i) A remanufacturer or other person that stores or treats the hazardous secondary material shall demonstrate using either a performance test as specified in paragraph (c)(5)(iii) of this section or a design analysis as specified in paragraph (c)(5)(iv) of this section the performance of each control device except for the following:

(A) A flare;

(B) A boiler or process heater with a design heat input capacity of forty-four (44) megawatts or greater;

(C) A boiler or process heater into which the vent stream is introduced with the primary fuel;

(ii) A remanufacturer or other person that stores or treats the hazardous secondary material shall demonstrate the performance of each flare in accordance with the requirements specified in section 261.1033(e).

(iii) For a performance test conducted to meet the requirements of paragraph (c)(5)(i) of this section, the remanufacturer or other person that stores or treats the hazardous secondary material shall use the test methods and procedures specified in section 261.1034(c)(1) through (4).

(iv) For a design analysis conducted to meet the requirements of paragraph (c)(5)(i) of this section, the design analysis shall meet the requirements specified in section 261.1035(b)(4)(iii).

(v) The remanufacturer or other person that stores or treats the hazardous secondary material shall demonstrate that a carbon adsorption system achieves the performance requirements of paragraph (c)(1) of this section based on the total quantity of organics vented to the atmosphere from all carbon adsorption system equipment that is used for organic adsorption, organic desorption or carbon regeneration, organic recovery, and carbon disposal.

(6) If the remanufacturer or other person that stores or treats the hazardous secondary material and the Department do not agree on a demonstration of control device performance using a design analysis then the disagreement shall be resolved using the results of a performance test performed by the remanufacturer or other person that stores or treats the hazardous secondary material in accordance with the requirements of paragraph (c)(5)(iii) of this section. The Department may choose to have an authorized representative observe the performance test.

(7) The closed-vent system and control device shall be inspected and monitored by the remanufacture or other person that stores or treats the hazardous secondary material in accordance with the procedures specified in section 261.1033(f)(2) and (l). The readings from each monitoring device required by section 261.1033(f)(2) shall be inspected at least once each operating day to check control device operation. Any necessary corrective measures shall be immediately implemented to ensure the control device is operated in compliance with the requirements of this section.

261.1088. Inspection and monitoring requirements.

(a) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect and monitor air emission control equipment used to comply with this subpart in accordance with the applicable requirements specified in sections 261.1084 through 261.1087.

(b) The remanufacture or other person that stores or treats the hazardous secondary material shall develop and implement a written plan and schedule to perform the inspections and monitoring required by paragraph (a) of this section. The remanufacturer or other person that stores or treats the hazardous secondary material shall keep the plan and schedule at the facility.

261.1089. Recordkeeping requirements.

(a) Each remanufacturer or other person that stores or treats the hazardous secondary material subject to requirements of this subpart shall record and maintain the information specified in paragraphs (b) through (j) of this section, as applicable to the facility. Except for air emission control equipment design documentation and information required by paragraphs (i) and (j) of this section, records required by this section shall be maintained at the facility for a minimum of three (3) years. Air emission control equipment design documentation shall be maintained at the facility until the air emission control equipment is replaced or otherwise no longer in service. Information required by paragraphs (i) and (j) of this section shall be maintained at the facility for as long as the hazardous secondary material management unit is not using air emission controls specified in sections 261.1084 through 261.1087 in accordance with the conditions specified in section 261.1080(b)(7) or (d), respectively.

(b) The remanufacturer or other person that stores or treats the hazardous secondary material using a tank with air emission controls in accordance with the requirements of section 261.1084 shall prepare and maintain records for the tank that include the following information:

(1) For each tank using air emission controls in accordance with the requirements of section 261.1084, the remanufacturer or other person that stores or treats the hazardous secondary material shall record:

(i) A tank identification number (or other unique identification description as selected by the remanufacturer or other person that stores or treats the hazardous secondary material).

(ii) A record for each inspection required by section 261.1084 that includes the following information:

(A) Date inspection was conducted.

(B) For each defect detected during the inspection: The location of the defect, a description of the defect, the date of detection, and corrective action taken to repair the defect. In the event that repair of the defect

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is delayed in accordance with the requirements of section 261.1084, the remanufacturer or other person that stores or treats the hazardous secondary material shall also record the reason for the delay and the date that completion of repair of the defect is expected.

(2) In addition to the information required by paragraph (b)(1) of this section, the remanufacturer or other person that stores or treats the hazardous secondary material shall record the following information, as applicable to the tank:

(i) The remanufacturer or other person that stores or treats the hazardous secondary material using a fixed roof to comply with the Tank Level 1 control requirements specified in section 261.1084(c) shall prepare and maintain records for each determination for the maximum organic vapor pressure of the hazardous secondary material in the tank performed in accordance with the requirements of section 261.1084(c). The records shall include the date and time the samples were collected, the analysis method used, and the analysis results.

(ii) The remanufacturer or other person that stores or treats the hazardous secondary material using an internal floating roof to comply with the Tank Level 2 control requirements specified in section 261.1084(e) shall prepare and maintain documentation describing the floating roof design.

(iii) Remanufacturer or other persons that store or treat the hazardous secondary material using an external floating roof to comply with the Tank Level 2 control requirements specified in section 261.1084(f) shall prepare and maintain the following records:

(A) Documentation describing the floating roof design and the dimensions of the tank.

(B) Records for each seal gap inspection required by section 261.1084(f)(3) describing the results of the seal gap measurements. The records shall include the date that the measurements were performed, the raw data obtained for the measurements, and the calculations of the total gap surface area. In the event that the seal gap measurements do not conform to the specifications in section 261.1084(f)(1), the records shall include a description of the repairs that were made, the date the repairs were made, and the date the tank was emptied, if necessary.

(iv) Each remanufacturer or other person that stores or treats the hazardous secondary material using an enclosure to comply with the Tank Level 2 control requirements specified in section 261.1084(i) shall prepare and maintain the following records:

(A) Records for the most recent set of calculations and measurements performed by the remanufacturer or other person that stores or treats the hazardous secondary material to verify that the enclosure meets the criteria of a permanent total enclosure as specified in “Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure” under 40 CFR 52.741, appendix B.

(B) Records required for the closed-vent system and control device in accordance with the requirements of paragraph (e) of this section.

(c) [Reserved]

(d) The remanufacturer or other person that stores or treats the hazardous secondary material using containers with Container Level 3 air emission controls in accordance with the requirements of section 261.1086 shall prepare and maintain records that include the following information:

(1) Records for the most recent set of calculations and measurements performed by the remanufacturer or other person that stores or treats the hazardous secondary material to verify that the enclosure meets the criteria of a permanent total enclosure as specified in “Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure” under 40 CFR 52.741, Appendix B.

(2) Records required for the closed-vent system and control device in accordance with the requirements of paragraph (e) of this section.

(e) The remanufacturer or other person that stores or treats the hazardous secondary material using a closed-vent system and control device in accordance with the requirements of section 261.1087 shall prepare and maintain records that include the following information:

(1) Documentation for the closed-vent system and control device that includes:

(i) Certification that is signed and dated by the remanufacturer or other person that stores or treats the hazardous secondary material stating that the control device is designed to operate at the performance level documented by a design analysis as specified in paragraph (e)(1)(ii) of this section or by performance tests as specified in paragraph (e)(1)(iii) of this section when the tank or container is or would be operating at capacity or the highest level reasonably expected to occur.

(ii) If a design analysis is used, then design documentation as specified in section 261.1035(b)(4). The documentation shall include information prepared by the remanufacturer or other person that stores or treats the hazardous secondary material or provided by the control device manufacturer or vendor that describes the control device design in accordance with section 261.1035(b)(4)(iii) and certification by the remanufacturer or other person that stores or treats the hazardous secondary material that the control equipment meets the applicable specifications.

(iii) If performance tests are used, then a performance test plan as specified in section 261.1035(b)(3) and all test results.

(iv) Information as required by sections 261.1035(c)(1) and 261.1035(c)(2), as applicable.

(v) A remanufacturer or other person that stores or treats the hazardous secondary material shall record, on a semiannual basis, the information specified in paragraphs (e)(1)(v)(A) and (B) of this section for those planned routine maintenance operations that would require the control device not to meet the requirements of section 261.1087(c)(1)(i), (ii), or (iii), as applicable.

(A) A description of the planned routine maintenance that is anticipated to be performed for the control device during the next six (6)-month period. This description shall include the type of maintenance necessary, planned frequency of maintenance, and lengths of maintenance periods.

(B) A description of the planned routine maintenance that was performed for the control device during the previous six (6)-month period. This description shall include the type of maintenance performed and the total number of hours during those six (6) months that the control device did not meet the requirements of section 261.1087(c)(1)(i), (ii), or (iii), as applicable, due to planned routine maintenance.

(vi) A remanufacturer or other person that stores or treats the hazardous secondary material shall record the information specified in paragraphs (e)(1)(vi)(A) through (C) of this section for those unexpected control device system malfunctions that would require the control device not to meet the requirements of section 261.1087(c)(1)(i), (ii), or (iii), as applicable.

(A) The occurrence and duration of each malfunction of the control device system.

(B) The duration of each period during a malfunction when gases, vapors, or fumes are vented from the hazardous secondary material management unit through the closed-vent system to the control device while the control device is not properly functioning.

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(C) Actions taken during periods of malfunction to restore a malfunctioning control device to its normal or usual manner of operation.

(vii) Records of the management of carbon removed from a carbon adsorption system conducted in accordance with section 261.1087(c)(3)(ii).

(f)(1) The remanufacturer or other person that stores or treats the hazardous secondary material using a tank or container exempted under the hazardous secondary material organic concentration conditions specified in section 261.1082(c)(1) or (c)(2)(i) through (vi), shall prepare and maintain at the facility records documenting the information used for each material determination (e.g., test results, measurements, calculations, and other documentation). If analysis results for material samples are used for the material determination, then the remanufacturer or other person that stores or treats the hazardous secondary material shall record the date, time, and location that each material sample is collected in accordance with applicable requirements of section 261.1083.

(2) [Reserved]

(g) A remanufacturer or other person that stores or treats the hazardous secondary material designating a cover as “unsafe to inspect and monitor” pursuant to sections 261.1084(l) or 261.1085(g) shall record and keep at facility the following information: The identification numbers for hazardous secondary material management units with covers that are designated as “unsafe to inspect and monitor,” the explanation for each cover stating why the cover is unsafe to inspect and monitor, and the plan and schedule for inspecting and monitoring each cover.

(h) The remanufacturer or other person that stores or treats the hazardous secondary material that is subject to this subpart and to the control device standards in 40 CFR part 60, subpart VV, or 40 CFR part 61, subpart V, may elect to demonstrate compliance with the applicable sections of this subpart by documentation either pursuant to this subpart, or pursuant to the provisions of 40 CFR part 60, subpart VV or 40 CFR part 61, subpart V, to the extent that the documentation required by 40 CFR parts 60 or 61 duplicates the documentation required by this section.

261.1090. [Reserved]

Revise 61-79.262.21(b)(8) to read:

(8) A signed certification by a duly authorized employee of the registrant that the organizations and companies in its application will comply with the procedures of its approved application and the requirements of this section and that it will notify the EPA Director of the Office of Resource Conservation and Recovery of any duplicated manifest tracking numbers on manifests that have been used or distributed to other parties as soon as it becomes known.

Revise 61-79.262.21(f)(2) to read:

(2) A unique manifest tracking number assigned in accordance with a numbering system approved by EPA must be pre-printed in Item 4 of the manifest. The tracking number must consist of a unique three-letter suffix following nine digits.

Revise 61-79.262.21(h)(3) to read:

(3) If a registrant would like to change paper type, paper weight, ink color of the manifest instructions, or binding method of its manifest or continuation sheet subsequent to approval under paragraph (e) of this section, then the registrant must submit three samples of the revised form for EPA review and approval. If the approved registrant would like to use a new printer, the registrant must submit three manifest samples printed by the new

printer, along with a brief description of the printer's qualifications to print the manifest. EPA will evaluate the manifests and either approve the registrant to print the forms as proposed or request additional information or modification to them before approval. EPA will notify the registrant of its decision by mail. The registrant cannot use or distribute its revised forms until EPA approves them.

Revise 61-79.262.33 to read:

Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must placard or offer the initial transporter the appropriate placards according to Department of Transportation regulations for hazardous materials under 49 CFR part 172, subpart F and in accordance with applicable S. C. Public Service Commission regulations. **Revise 61-79.262.42(a) to read:**

(a)(1) A generator with one thousand (1,000) kilograms or greater of hazardous waste in a calendar month, or greater than one (1) kg of acute hazardous waste listed in section 261.31 or 261.33(e) in a calendar month, who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within thirty-five (35) days of the date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste.

(2) A generator of one thousand (1,000) kilograms or greater of hazardous waste in a calendar month, or greater than one (1) kg of acute hazardous waste listed in section 261.31 or 261.33(e) in a calendar month, must submit an Exception Report to the Department if they have not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within forty-five (45) days of the date the waste was accepted by the initial transporter. The Exception Report must include:

Revise 61-79.262.206(b) to read:

(b) Management of Containers in the Laboratory: An eligible academic entity must properly manage containers of unwanted material in the laboratory to assure safe storage of the unwanted material, to prevent leaks, spills, emissions to the air, adverse chemical reactions, and dangerous situations that may result in harm to human health or the environment. Proper container management must include the following:

Revise 61-79.262.212(e)(3) to read:

(3) Count the hazardous waste toward the eligible academic entity's generator status, pursuant to section 262.13 in the calendar month that the hazardous waste determination was made, and

Revise 61-79.263.20(a)(1) to read:

(a)(1) Manifest requirement. A transporter may not accept hazardous waste from a generator unless the transporter is also provided with a manifest form (EPA Form 8700-22, and if necessary, EPA Form 8700-22A) signed in accordance with the requirement of section 262.23, or is provided with an electronic manifest that is obtained, completed, and transmitted in accordance with section 262.20(a)(3), and signed with a valid and enforceable electronic signature as described in section 262.25.

Revise 61-79.264.72(c) to read:

(c) Upon discovering a significant difference in quantity or type, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within fifteen (15) days after receiving the waste, the owner or operator must immediately submit to the Department a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

Revise 61-79.264.76(a) to read:

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(a) If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described by section 263.20(e), and if the waste is not excluded from the manifest requirement by this chapter, then the owner or operator must prepare and submit a letter to the Department within fifteen (15) days after receiving the waste. The unmanifested waste report must contain the following information:

Revise 61-79.264.147(h)(1) to read:

(1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit that conforms to the requirements of this paragraph and submitting a copy of the letter of credit to the Department.

Revise 61-79.264.151(a)(1) to read:

(a)(1) A trust agreement for a trust fund, as specified in sections 264.143(a) or 264.145(a) or 265.143(a) or 265.145(a), must be worded as noted in section 264.151 Appendix A(1) except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Revise 61-79.264.151(k) to read:

(k) A letter of credit, as specified in section 264.147(h) or 265.147(h), must be worded as noted in section 264.151 Appendix K, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Revise 61-79.264.151(l) to read:

(l) A surety bond, as specified in section 264.147(i) or 265.147(i) of this chapter, must be worded as noted in section 264.151 Appendix L, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Revise 61-79.264.151 Appendix K to read:

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. _____ in the favor of ["any and all third-party liability claimants" or insert name of trustee of the standby trust fund], at the request and for the account of [owner or operator's name and address] for third-party liability awards or settlements up to [in words] U.S. dollars \$_____ per occurrence and the annual aggregate amount of [in words] U.S. dollars \$_____, for sudden accidental occurrences and/or for third-party liability awards or settlements up to the amount of [in words] U.S. dollars \$_____ per occurrence, and the annual aggregate amount of [in words] U.S. dollars \$_____, for nonsudden accidental occurrences available upon presentation of a sight draft bearing reference to this letter of credit No. _____, and [insert the following language if the letter of credit is being used without a standby trust fund: (1) a signed certificate reading as follows:

Revise 61-79.264.151 Appendix M, Section 8(c) to read:

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

Revise 61-79.264.151 Appendix N, Section 3(c)(1) to read:

(1) An employee of [insert Grantor] arising from, and in the course of, employment by [insert Grantor];
or

Revise 61-79.264.151 Appendix N, Section 3(e)(3) to read:

(3) Property loaned by [insert Grantor];

Revise 61-79.264.151 Appendix N, Section 8(c) to read:

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

Revise 61-79.264.151 Appendix N, Section 12 to read:

Section 12. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the Department and the present Trustee by certified mail ten (10) days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Revise 61-79.264.151 Appendix N, Section 16 to read:

Section 16. Immunity and indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor and the Department issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Add 61-79.264.172 to read:**264.172. Compatibility of waste with containers.**

The owner or operator must use a container made of or lined with materials which will not react with, and are otherwise compatible with, the hazardous waste to be stored, so that the ability of the container to contain the waste is not impaired.

Revise 61-79.264.193(e)(2)(v)(B) to read:

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(B) Meets the definition of reactive waste under section 261.23, and may form an ignitable or explosive vapor; and

Revise 61-79.264.221(e)(2)(i)(B) to read:

(B) The monofill is located more than one-quarter mile from an "underground source of drinking water" (as that term is defined in section 270.2); and

Revise 61-79.265.56(b) to read:

(b) Whenever there is a release, fire, or explosion, the emergency coordinator must immediately identify the character, exact source, amount, and areal extent of any released materials and notify the Department per section 265.56(d)(2). They may do this by observation or review of facility records or manifests and, if necessary, by chemical analysis.

Revise 61-79.265.76(a) to read:

(a) If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described by section 263.20(e), and if the waste is not excluded from the manifest requirement by this chapter, then the owner or operator must prepare and submit a letter to the Department within fifteen (15) days after receiving the waste. The unmanifested waste report must contain the following information:

Revise 61-79.265.255(b) to read:

(b) The Department shall approve an action leakage rate for waste pile units subject to section 265.254. The action leakage rate is the maximum design flow rate that the leak detection system (LDS) can remove without the fluid head on the bottom liner exceeding one (1) foot. The action leakage rate must include an adequate safety margin to allow for uncertainties in the design (e.g., slope, hydraulic conductivity, thickness of drainage material), construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions (e.g., the action leakage rate must consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.).

Revise 61-79.265.314(f)(2) to read:

(2) Placement in such owner or operator's landfill will not present a risk of contamination of any "underground source of drinking water" (as that term is defined in section 270.2).

Revise 61-79.266.100(c)(3) to read:

(3) Hazardous wastes that are exempt from regulation under sections 261.4 and 261.6(a)(3)(iii) and (vi), and hazardous wastes that are subject to the special requirements for very small quantity generators under section 262.14; and

Revise 61-79.266.108(c) Note to read:

Note: Hazardous wastes that are subject to the special requirements for small quantity generators under section 262.16 may be burned in an offsite device under the exemption provided by 266.108, but must be included in the quantity determination for the exemption.

Revise 61-79.270.14(a) to read:

(a) Part B of the permit application consists of the general information requirements of this section, and the specific information requirements in sections 270.14 through 270.29 applicable to the facility. The part B information requirements presented in sections 270.14 through 270.29 reflect the standards promulgated in R.61-79.264. These information requirements are necessary in order for the Department to determine compliance with the R.61-79.264 standards. If owners and operators of HWM facilities can demonstrate that the information prescribed in part B cannot be provided to the extent required, the Department may make allowance for submission of such information on a case-by-case basis. Information required in part B shall be submitted to the Department and signed in accordance with the requirements in section 270.11. Certain technical data, such as design drawings and specifications, and engineering studies shall be certified by a qualified Professional Engineer. For post-closure permits, only the information specified in section 270.28 is required in part B of the permit application.

Revise 61-79.270.26(c)(15) to read:

(15) A certification signed by a qualified Professional Engineer, stating that the drip pad design meets the requirements of paragraphs (a) through (f) of section 264.573.

Fiscal Impact Statement:

The proposed amendments have no substantial fiscal or economic impact on the state or its political subdivisions. Implementation of this regulation will not require additional resources beyond those allowed. There is no anticipated additional cost by the Department or state government due to any requirements of this regulation.

Statement of Need and Reasonableness:

The following presents an analysis of the factors listed in 1976 Code Sections 1-23-115(C)(1)-(3) and (9)-(11):

DESCRIPTION OF REGULATION: 61-79, Hazardous Waste Management Regulations.

Purpose: The purpose of these amendments is to realize the benefits of and maintain state consistency with the EPA's January 13, 2015, and May 30, 2018, amendments to 40 CFR 260 through 279, and to correct typographical errors, citation errors, and other errors and omissions that have come to the attention of the Department in R.61-79, Hazardous Waste Management Regulations.

Legal Authority: 1976 Code Sections 44-56-10 et seq.

Plan for Implementation: The DHEC Regulation Development Update (accessible at <http://www.scdhec.gov/Agency/RegulationsAndUpdates/RegulationDevelopmentUpdate/>) provides a summary of and link to these amendments. Additionally, printed copies are available for a fee from the Department's Freedom of Information Office. Upon taking legal effect, Department personnel will take appropriate steps to inform the regulated community of the amendment and any associated information.

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

The Department amends R.61-79 to adopt the EPA's "Revisions to the Definition of Solid Waste Rule," published on January 13, 2015, at 80 FR 1694-1814 and May 30, 2018, at 83 FR 24664-24671. This rule revises several recycling-related provisions issued under the authority of Subtitle C of the Resource Conservation and Recovery Act ("RCRA"). The purpose of these revisions is to encourage recycling of hazardous waste. The federal rule has made the recycling-related provisions less stringent than previous standards set forth. EPA Checklist 233D2 (2008 DSW exclusions and non-waste determinations, including revisions from 2015 DSW final rule and 2018 DSW final rule) and Checklist 233E (Remanufacturing Exclusion) describe the amendments.

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The revisions to the typographical, citation, and other errors and omissions in R.61-79 correct form references, add language omitted during previous rule adoption, and other changes to conform to federal law.

DETERMINATION OF COSTS AND BENEFITS:

There is no anticipated increased cost to the state or its political subdivisions resulting from these revisions. The EPA estimates in the Federal Register, Volume 80, Number 8, January 13, 2015, on page 1769 that the Definition of Solid Waste Rule will result in cost savings for the regulated community due to increased recycling of hazardous wastes. The revisions to the typographical, citation, and other errors and omissions in R.61-79 correct form references, add language omitted during previous rule adoption, and other changes to conform to federal law. The amendments benefit the regulated community by clarifying and updating the regulations and increasing ease of use and will not result in increased costs.

UNCERTAINTIES OF ESTIMATES:

There are no uncertainties of estimates regarding costs to the state or its political subdivisions.

EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH:

The revisions to R.61-79 provide continued protection of the environment and public health, as indicated above.

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

There will be no detrimental effect on the environment and/or public health associated with these revisions. Rather, the state's authority to implement programs for which the state has been delegated authority, which are beneficial to public health and the environment, would be compromised if these amendments were not adopted in South Carolina.

Statement of Rationale:

R.61-79 contains requirements for hazardous waste management, including identification of waste, standards for generators, transporters, and owners/operators of treatment, storage, and disposal (TSD) facilities, procedures for permits for TSD facilities, investigation and cleanup of hazardous waste, and closure/post-closure requirements. The regulation is promulgated pursuant to the S.C. Hazardous Waste Management Act, Section 44-56-10. As an authorized state program, the regulation must be equivalent to and consistent with the U.S. EPA's regulations under the federal Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Section 6901 *et. seq.* The revisions encourage recycling of hazardous waste. The Department also amends R.61-79 to correct typographical errors, citation errors, and other errors and omissions that have come to the Department's attention, such as correcting form references, adding language that was erroneously omitted during adoption of previous rules, and other such changes.

Document No. 4902

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61

Statutory Authority: 1976 Code Sections 44-1-140(3) and 44-1-150

61-35. Imitation Milk, Imitation Milk Products, and Products Made in Semblance of Milk and Milk Products.
61-36. Frozen Desserts.

Synopsis:

The purpose of R.61-36, Frozen Desserts, and R.61-35, Imitation Milk, Imitation Milk Products, and Products Made in Semblance of Milk and Milk Products, is to safeguard public health and provide consumers safe, unadulterated frozen dessert and imitation dairy food products manufactured in South Carolina to be sold and distributed both in state and out of state. These regulations govern the production, processing, storing, labeling, transportation, and distribution of frozen desserts and imitation dairy foods that are not regulated as “Grade A” milk under the provisions of R.61-34, Raw Milk for Human Consumption, or R.61-34.1, Pasteurized Milk and Milk Products. The regulations are based on Title 21, Part 110, Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food of the Code of Federal Regulations (21 CFR Part 110).

The Department of Health and Environmental Control (“Department”) last amended R.61-36 in 2004. Earlier this year, 21 CFR Part 110, Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food was replaced with 21 CFR Part 117, Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food. There have been numerous changes in the manufactured food industry, including changes to food handling practices, food equipment technology, and food preparation processes, making R.61-36, Frozen Desserts, and R.61-35, Imitation Milk, Imitation Milk Products, and Products Made in Semblance of Milk and Milk Products, outdated. The new federal regulation updates good manufacturing processes and incorporates new preventive controls for minimizing or preventing food safety hazards.

The Department is amending the provisions of R.61-36 and R.61-35 to incorporate standards of the new federal regulation. The structure of the federal regulation also facilitates combining provisions governing all manufactured dairy products into one streamlined regulation, instead of separate regulations with repetitive content. As part of this new streamlined regulation, the Department is adding requirements for manufacturing cheese, butter, and other non-grade “A” milk products. The South Carolina Department of Agriculture previously oversaw requirements for cheese and butter products (also under 21 CFR Part 110, Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food); however, per agreement between the two agencies, the Department has assumed oversight responsibility with respect to these products.

To achieve this more functional, streamlined regulation, the Department is repealing R.61-35 and combining its revised provisions into R.61-36. This includes amending the title of R.61-36 to “Manufactured Grade Dairy Products.”

The amendments also entail changes not required by federal law, including updates from the current Pasteurized Milk Ordinance (“PMO”) and additions, updates, and clarifications to administrative requirements, enforcement requirements, and definitions, as well as other changes deemed necessary by the Department to improve the overall clarity, organization, and quality of the regulation. These changes include stylistic changes such as corrections for clarity and readability, grammar, punctuation, references, codification, and overall improvement of the text of the regulation.

The Department had a Notice of Drafting published in the April 26, 2019, *South Carolina State Register*.

Instructions:

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Repeal R.61-35 in its entirety from the South Carolina Code of Regulations. Replace R.61-36 in its entirety with this amendment.

Text:

61-35. [Repealed].

61-36. Manufactured Grade Dairy Products.

Statutory Authority: S.C. Code Sections 39-37-120, 44-1-140, and 44-1-150

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SECTION I. DEFINITIONS

The following definitions shall apply in the interpretation and the enforcement of this regulation:

A. **ADULTERATED** - a **MANUFACTURED GRADE DAIRY PRODUCT** is deemed to be **ADULTERATED** if the product:

1. Bears or contains any poisonous or deleterious substance in a quantity that may render it injurious to health;

2. Bears or contains any added poisonous or deleterious substance for which no safe tolerance has been established by state or federal regulation, or in excess of such tolerance if one has been established;

3. Consists, in whole or in part, of any substance unfit for human consumption;

4. Has been produced, processed, prepared, packaged, or held under unsanitary conditions;

5. Is packaged in a container which is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

6. Has any substance added thereto or mixed or packaged therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is;

7. Is in violation of Section 402 of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 342);
or

8. Contains any animal DRUG residues.

B. ALCOHOL INFUSED FROZEN DESSERT- any FROZEN DESSERT that contains five percent (5%) or more alcohol by volume.

C. APPROVED - acceptable to the DEPARTMENT based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.

D. ASEPTICALLY PROCESSED MIX - a MANUFACTURED GRADE DAIRY PRODUCT that is hermetically sealed in a container and so thermally processed in conformance with 21 CFR Part 113 and the provisions of this regulation so as to render the product free of MICROORGANISMS capable of reproducing in the product under normal non-refrigeration conditions of storage and distribution. The product shall be free of viable MICROORGANISMS (including spores) of public health significance.

E. ASEPTIC PROCESSING - a process whereby the MANUFACTURED GRADE DAIRY PRODUCT has been subjected to sufficient heat processing, and packaged in a HERMETICALLY SEALED CONTAINER, to conform to the applicable requirements of 21 CFR Part 113 and the provisions of Section VII A.1.c. of this regulation and maintain the commercial sterility of the product under normal non-refrigerated conditions.

F. BUSINESS DAY - every official work day of the week excluding weekends and state holidays.

G. BUTTER - the FOOD product usually known as BUTTER that is made exclusively from MILK or cream, or both, with or without salt, and with or without additional coloring matter, and which contains not less than eighty percent (80%) by weight of MILK fat. BUTTER may contain: (a) MILK solids; (b) APPROVED bacterial culture; (c) salt; (d) air or inert gas; and (e) APPROVED FOOD color. BUTTER also includes the following MANUFACTURED GRADE DAIRY PRODUCTS:

1. BUTTER WITH (NAMING THE FRUIT, VEGETABLE, OR RELISH) - BUTTER to which any fruit, vegetable, or relish, or any combination thereof, has been added. It may contain less than eighty percent (80%) MILK fat if the percentage of MILK fat is reduced by the amount of the product added, but the resulting MILK fat content must be at least seventy-five (75%).

2. BUTTER WITH (NAMING THE SEASONING OR FLAVOR) - BUTTER to which a seasoning or a flavor other than that of BUTTER, or both, has been added. It must contain at least eighty percent (80%) MILK fat.

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3. **CALORIE-REDUCED BUTTER** - the **FOOD** product usually known as calorie-reduced **BUTTER** that is prepared from **MILK** or **MILK** products or a combination thereof, and which contains at least thirty-nine (39%) **MILK** fat and not more than fifty percent (50%) of the calories that would normally be present in **BUTTER**. **CALORIE-REDUCED BUTTER** may contain: (a) **MILK** solids; (b) **APPROVED** bacterial culture; (c) salt; (d) air or inert gas; (e) **APPROVED FOOD** color; (f) **APPROVED** emulsifying and stabilizing agents; (g) **APPROVED** preservatives; and (h) not more than one percent (1%) added edible casein, edible caseinates, or any combination thereof.

4. **LIGHT BUTTER OR LITE BUTTER** - **FOOD** product usually known as **LIGHT BUTTER** or **LITE BUTTER**, which is prepared from **MILK** or **MILK** products or a combination thereof, and which contains at least thirty-nine (39%) **MILK** fat and not more than sixty percent (60%) **MILK** fat. **LIGHT BUTTER** or **LITE BUTTER** may contain: (a) **MILK** solids; (b) **APPROVED** bacterial culture; (c) salt; (d) air or inert gas; and (e) **APPROVED FOOD** color.

5. **WHEY BUTTER** - **FOOD** product usually known as **WHEY BUTTER** that is prepared from **MILK** or **MILK** products or a combination thereof, and which contains at least eighty percent (80%) **MILK** fat that is recovered from whey, by weight. **WHEY BUTTER** may contain: (a) **MILK** solids; (b) **APPROVED** bacterial culture; (c) salt; (d) air or inert gas; and (e) **APPROVED FOOD** color.

H. **CODE OF FEDERAL REGULATIONS (CFR)** - a codification of the general and permanent rules and regulations (administrative **LAW**) published in the Federal Register by the executive departments and agencies of the federal government of the United States. Citations to the **CFR** in this regulation refer sequentially to the Title, Part, and Section numbers (e.g., 21 **CFR** 117.10 refers to Title 21, Part 117, Section 117.10).

I. **CHEESE** - the fresh or matured product obtained by draining after coagulation of **MILK**, cream, skimmed or partly skimmed **MILK**, or a combination of some or all of these products, including any **CHEESE** that conforms to the requirements of 21 **CFR** 133, as amended.

J. **DEPARTMENT** - the South Carolina Department of Health and Environmental Control and its authorized representatives.

K. **DRUG** - shall mean:

1. articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and

2. articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and

3. articles (other than **FOOD**) intended to affect the structure of any function of the body of man or other animals; and

4. articles intended for use as a component of any articles specified in clauses 1, 2, or 3, but does not include devices or their components, parts, or accessories.

L. **EMPLOYEE** - permit holder, **PERSON** in charge, **PERSON** having supervisory or managerial duties, **PERSON** on the payroll, family member, volunteer, **PERSON** performing work under a contractual agreement, or any other **PERSON** working in a **MANUFACTURED GRADE DAIRY PRODUCTS** plant or distribution station.

M. **EXCLUSION** - prevention of a **PERSON** from working as an **EMPLOYEE** in a **MANUFACTURED GRADE DAIRY PRODUCTS** plant or distribution station or entering a **MANUFACTURED GRADE DAIRY PRODUCTS** plant or distribution station as an **EMPLOYEE**.

N. FDA - United States Food and Drug Administration.

O. FD&C - United States Food, Drug, and Cosmetic Act, the federal LAWS giving authority to FDA to oversee the safety of FOOD, DRUGS, medical devices and cosmetics, as set forth in 21 U.S.C. Section 301 et seq.

P. FOOD - means FOOD as defined in section 201(f) of the Federal Food, Drug, and Cosmetic Act (FD&C) and includes raw materials and ingredients.

Q. FROZEN DESSERT - as used in this regulation is defined in S.C. Code Ann. Section 39-37-10. They shall also include MIXES used for FROZEN DESSERT manufacturing and products such as gelato and sorbetto made in semblance of those products defined in Section 39-37-10.

R. HERMETICALLY SEALED CONTAINER - a container that is designed and intended to be secure against the entry of MICROORGANISMS and thereby maintain the commercial sterility of its contents after processing.

S. IMITATION MILK AND IMITATION MILK PRODUCTS, SYNTHETIC MILK AND SYNTHETIC MILK PRODUCTS, MILK DERIVATIVES, AND ANY OTHER PRODUCTS MADE IN SEMBLANCE OF MILK OR MILK PRODUCTS - Products made in semblance of MILK and MILK products are products that are made to resemble in form and are intended to be used in substitution for MILK and/or MILK products and that are determined not to be nutritionally inferior to MILK and/or MILK products.

T. IMMINENT HEALTH HAZARD - a significant threat or danger to health that is considered to exist when there is sufficient evidence to show that a product, practice, circumstance, or event creates a situation requiring immediate correction or cessation of operation to prevent illness or injury based on the number of potential illnesses or injuries, and the nature, severity, and duration of the anticipated illness or injury.

U. LAW - applicable local, state, and federal statues, regulations, and ordinances.

V. MANUFACTURED GRADE DAIRY PRODUCT(S) - refers to all types of dairy based manufactured FOOD products to include CHEESES, BUTTERS, FROZEN DESSERTS (including MIX), and IMITATION MILK and IMITATION MILK PRODUCTS, SYNTHETIC MILK AND SYNTHETIC MILK PRODUCTS, MILK DERIVATIVES, and ANY OTHER PRODUCTS MADE IN SEMBLANCE OF MILK OR MILK PRODUCTS.

W. MANUFACTURED GRADE DAIRY PRODUCTS DISTRIBUTION STATION - any place or PREMISES, except MANUFACTURED GRADE DAIRY PRODUCTS RETAILERS, where MANUFACTURED GRADE DAIRY PRODUCTS are received, stored, and dispensed to retailers (may also be referred to as "Distribution Station").

X. MANUFACTURED GRADE DAIRY PRODUCTS DISTRIBUTOR - any PERSON, except a MANUFACTURED GRADE DAIRY PRODUCTS RETAILER, who receives, stores, and dispenses MANUFACTURED GRADE DAIRY PRODUCTS to retailers (may also be referred to as "Distributor").

Y. MANUFACTURED GRADE DAIRY PRODUCTS MANUFACTURER - any PERSON, except a MANUFACTURED GRADE DAIRY PRODUCTS RETAILER, who manufactures, processes, or freezes MANUFACTURED GRADE DAIRY PRODUCTS for distribution or sale.

Z. MANUFACTURED GRADE DAIRY PRODUCTS PLANT - any place or PREMISES, except MANUFACTURED GRADE DAIRY PRODUCTS RETAILERS, where MANUFACTURED GRADE DAIRY PRODUCTS are manufactured, processed, or frozen for distribution or sale.

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AA. MANUFACTURED GRADE DAIRY PRODUCTS RETAILER - any PERSON who sells, serves, or dispenses MANUFACTURED GRADE DAIRY PRODUCTS at retail which have been processed in an APPROVED MANUFACTURED GRADE DAIRY PRODUCTS PLANT.

BB. MICROORGANISMS - means yeasts, molds, bacteria, viruses, protozoa, and microscopic parasites and includes species that are PATHOGENS. The term "undesirable MICROORGANISMS" includes those MICROORGANISMS that are PATHOGENS, that subject FOOD to decomposition, that indicate that FOOD is contaminated with filth, or that otherwise may cause FOOD to be ADULTERATED.

CC. MILK (HOOVED MAMMALS' MILK) - Hooved mammals' MILK is the normal lacteal secretion, practically free of colostrum, obtained by the complete milking of one (1) or more healthy hooved mammals. Hooved mammals for the purpose of this regulation include, but are not limited to, the members of the Order Cetartiodactyla, such as: Family Bovidae (cattle, water buffalo, sheep, goats, yaks, etc.), Family Camelidae (llamas, alpacas, camels, etc.), Family Cervidae (deer, reindeer, moose, etc.), and Family Equidae (horses, donkeys, etc.).

DD. MIX - the unfrozen combination of ingredients of FROZEN DESSERTS except such fruits, nuts, flavors, color, and other ingredients as may be exempted by the DEPARTMENT. MIX shall be PASTEURIZED.

EE. NUISANCE - for purposes of this regulation, a public health NUISANCE, meaning whatever is dangerous to human life or detrimental to health; or whatever structure or PREMISES is not sufficiently ventilated, sewerred, drained, cleaned, or lighted with respect to its intended occupancy.

FF. OFFICIALLY DESIGNATED LABORATORY - a commercial laboratory authorized to do official work by the DEPARTMENT, or a MILK industry laboratory officially designated by the DEPARTMENT for the examination of producer samples of Grade "A" RAW MILK for PASTEURIZATION and commingled MILK tank truck samples of RAW MILK for antibiotic residues and bacterial limits.

GG. OFFICIAL LABORATORY - a biological, chemical, or physical laboratory that is under the direct supervision of the DEPARTMENT.

HH. PASTEURIZATION - the process of heating every particle of MANUFACTURED GRADE DAIRY PRODUCT in properly designed and operated equipment to one of the temperatures given in the following table, and holding the product continuously at or above that temperature for at least the corresponding specified time:

Batch (Vat) PASTEURIZATION	
Temperature	Time
145°F (63°C)*	30 minutes
Continuous Flow (HTST and HHST) PASTEURIZATION	
Temperature	Time
161°F (72°C)*	15 seconds
191°F (89°C)	1.0 second
194°F (90°C)	0.5 second
201°F (94°C)	0.1 second
204°F (96°C)	0.05 second
212°F (100°C)	0.01 second

*If the fat content of the dairy product is ten percent (10%) or greater, or a total solids of eighteen percent (18%) or greater, or if it contains added sweeteners, the specified temperature shall be increased by 5°F (3°C).

Provided, that FROZEN DESSERTS shall be heated to at least the following temperature and time specifications:

Batch (Vat) PASTEURIZATION	
Temperature	Time
155°F (69°C)	30 minutes
Continuous Flow (HTST) PASTEURIZATION	
Temperature	Time
175°F (80°C)	25 seconds
180°F (83°C)	15 seconds

Provided, that MILK for CHEESE making shall be heated to at least the following temperature and time specification:

Batch (Vat) PASTEURIZATION	
Temperature	Time
145°F (63°C)	30 minutes
Continuous Flow (HTST) PASTEURIZATION	
Temperature	Time
161°F (72°C)	15 seconds

Provided, that cream for BUTTER making shall be heated to at least the following temperature and time specifications:

Batch (Vat) PASTEURIZATION	
Temperature	Time
165°F (74°C)	30 minutes
Continuous Flow (HTST) PASTEURIZATION	
Temperature	Time
185°F (85°C)	15 seconds

Provided further that nothing in this definition shall be construed as barring any other process found equivalent to PASTEURIZATION for dairy products, which has been recognized by the FDA as provided in Section 403(h)(3) of the FD&C (21 U.S.C. Section 343(h)(3)), as amended, and which is APPROVED by the DEPARTMENT.

II. PATHOGEN - a microorganism of public health significance.

JJ. PERMIT - the document issued by the DEPARTMENT that authorizes a PERSON or entity to operate a MANUFACTURED GRADE DAIRY PRODUCTS PLANT or MANUFACTURED GRADE DAIRY PRODUCTS DISTRIBUTION STATION.

KK. PERMIT HOLDER - the entity, such as the owner, the owner’s agent, or other PERSON, that possesses a valid PERMIT to operate a MANUFACTURED GRADE DAIRY PRODUCTS PLANT or MANUFACTURED GRADE DAIRY PRODUCTS DISTRIBUTION STATION and is legally responsible for its operation.

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LL. PERSON - any individual, plant operator, partnership, corporation, company, firm, trustee, association, or institution.

MM. PEST - any objectionable animals or insects including but not limited to birds, rodents, flies, and larvae.

NN. PASTEURIZED MILK ORDINANCE (PMO) - a set of minimum standards and requirements that are established by the FDA for regulating the production, processing, and packaging of Grade "A" MILK.

OO. PREMISES -

1. The physical facility, its contents, its land, and any adjacent or bordering contiguous land or property under the control of the PERMIT HOLDER; or

2. The physical facility, its contents, and land or property not described in (a) of this definition if the facilities and contents are under the control of the PERMIT HOLDER and may impact the MANUFACTURED GRADE DAIRY PRODUCTS PLANT or distribution station personnel, facilities, or operations, and the MANUFACTURED GRADE DAIRY PRODUCTS PLANT or distribution station is only one component of a larger operation such as a healthcare facility, hotel, motel, school, recreational camp, or prison.

PP. RAW MILK - MILK that has not been PASTEURIZED.

QQ. RESTRICTION - limitation of the activities of an EMPLOYEE so that there is no RISK of transmitting a disease that is transmissible through MANUFACTURED GRADE DAIRY PRODUCTS or ingredients and the EMPLOYEE does not work with exposed MANUFACTURED GRADE DAIRY PRODUCTS or ingredients, clean equipment, utensils, linens, or unwrapped single-service or single-use articles.

RR. RETAIL FOOD ESTABLISHMENT - an establishment that sells FOOD products directly to consumers as its primary function. RETAIL FOOD ESTABLISHMENTS include, but are not limited to, grocery stores, convenience stores, roadside stands, farmers markets, and community supported agriculture (CSA) operations. Any business making FOOD (including a farm business) with at least 50.1 percent in direct to individual consumer FOOD sales satisfies the definition of a RETAIL FOOD ESTABLISHMENT and is exempt from the Bioterrorism Act registration regulations under the 2002 Bioterrorism Act (21 CODE OF FEDERAL REGULATIONS [C.F.R.] 1.225) as a RETAIL FOOD ESTABLISHMENT. The term "consumers" does not include businesses. A RETAIL FOOD ESTABLISHMENT also includes certain farm-operated businesses selling FOOD directly to consumers as their primary function.

SS. RISK - the likelihood that an adverse health effect will occur within a population as a result of a hazard in a FOOD.

TT. SANITIZE - to adequately treat cleaned surfaces by a DEPARTMENT-accepted process that is effective in destroying vegetative cells of PATHOGENS, and in substantially reducing numbers of other undesirable MICROORGANISMS, but without adversely affecting the product or its safety for the consumer.

UU. ULTRA-PASTEURIZED - MANUFACTURED GRADE DAIRY PRODUCT that has been thermally processed at or above 280°F (138°C) for at least two (2) seconds, either before or after packaging, so as to produce a product that has an extended shelf life under refrigerated conditions.

VV. UNEXPOSED PACKAGED FOOD - packaged FOOD that is not exposed to the environment.

Additional definitions related to this regulation are found in 21 CFR 117.3, as amended.

SECTION II. ADULTERATED OR MISBRANDED MANUFACTURED GRADE DAIRY PRODUCTS

A. No PERSON within South Carolina, or its jurisdiction, shall produce, provide, sell, offer, or expose for sale, or have in possession with intent to sell, any MANUFACTURED GRADE DAIRY PRODUCT that is ADULTERATED or misbranded. Any MANUFACTURED GRADE DAIRY PRODUCT that may contain any unwholesome substance, or that does not conform with an applicable standard of identity or other requirement under Section I for that particular MANUFACTURED GRADE DAIRY PRODUCT, shall be deemed ADULTERATED and/or misbranded.

B. The DEPARTMENT issues PERMITS for the manufacturing of ALCOHOL INFUSED FROZEN DESSERTS. The DEPARTMENT does not regulate the distribution or sale of ALCOHOL INFUSED FROZEN DESSERTS. Compliance with DEPARTMENT requirements under this regulation does not exempt PERSONS engaged in the production, distribution, or sale of ALCOHOL INFUSED FROZEN DESSERTS from any other applicable LAWS governing the sale or distribution of alcoholic products.

C. The DEPARTMENT may place a hold order on a MANUFACTURED GRADE DAIRY PRODUCT that it determines or has reason to believe:

1. Originated from an unAPPROVED source;
2. May be unsafe, unwholesome, ADULTERATED, misbranded, or not honestly presented;
3. Is not labeled according to LAW; or
4. Is otherwise not in compliance with this regulation.

D. The DEPARTMENT may suspend a PERSON's PERMIT for violating a hold order.

E. The DEPARTMENT may impound, condemn, forbid the sale of, or cause to be removed or destroyed, any FOOD that is determined to be in violation of this regulation, unwholesome, contaminated, ADULTERATED, misbranded, or from an unAPPROVED source.

F. The DEPARTMENT may issue a hold order to a PERMIT HOLDER or to a PERSON who owns or controls the FOOD, as specified above, without prior warning, notice of a hearing, or a hearing on the hold order.

G. The DEPARTMENT may examine MANUFACTURED GRADE DAIRY PRODUCTS as often as necessary to determine freedom from ADULTERATION or misbranding. Under a hold order, MANUFACTURED GRADE DAIRY PRODUCTS shall be suitably stored. It shall be unlawful for any PERSON to remove or alter a hold order, notice, or tag placed on MANUFACTURED GRADE DAIRY PRODUCTS by the DEPARTMENT, and neither such MANUFACTURED GRADE DAIRY PRODUCTS nor the containers thereof shall be relabeled, repacked, reprocessed, altered, disposed of, or destroyed without permission of the DEPARTMENT, except on order by a court of competent jurisdiction.

H. Whenever MANUFACTURED GRADE DAIRY PRODUCTS are ADULTERATED by DRUGS, pesticides, herbicides, or other poisonous substances, the PERSON or entity in possession of the product shall remove the product from the market, dispose of the product, and stop sale of the product until analysis provides the product to be free from ADULTERATION.

SECTION III. COMPLIANCE PROCEDURES

A. PERMIT.

1. It shall be unlawful for any PERSON to manufacture or distribute any MANUFACTURED GRADE DAIRY PRODUCT without a valid PERMIT issued by the DEPARTMENT for the specific MANUFACTURED GRADE DAIRY PRODUCTS PLANT or DISTRIBUTION STATION. Grocery stores, restaurants, and similar

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establishments where MANUFACTURED GRADE DAIRY PRODUCTS are served or sold at retail, but not processed (other than fountain freezing of APPROVED pasteurized MIX for FROZEN DESSERTS), may be exempt from the requirements of this section.

2. Every MANUFACTURED GRADE DAIRY PRODUCTS PLANT and MANUFACTURED GRADE DAIRY PRODUCTS DISTRIBUTION STATION must obtain a PERMIT. PERMITS are nontransferable with respect to PERSONS and/or locations.

B. Suspension of PERMIT.

1. The DEPARTMENT may suspend a PERMIT whenever:

- a. it has reason to believe that a public health hazard exists;
- b. the PERMIT HOLDER has violated any of the requirements of this regulation;
- c. the PERMIT HOLDER has violated its PERMIT or an order of the DEPARTMENT, including but not limited to, a hold order; or
- d. the PERMIT HOLDER has interfered with the DEPARTMENT in the performance of its duties.

A suspension shall remain in effect until the violation has been corrected to the satisfaction of the DEPARTMENT.

2. The DEPARTMENT may without prior warning or notice, suspend summarily a PERMIT to operate a MANUFACTURED GRADE DAIRY PRODUCTS PLANT or DISTRIBUTION STATION when the DEPARTMENT determines that the operation of the MANUFACTURED GRADE DAIRY PRODUCTS PLANT or DISTRIBUTION STATION, including but not limited to a willful refusal to permit authorized inspection, constitutes an IMMINENT HEALTH HAZARD. Upon summary PERMIT suspension, all manufacturing and distribution operations shall immediately cease. During the process, the PERMIT shall remain suspended unless the IMMINENT HEALTH HAZARD has been corrected.

3. Any MANUFACTURED GRADE DAIRY PRODUCTS MANUFACTURER or MANUFACTURED GRADE DAIRY PRODUCTS DISTRIBUTOR whose PERMIT has been suspended may make written application for the reinstatement of the PERMIT.

4. Within seven (7) BUSINESS DAYS of receiving the written application, the DEPARTMENT shall make inspections and/or collect samples for analysis to determine whether the conditions cited in the notice of suspension no longer exist. If conditions warrant, the DEPARTMENT may reinstate the PERMIT.

C. Revocation of PERMIT.

1. The DEPARTMENT may revoke a PERMIT for repeated violations of any of the requirements of this regulation, the PERMIT, or an order of the DEPARTMENT, or for interference with the DEPARTMENT or its staff in the performance of its duties. Notwithstanding any other provisions of this regulation, the PERMIT may be revoked if the DEPARTMENT is threatened with bodily harm or physical interference in the performance of inspectional duties.

2. The DEPARTMENT may deny a new PERMIT based upon past noncompliance, including previous enforcement, suspension, or revocation history.

3. Any PERSON whose PERMIT is revoked shall not be eligible to apply for re-permitting within one (1) year from the date of revocation. Any PERSON whose PERMIT has previously been revoked and who obtains

a subsequent PERMIT and violates the provisions of this regulation, resulting in revocation of the PERMIT for a second time, shall not be granted another PERMIT for a period of five (5) years.

SECTION IV. LABELING

MANUFACTURED GRADE DAIRY PRODUCTS must be labeled according to the requirements in 21 CFR Part 101, as amended.

SECTION V. INSPECTION OF MANUFACTURED GRADE DAIRY PRODUCTS PLANTS, AND MANUFACTURED GRADE DAIRY PRODUCTS DISTRIBUTION STATIONS

A. Each MANUFACTURED GRADE DAIRY PRODUCTS MANUFACTURER whose MANUFACTURED GRADE DAIRY PRODUCTS are intended for consumption within South Carolina or its jurisdiction shall be inspected by the DEPARTMENT prior to the issuance of a PERMIT.

B. Following the issuance of a PERMIT, the DEPARTMENT will inspect each MANUFACTURED GRADE DAIRY PRODUCTS MANUFACTURER and DISTRIBUTOR at a frequency determined by the RISK level assigned to the product(s) being manufactured or distributed, or as otherwise deemed necessary by the DEPARTMENT to determine compliance with this regulation.

C. When the DEPARTMENT finds a critical processing element violation involving:

1. Improper PASTEURIZATION, whereby every particle of a MANUFACTURED GRADE DAIRY PRODUCT may not have been heated to the proper temperature and held for the required time in properly designed and operated equipment; or

2. Cross contamination whereby direct contamination of a PASTEURIZED MANUFACTURED GRADE DAIRY PRODUCT is occurring; or

3. Conditions whereby direct contamination of a MANUFACTURED GRADE DAIRY PRODUCT is occurring, the DEPARTMENT shall take immediate action to prevent further processing of such MIX or MANUFACTURED GRADE DAIRY PRODUCT until all violations of critical processing element(s) have been corrected. Should correction of such critical processing elements not be accomplished immediately, the DEPARTMENT will take prompt action to suspend the PERMIT as provided for in Section III of this regulation.

D. In the case of a plant producing ASEPTICALLY PROCESSED MIX, when an inspection of the plant or its records reveal that the process used has been less than the required scheduled process, as per the PMO, it shall be considered an IMMINENT HEALTH HAZARD and the DEPARTMENT shall take immediate action to suspend the PERMIT of the plant for the sale of aseptically processed MANUFACTURED GRADE DAIRY PRODUCTS in conformance with Section III of this regulation.

E. A copy of the inspection report will be provided either electronically or in paper form to the PERMIT HOLDER, manager, or other duly authorized representative.

F. Every MANUFACTURED GRADE DAIRY PRODUCTS MANUFACTURER and DISTRIBUTOR shall, upon request of a DEPARTMENT representative, permit the DEPARTMENT access to all parts of the establishment or facilities to determine compliance with the provisions of this regulation. A PERMIT HOLDER, manager, or other duly authorized representative shall furnish the DEPARTMENT, upon request and for official use only, a true statement of the actual quantities of MANUFACTURED GRADE DAIRY PRODUCT purchased and sold, and a list of all sources of such MANUFACTURED GRADE DAIRY PRODUCT, records of inspections, records of tests, and PASTEURIZATION time and temperature records.

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G. It is unlawful for any PERSON who, in an official capacity, obtains any information under the provisions of this regulation which is entitled to protection as a trade secret, to use such information to his or her own advantage or to reveal it to any unauthorized PERSON.

SECTION VI. THE EXAMINATION OF MANUFACTURED GRADE DAIRY PRODUCTS

A. Sampling criteria.

1. Samples of MANUFACTURED GRADE DAIRY PRODUCTS shall be collected by the manufacturer or the DEPARTMENT, as directed, at a frequency that is deemed appropriate by the DEPARTMENT based on the level of RISK of the product.

2. Samples may be taken while in the possession of the manufacturer and/or distributor, retail stores, cafes, restaurants, and other places where MANUFACTURED GRADE DAIRY PRODUCTS are sold and shall be taken and examined as often as the DEPARTMENT may require.

B. Sampling enforcement.

1. Upon receipt of unsatisfactory samples, as specified in (a) and (b) below, the DEPARTMENT shall send a written notice thereof to the PERMIT HOLDER of the MANUFACTURED GRADE DAIRY PRODUCTS PLANT or MANUFACTURED GRADE DAIRY PRODUCTS DISTRIBUTION STATION.

a. For FROZEN DESSERTS this notice shall be sent when two (2) of the last four (4) consecutive bacterial counts (except those for ASEPTICALLY PROCESSED MIX), coliform determinations, or cooling temperatures, taken on separate days, exceed the limit of the standard for FROZEN DESSERTS. An additional sample shall be taken within twenty-one (21) days of the sending of such notice, but not before the lapse of three (3) days. The DEPARTMENT shall suspend the manufacturer and/or distributor's PERMIT in accordance with Section III and/or take court action as necessary whenever the additional sampling results indicate that three (3) of the last five (5) bacterial counts (except those for ASEPTICALLY PROCESSED MIX), coliform determinations, or cooling temperatures exceed the limit of the standard for FROZEN DESSERTS.

b. For CHEESE and BUTTER, this notice shall be sent when a sample is confirmed to be positive for PATHOGENIC organisms. A positive finding of PATHOGENIC organisms in a sample shall be considered an IMMINENT HEALTH HAZARD, and the product involved shall not be offered for sale. The DEPARTMENT shall immediately suspend the PERMIT and the PERMIT shall remain suspended until a minimum of two (2) consecutive representative samples are found to be free of PATHOGENIC organisms.

2. Whenever a phosphatase test is positive, the cause shall be determined by the PERMIT HOLDER. Where the cause is improper PASTEURIZATION, it shall be corrected, and any MANUFACTURED GRADE DAIRY PRODUCT involved shall not be offered for sale.

3. Whenever a pesticide residue test is positive, an investigation shall be made to determine the cause, and the product involved shall not be offered for sale. The cause shall be corrected. An additional sample shall be taken and tested for pesticide residues and no MANUFACTURED GRADE DAIRY PRODUCT shall be offered for sale until it is shown by a subsequent sample to be free of pesticide residues or below the actionable levels established for such residues.

4. Whenever a DRUG residue test is positive, an investigation shall be made to determine the cause, and the cause shall be corrected in accordance with the provision of Section II of this regulation.

5. Whenever a container or containers of ASEPTICALLY PROCESSED MANUFACTURED GRADE DAIRY PRODUCT is found to be unsterile due to under processing, the DEPARTMENT shall consider this to be an IMMINENT HEALTH HAZARD and shall suspend the PERMIT of the MANUFACTURED GRADE

DAIRY PRODUCT plant for the sale of ASEPTICALLY PROCESSED MANUFACTURED GRADE DAIRY PRODUCT. No ASEPTICALLY PROCESSED MANUFACTURED GRADE DAIRY PRODUCT shall be sold until it can be shown that the processes, equipment, and procedures used are suitable for consistent production of a sterile product. All products, including MANUFACTURED GRADE DAIRY PRODUCT, manufactured in or from the lot found to contain one (1) or more unsterile units shall be recalled and disposed of as directed by the DEPARTMENT.

C. Sampling methods.

Samples shall be analyzed at an official or appropriate OFFICIALLY DESIGNATED LABORATORY. All sampling procedures and required laboratory examinations shall be in substantial compliance with the Standard Methods for the Examination of Dairy Products of the American Public Health Association, and the certification of sample collectors, and examinations shall be evaluated in accordance with the United States Public Health Service/FDA Evaluation of MILK Laboratories. Aseptically processed MANUFACTURED GRADE DAIRY PRODUCTS packaged in HERMETICALLY SEALED CONTAINERS shall be tested in accordance with the FDA’s Bacteriological Analytical Manual. Examinations and tests to detect adulterants, including pesticides, shall be conducted as the DEPARTMENT requires.

SECTION VII. STANDARDS FOR MANUFACTURED GRADE DAIRY PRODUCTS PLANTS AND MANUFACTURED GRADE DAIRY PRODUCTS DISTRIBUTION STATIONS

A. Temperature, bacteriological and chemical requirements.

1. All frozen dessert MIX shall be produced, processed, and PASTEURIZED, ULTRA-PASTEURIZED, or ASEPTICALLY PROCESSED as specified in the PMO and frozen to conform with the following temperature, bacteriological, and chemical standards and the sanitation requirements of this section:

a. RAW MILK and MILK products obtained by a FROZEN DESSERT manufacturer for future PASTEURIZATION, ULTRA-PASTEURIZATION, or ASEPTIC PROCESSING and use in the production of FROZEN DESSERTS must come from an APPROVED source and must be in compliance with the temperature, bacteriological, and chemical standards in R.61-34, Raw Milk for Human Consumption, or R. 61-34.1, Pasteurized Milk and Milk Products, or the PMO.

b. PASTEURIZED FROZEN DESSERTS and/or Heat-Treated, Bulk-Shipped MILK Products:

(1) Temperature – Cooled to 45°F (7°C) or less and maintained thereat.

(2) Bacterial limits* - 30,000 per mL.

(3) Coliform - Not to exceed 10 per mL: provided that, in the case of bulk MILK transport tank shipments, where contents are to be repasteurized, shall not exceed 100 per mL.

(4) Phosphatase** - Less than 500 milliunits/L by the Fluorometer or Clarion ALP or equivalent.

(5) DRUGS - No positive results on DRUG residue detection methods as referenced in Section 6 – Laboratory Techniques, FDA Grade “A” PMO as amended.

c. ASEPTICALLY PROCESSED MIX:

(1) Temperature - None.

(2) Bacterial limits - No growth by test specified in Section VI.

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(3) DRUGS - No positive results on DRUG residue detection methods as referenced in Section 6 – Laboratory Techniques, FDA Grade “A” PMO as amended.

*Not applicable to cultured products.

**Not applicable to bulk shipped heat-treated products.

2. Each type of CHEESE shall conform to the sanitation requirements of this section and be produced and processed and PASTEURIZED, ULTRA-PASTEURIZED, and ASEPTICALLY PROCESSED to conform with the temperature, bacteriological, and chemical standards that are outlined below:

a. Except as provided in paragraph A.2.b. below, all MILK and MILK products used in the production of CHEESE shall meet the requirements in either (1) or (2) below:

(1) Be PASTEURIZED or subjected to equivalent heat treatment by the CHEESE manufacturer in accordance with the applicable specifications under the definition of PASTEURIZATION in Section I of this regulation.

a. PASTEURIZATION achieved by methods other than those described in the current PMO must be achieved in accordance with a written procedure that has been APPROVED by the DEPARTMENT; and

b. has been proven by a phosphatase test to achieve PASTEURIZATION.

(2) Be made from PASTEURIZED MILK products or from MILK products which have been subjected to equivalent heat treatment as outlined in Section I of this regulation.

b. If made from RAW MILK (CHEESE labeled as “heat treated”, “unPASTEURIZED”, “RAW MILK”, or “for manufacturing”), CHEESE must be aged for no less than sixty (60) days at a temperature greater than or equal to 35°F (1.7°C) in order to control microbial PATHOGENS.

c. RAW MILK and MILK products obtained by a CHEESE manufacturer for future PASTEURIZATION, ULTRA-PASTEURIZATION, or ASEPTIC PROCESSING and use in the production of CHEESE must come from an APPROVED source and be in compliance with the temperature, bacteriological, and chemical standards in R.61-34, Raw Milk for Human Consumption, or R. 61-34.1, Pasteurized Milk and Milk Products., or the PMO.

d. All CHEESE shall be made from ingredients that conform to the quality specifications for raw materials outlined in 21 CFR 58.430 through 58.437, as amended.

e. Each type of CHEESE must meet the specific standards and limits applicable to it under Subpart B of 21 CFR Part 133, as amended.

3. All BUTTERS shall conform to the sanitation requirements of 21 CFR 117.80 and be produced, processed, and PASTEURIZED, ULTRA-PASTEURIZED, or ASEPTICALLY PROCESSED to conform with the temperature, bacteriological, and chemical standards that are outlined below:

a. All BUTTERS shall be manufactured from MILK or MILK products that have been PASTEURIZED or subjected to equivalent heat treatment in accordance with the applicable specifications under the definition of PASTEURIZATION in Section I of this regulation and shall not be made from RAW MILK or RAW MILK products.

(1) PASTEURIZATION achieved by methods other than those described in the current PMO must be achieved in accordance with a written procedure that has been APPROVED by the DEPARTMENT; and

(2) has been proven by a phosphatase test to achieve PASTEURIZATION.

b. All BUTTERS shall be made from ingredients that conform to the quality specifications for raw materials outlined in 7 CFR 58.322 through 58.331, as amended.

c. BUTTER specifications:

- (1) Proteolytic count - Not more than 100 per gram.
- (2) Yeast and mold count - Not more than 20 per gram.
- (3) Coliform count - Not more than 10 per gram.
- (4) Enterococci - Not more than 10 per gram.

4. No process or manipulation other than PASTEURIZATION, ULTRA-PASTEURIZATION or ASEPTIC PROCESSING, freezing, processing methods integral therewith, and appropriate refrigeration (freezing) shall be applied to MANUFACTURED GRADE DAIRY PRODUCTS for the purpose of removing or deactivating MICROORGANISMS.

5. All IMITATION MILK, IMITATION MILK PRODUCTS, AND PRODUCTS MADE IN SEMBLANCE OF MILK AND MILK PRODUCTS shall meet the minimum standards for the MILK or MILK product which it imitates or resembles, including those for fat and solids not fat. To each quart of IMITATION MILK, imitation low-fat MILK, imitation skim MILK, and products made in semblance of these products, 400 U.S.P. units of Vitamin D and 2000 U.S.P. units of Vitamin A shall be added.

B. Post-PASTEURIZATION ingredients.

Only the following flavoring ingredients and other ingredients which have been found to be safe and suitable may be added to a MANUFACTURED GRADE DAIRY PRODUCT after PASTEURIZATION:

- 1. Fresh fruits and vegetables, provided the resultant equilibrium pH level (4.6 or below when measured at 75°F (24°C)) of the finished product is reached without undue delay and is maintained during the shelf life of the product;
- 2. Ingredients subjected to prior heating or other technology that has been demonstrated to the FDA to be sufficient to destroy or remove PATHOGENIC MICROORGANISMS;
- 3. Ingredients having a water activity of 0.85% or less;
- 4. Ingredients having a high acid content (pH level of 4.6 or below when measured at 75°F (24°C)) or high alkalinity (pH level greater than 11 when measured at 75°F (24°C));
- 5. Roasted nuts;
- 6. Dry sugars and salts;
- 7. Safe and suitable bacterial cultures and enzymes;
- 8. Alcohol;
- 9. Ingredients that have been found to be safe and suitable by the FDA.

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All such additions shall be made in a sanitary manner that prevents the contamination of the added ingredient or the MANUFACTURED GRADE DAIRY PRODUCT.

C. Sanitation of MANUFACTURED GRADE DAIRY PRODUCTS PLANTS and MANUFACTURED GRADE DAIRY PRODUCTS DISTRIBUTION STATIONS.

1. All MANUFACTURED GRADE DAIRY PRODUCTS MANUFACTURERS and DISTRIBUTORS, regardless of exemption status, shall comply with the requirements of 21 CFR Part 117, Subpart A - General Provisions, Subpart B - Current Good Manufacturing Practice, and Subpart F - Requirements Applying to Records That Must Be Established and Maintained, as amended.

a. In addition to the requirements in Section VII(C)(1) above, BUTTER plants, BUTTER manufacturers, BUTTER distribution stations, and BUTTER distributors shall comply with 7 CFR 58.311 through 58.321, as amended, and 7 CFR 58.332 through 58.344, as amended.

b. In addition to the requirements in Section, VII(C)(1) above, CHEESE plants, CHEESE manufacturers, CHEESE distribution stations, and CHEESE distributors shall comply with 7 CFR 58.406 through 58.429, as amended, and 7 CFR 58.438 through 58.445, as amended.

2. MANUFACTURED GRADE DAIRY PRODUCTS PLANTS and DISTRIBUTION STATIONS that have been granted a Qualified Facility Exemption by the FDA or that are solely engaged in the storage of refrigerated UNEXPOSED PACKAGED FOODS when temperature controls are necessary to prevent PATHOGEN growth shall comply with the requirements of 21 CFR Part 117, Subpart A - General Provisions, Subpart B - Current Good Manufacturing Practice, Subpart D - Modified Requirements, and Subpart F - Requirements Applying to Records That Must Be Established and Maintained, and be familiar with Subpart E - Withdrawal of a Qualified Facility Exemption, as amended.

3. All MANUFACTURED GRADE DAIRY PRODUCTS PLANTS and DISTRIBUTION STATIONS that have not been granted a Qualified Facility Exemption by the FDA shall comply with the requirements of 21 CFR Part 117, Subpart A - General Provisions, Subpart B - Current Good Manufacturing Practice, Subpart C - Hazard Analysis and Risk-Based Preventive Controls, and Subpart F - Requirements Applying to Records That Must Be Established and Maintained, as amended.

4. MANUFACTURED GRADE DAIRY PRODUCTS PLANTS and DISTRIBUTION STATIONS that are requiring a withdrawal of their Qualified Facility Exemption from the FDA shall be subject to the requirements of 21 CFR Part 117, Subpart E - Withdrawal of a Qualified Facility Exemption, as amended.

5. MANUFACTURED GRADE DAIRY PLANTS and DISTRIBUTION STATIONS that have not been granted a Qualified Facility Exemption by the FDA and have identified a hazard requiring a supply-chain applied control shall comply with the requirements of 21 CFR Part 117, Subpart G - Supply-Chain Program, as amended.

6. There shall be separate rooms for processing and packaging of different types of MANUFACTURED GRADE DAIRY PRODUCTS as determined by the DEPARTMENT.

7. Water Supply.

a. Water used for MANUFACTURED GRADE DAIRY PRODUCTS PLANT purposes shall be from a supply properly located, protected, and operated, and shall be easily accessible, adequate, and of a safe, sanitary quality. Any water used as an ingredient must be obtained from an APPROVED public water system as defined in R.61-58. Water for MANUFACTURED GRADE DAIRY PLANTS that have not been granted a Qualified Facility Exemption by the FDA must be from an APPROVED public water supply.

b. Firms that have been granted a Qualified Facility Exemption by the FDA shall have their water supply tested. Samples for bacteriological testing of individual water supplies may be taken by the DEPARTMENT or by other APPROVED individuals with the results to be submitted to the DEPARTMENT upon the initial approval of the physical structure, annually thereafter, and when any repair or alteration of the water supply system has been made. Examinations shall be conducted in an OFFICIAL LABORATORY at the MANUFACTURED GRADE DAIRY PRODUCT PLANT'S expense. The plant must maintain records of the tested samples.

SECTION VIII. MANUFACTURED GRADE DAIRY PRODUCTS FROM OUT OF STATE OR OUTSIDE THE UNITED STATES

MANUFACTURED GRADE DAIRY PRODUCTS from out of state or outside the United States may be sold in South Carolina only if the DEPARTMENT determines they are manufactured and distributed under provisions substantially equivalent to the requirements of this regulation and adequately enforced.

SECTION IX. PLANS FOR CONSTRUCTION AND RECONSTRUCTION

Properly prepared plans for all MANUFACTURED GRADE DAIRY PRODUCTS PLANTS or MANUFACTURED GRADE DAIRY PRODUCTS DISTRIBUTION STATIONS regulated under this regulation which are to be constructed, reconstructed, or extensively altered shall be submitted to the DEPARTMENT for written approval before work is begun.

SECTION X. EQUIPMENT AND FACILITIES IN OPERATION PRIOR TO JULY 1, 2020

Equipment and physical facilities of MANUFACTURED GRADE DAIRY PRODUCTS PLANTS and MANUFACTURED GRADE DAIRY PRODUCTS DISTRIBUTION STATIONS in operation prior to July 1, 2020 are deemed in compliance even if they do not meet all construction, equipment, and facilities requirements of this regulation if the facilities and equipment:

- A. Are in compliance with the regulatory standards in place for such equipment and facilities on January 1, 2020;
- B. Are capable of being maintained in a sanitary condition;
- C. Are not a public health hazard or NUISANCE; and
- D. Are replaced in the normal course of operation with equipment and facilities that meet the requirements of this regulation.

This section shall not apply to equipment installed or construction commenced on or after July 1, 2020.

SECTION XI. PROCEDURE WHEN INFECTION OR HIGH RISK INFECTION IS SUSPECTED

When reasonable cause exists to suspect the possibility of transmission of infection from any PERSON concerned with the handling of MANUFACTURED GRADE DAIRY PRODUCTS, or their ingredients, the DEPARTMENT is authorized to require any or all of the following measures:

- A. The immediate EXCLUSION or RESTRICTION of that PERSON from handling MANUFACTURED GRADE DAIRY PRODUCTS, or their ingredients;
- B. The immediate removal of the MANUFACTURED GRADE DAIRY PRODUCTS of concern from distribution and use; and/or

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C. Adequate medical and bacteriological examination of the PERSON, of their associates, and any of their bodily discharges.

SECTION XII. RECALLS

For MANUFACTURED GRADE DAIRY PRODUCTS MANUFACTURERS and DISTRIBUTORS that have not been granted a Qualified Facility Exemption by the FDA, the Recall Plan requirements of 21 CFR 117.139 supersede the requirements of this section.

If 21 CFR 117.139 does not apply, each MANUFACTURED GRADE DAIRY PRODUCTS MANUFACTURER and MANUFACTURED GRADE DAIRY PRODUCTS DISTRIBUTOR shall develop and maintain procedures for the notification of regulatory officials, consumer notification, and product recall, and shall implement any said procedure as necessary with respect to any product for which the PERMIT HOLDER or the DEPARTMENT has reason to believe circumstances exist that may adversely affect its safety for the consumer. If the DEPARTMENT determines, based upon representative samples, RISK analysis, information provided by the MANUFACTURED GRADE DAIRY PRODUCTS MANUFACTURER and/or MANUFACTURED GRADE DAIRY PRODUCTS DISTRIBUTOR, and/or other information available to the DEPARTMENT, that the circumstances present an IMMINENT HEALTH HAZARD and that a form of consumer notice or product recall can effectively avoid or significantly minimize the threat to public health, the DEPARTMENT may order the MANUFACTURED GRADE DAIRY PRODUCTS MANUFACTURER and/or MANUFACTURED GRADE DAIRY PRODUCTS DISTRIBUTOR to initiate a level of product recall or, if appropriate, issue a form of notification to customers. Each MANUFACTURED GRADE DAIRY PRODUCTS MANUFACTURER and MANUFACTURED GRADE DAIRY PRODUCTS DISTRIBUTOR shall be responsible for disseminating the notice in a manner designed to inform customers who may be affected by the problem.

SECTION XIII. ENFORCEMENT AND PENALTIES

Any PERSON found to be in violation of this regulation, in non-compliance with the issued PERMIT, or in violation of an order issued by the DEPARTMENT shall be subject to civil monetary penalties, PERMIT suspension, and/or PERMIT revocation. Each day of continued violation shall be a separate offense.

SECTION XIV. SEVERABILITY CLAUSE

Should any section, paragraph, sentence, clause, or phrase of this regulation be declared unconstitutional or invalid for any reason, the remainder of said regulations shall not be affected thereby.

Fiscal Impact Statement:

There are no anticipated new costs associated with the implementation of this regulation to the state or its political subdivisions.

Statement of Need and Reasonableness:

The following presents an analysis of the factors listed in 1976 Code Sections 1-23-115(C)(1)-(3) and (9)-(11):

DESCRIPTION OF REGULATION: 61-35, Imitation Milk, Imitation Milk Products, and Products Made in Semblance of Milk and Milk Products; and 61-36, Frozen Desserts.

Purpose: This amendment strikes the text of the existing regulations in total, repeals the text of R.61-35, combines the revised text of both to align with current standards of the most recent edition of the CFR, and includes provisions for the regulation of additional non-grade "A" dairy products, such as cheese and butter. The existing regulations are based on 21 CFR Part 110, Current Good Manufacturing Practice in Manufacturing,

Packing, or Holding Human Food, which has been replaced with 21 CFR Part 117, Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food. The new federal regulation updates good manufacturing processes to be implemented by the regulated community and also incorporates new preventive controls for minimizing or preventing food safety hazards. The PMO also has been recently updated, and the necessary provisions for pasteurization of fluid milk used in the production of these products have been incorporated into this revision. The new federal regulation facilitates combining all manufactured dairy products into one streamlined regulation, instead of two separate regulations with repetitive content.

Legal Authority: 1976 Code Sections 44-1-140(3) and 44-1-150.

Plan for Implementation: The DHEC Regulation Development Update (accessible at <http://www.scdhec.gov/Agency/RegulationsAndUpdates/RegulationDevelopmentUpdate/>) provides a summary of and link to these amendments and repeals. Additionally, printed copies are available for a fee from the Department's Freedom of Information Office. Upon taking legal effect, Department personnel will take appropriate steps to inform the regulated community of the amendments and repeals and any associated information.

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

The purpose of R.61-36, Frozen Desserts, and R.61-35, Imitation Milk, Imitation Milk Products, and Products Made in Semblance of Milk and Milk Products, is to safeguard public health and provide consumers safe, unadulterated frozen dessert and imitation dairy food products manufactured in South Carolina to be sold and distributed both in state and out of state. These regulations govern the production, processing, storing, labeling, transportation, and distribution of frozen desserts and imitation dairy foods that are not regulated as "Grade A" milk under the provisions of R.61-34, Raw Milk for Human Consumption, or R.61-34.1, Pasteurized Milk and Milk Products. The regulations are based on Title 21, Part 110, of the Code of Federal Regulations (21 CFR Part 110).

The Department last amended R.61-36 in 2004. Earlier this year, 21 CFR Part 110, Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food was replaced with 21 CFR Part 117, Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food. There have been numerous changes in the manufactured food industry, including changes to food handling practices, food equipment technology, and food preparation processes, making R.61-36 and R.61-35 outdated. The new federal regulation updates good manufacturing processes and incorporates new preventive controls for minimizing or preventing food safety hazards.

The Department is amending the provisions of R.61-36, Frozen Desserts, and R.61-35, Imitation Milk, Imitation Milk Products, and Products Made in Semblance of Milk and Milk Products to incorporate standards of the new federal regulation. The structure of the federal regulation also facilitates combining provisions governing all manufactured dairy products into one streamlined regulation, instead of separate regulations with repetitive content. As part of this new streamlined regulation, the Department is adding requirements for manufacturing cheese, butter, and other non-grade "A" milk products. The South Carolina Department of Agriculture previously oversaw requirements for cheese and butter products (also under 21 CFR Part 110, Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food); however, per agreement between the two agencies, the Department has assumed oversight responsibility with respect to these products. Furthermore, the U.S. Food and Drug Administration (FDA) recently updated the PMO, and the necessary provisions for pasteurization of fluid milk used in the production of these products have been incorporated into this revision.

The amendments to these regulations serve to improve the overall clarity and effectiveness of applicable administrative, enforcement, and other requirements. In addition to clarification and updating of state-specific regulatory provisions, these amendments incorporate current federal standards, which have replaced preexisting

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federal standards upon which the Department's existing, unrevised regulations are based. This serves to reduce administrative burdens on the regulated community by facilitating streamlined inspections and compliance under both state and federal requirements.

DETERMINATION OF COSTS AND BENEFITS:

There are no anticipated new costs associated with the implementation of this regulation. The amendments will benefit public health by ensuring safe, unadulterated dairy food and dairy food products at manufacturing plants and throughout the distribution chain. The amendments to these regulations also serve to improve the overall clarity and effectiveness of applicable administrative, enforcement, and other requirements. The amendment of R.61-36 to align with the most recent edition of the CFR and incorporate the most recent changes to the PMO will allow the regulation to conform to the current national standards. Industry will benefit by having an aligned set of rules to comply with for federal inspections that may be conducted by the FDA, those conducted by the Department for the FDA, and those conducted for the state under this regulation. Such alignment also allows for facilities to undergo one inspection, conducted by the Department under this regulation, to satisfy both federal and state oversight. The amendments also combine provisions governing different manufactured dairy products into one streamlined regulation, instead of separate regulations with repetitive content.

UNCERTAINTIES OF ESTIMATES:

None.

EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH:

Implementation of this regulation will not compromise the protection of the environment or the public health. The regulation will help to ensure that consumers are receiving safe, unadulterated dairy food and dairy food products. The amendment of R.61-36 to conform to the most recent edition of the CFR also provides effective means of reducing the risks of foodborne illnesses within dairy food manufacturing plants, thus protecting consumers and industry from potentially devastating public health consequences and financial loss. Incorporation of the Food Safety Modernization Act compliant 21 CFR Part 117, Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food, and the new preventive controls for minimizing or preventing food safety hazards allows for better training and understanding of risk by those in charge of food safety in processing plants.

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

There will be no adverse effect on the environment if the regulations are not implemented.

Failure to adopt these amendments would prevent implementation of the latest sanitary standards and a comprehensive approach to food safety management needed in addressing food protection in the manufactured dairy products industry. This could have a detrimental effect on the health of South Carolina's citizens and visitors.

Statement of Rationale:

The Department promulgates these amendments to meet the latest sanitation requirements for providing safe, unadulterated manufactured grade dairy products to consumers. Furthermore, the amendments allow for one inspection, conducted by the Department under this regulation, to satisfy both federal and state oversight. The amendments also combine provisions governing different manufactured grade dairy products into one streamlined regulation, instead of two separate regulations with repetitive content.

Document No. 4898

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61

Statutory Authority: 1976 Code Sections 59-111-510 through 59-111-580

61-1. Medical and Dental Scholarship Fund.

Synopsis:

The Department of Health and Environmental Control ("Department") repeals R.61-1, which implements a Medical and Dental Scholarship/Loan Fund established by S.C. Code Sections 59-111-510 through 59-111-580. The Fund was intended to provide financial assistance for medical and dental school educations to recipients who would agree to practice in a rural area of the state for a specified period of time. The fund had originally been a scholarship program when the regulation was first adopted but was converted by statute to a loan fund in 1985; however, the regulation was never amended to conform to the amended statute. The General Assembly last funded the program in the 1988 Appropriations Act for the 1988-1989 fiscal year. The last recipients completed their service obligations in 1996 following three years of residency and four years of service.

In 1989, when the S.C. General Assembly ceased to fund the Medical and Dental Loan Fund, it established a Rural Physician Program to address the undersupply of clinicians in rural and underserved South Carolina communities. The new program is administered by the South Carolina Area Health Education Consortium and fiscally managed by the Medical University of South Carolina. The program provides incentive grants for primary care physicians and advanced practice professionals who commit to practice in a rural or underserved area of South Carolina for a period of four years. Per S.C. Code Section 59-123-125, the Department's only current involvement with this fund extends to the SC DHEC Commissioner/Director or designee serving on the Rural Physician Board.

The Department had a Notice of Drafting published in the March 22, 2019, *South Carolina State Register*.

Instructions:

Repeal R.61-1, Medical and Dental Scholarship Fund, in its entirety in the South Carolina Code of Regulations.

Text:

61-1. [Repealed].

Fiscal Impact Statement:

No fiscal impact to the agency.

Statement of Need and Reasonableness:

The following presents an analysis of the factors listed in 1976 Code Section 1-23-115(C)(1)-(3) and (9)-(11):

DESCRIPTION OF REGULATION: 61-1, Medical and Dental Scholarship Fund.

Purpose: R.61-1 is no longer needed because when the S.C. General Assembly ceased to fund the Medical and Dental Loan Fund, it established a Rural Physician Program to address the undersupply of clinicians in rural and underserved South Carolina communities. The new program is administered by the South Carolina Area Health Education Consortium and fiscally managed by the Medical University of South Carolina. Should the General Assembly decide to fund the Medical and Dental Fund the statute provides for funding loans without the need for regulation.

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Legal Authority: 1976 Code Sections 59-111-510 through 59-111-580.

Plan for Implementation: The DHEC Regulation Development Update (accessible at <http://www.scdhec.gov/Agency/RegulationsAndUpdates/RegulationDevelopmentUpdate/>) provides a summary of and link to this repeal. Additionally, printed copies are available for a fee from the Department's Freedom of Information Office. Upon taking legal effect, Department personnel will take appropriate steps to inform the regulated community of the repeal and any associated information.

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

The General Assembly last funded the program in the 1988 Appropriations Act for the 1988-1989 fiscal year. The last recipients completed their service obligations in 1996 following three years of residency and four years of service. Since the General Assembly has not funded the Medical and Dental Scholarship/Loan program since FY 1989, the Department has had no funds to administer and the program has been dormant for the past thirty years. As such, the Department repeals R.61-1.

DETERMINATION OF COSTS AND BENEFITS:

There are no costs to the state or its political subdivisions associated with the repeal of R.61-1. The benefit of repealing this regulation is removing an unnecessary regulation that is no longer consistent with the statute.

UNCERTAINTIES OF ESTIMATES:

None.

EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH:

Repealing R.61-1 will have no effect on the environment and public health.

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

Repealing R.61-1 will have no detrimental effect on the environment and public health.

Statement of Rationale:

Here below is the Statement of Rationale pursuant to S.C. Code Section 1-23-110(h):

The fund had originally been a scholarship program when the regulation was first adopted but was converted by statute to a loan fund in 1985; however, the regulation was never amended to conform to the amended statute. The General Assembly last funded the program in the 1988 Appropriations Act for the 1988-1989 fiscal year. The last recipients completed their service obligations in 1996 following three years of residency and four years of service. In 1989, when the S.C. General Assembly ceased to fund the Medical and Dental Loan Fund, it established a Rural Physician Program to address the undersupply of clinicians in rural and underserved South Carolina communities. The new program is administered by the South Carolina Area Health Education Consortium and fiscally managed by the Medical University of South Carolina.

Document No. 4903

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

Statutory Authority: 1976 Code Sections 44-1-140 and 44-1-150

61-32. Soft Drink and Water Bottling Plants.

61-54. Wholesale Commercial Ice Manufacturing.

Synopsis:

The purpose of R.61-32, Soft Drink and Water Bottling Plants, and R.61-54, Wholesale Commercial Ice Manufacturing, is to safeguard public health and provide consumers safe, unadulterated soft drinks, bottled water, and wholesale ice products manufactured in South Carolina to be sold and distributed both in state and out of state. These regulations govern the production, processing, storing, labeling, transportation, and distribution of soft drinks, bottled water, and wholesale ice products. The regulations are based on Title 21, Part 110, Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food of the Code of Federal Regulations (21 CFR Part 110).

The Department of Health and Environmental Control (Department) last amended R.61-32 in 2004 and R.61-54 in 2008. Earlier this year, 21 CFR Part 110, Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food, was replaced with 21 CFR Part 117, Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food. There have been numerous changes in the manufactured food and beverage industry, including changes to food and beverage handling practices, food and beverage equipment technology, and food and beverage preparation processes, making R.61-32 and 61-54 outdated. The new federal regulation updates good manufacturing processes and incorporates new preventive controls for minimizing or preventing food safety hazards.

The Department is amending the provisions of R.61-32, Soft Drink and Water Bottling Plants, and R.61-54, Wholesale Commercial Ice Manufacturing, to incorporate standards of the new federal regulation. The structure of the federal regulation also facilitates combining provisions governing manufactured water-based products into one streamlined regulation, instead of two separate regulations with repetitive content. To achieve this more functional, streamlined regulation, the Department is repealing R.61-54 and combining its revised provisions into R.61-32. This also includes amending the title of R.61-32 to “Wholesale Bottled Water, Soft Drinks, and Ice Manufacturing.” The amendments also include other changes not required by federal law, including additions, updates, and clarifications to administrative requirements, enforcement requirements, and definitions, as well as other changes deemed necessary by the Department to improve the overall clarity, organization, and quality of the regulation. These changes include stylistic changes such as corrections for clarity and readability, grammar, punctuation, references, codification, and overall improvement of the text of the regulation.

The Department had a Notice of Drafting published in the April 26, 2019, *South Carolina State Register*.

Instructions:

Replace R.61-32 in its entirety with this amendment. Repeal R.61-54 in its entirety from the South Carolina Code of Regulations.

Text:

61-32. Wholesale Bottled Water, Soft Drink, and Ice Manufacturing.

Statutory Authority: S.C. Code Sections 44-1-140 and 44-1-150

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SECTION I. PURPOSE

This regulation sets forth minimum health standards, procedures, and practices to ensure that wholesale BOTTLED WATER, SOFT DRINKS, and ICE are manufactured in South Carolina in a safe and wholesome manner.

SECTION II. SCOPE

This regulation shall apply to all PERSONS who manufacture or distribute wholesale BOTTLED WATER, SOFT DRINKS, or ICE, sold for human consumption in South Carolina.

SECTION III. DEFINITIONS

A. ADEQUATE - substantial compliance with acceptable health standards, procedures, and practices.

B. ADULTERATED or ADULTERATION - BOTTLED WATER, SOFT DRINKS, or ICE are deemed to be ADULTERATED if the product:

1. Bears or contains any poisonous or deleterious substance in a quantity that may render it injurious to health;

2. Bears or contains any added poisonous or deleterious substance for which no state or federal regulation has established a safe tolerance, or in excess of such tolerance if one has been established;

3. Consists, in whole or in part, of any substance unfit for human consumption;

4. Has been produced, processed, prepared, packaged, or held under unsanitary conditions;

5. Is packaged in a container which is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

6. Has any substance added thereto, or mixed or packaged therewith, so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is; or

7. Is in violation of Section 402 of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. Section 342).

C. **APPROVED** - acceptable to the Department based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.

D. **APPROVED LABORATORY** - a laboratory **APPROVED** by the Department or certified by the U.S. Environmental Protection Agency (EPA), or certified (accredited) by a third-party organization acceptable to the Department.

E. **APPROVED SOURCE** - the source of the water used in a plant's operations or a bottled water plant's product water, whether it be from a spring, artesian well, drilled well, public or community water system, or any other source that has been inspected and the water sampled, analyzed, and found of a safe and sanitary quality with or without treatment, and **APPROVED** by the Department in accordance with Regulation 61-58, State Primary Drinking Water Regulations.

F. **ARTESIAN WATER - BOTTLED WATER** from a well tapping a confined aquifer in which the water level stands at some height above the top of the aquifer. **ARTESIAN WATER** may be collected with the assistance of external force to enhance the natural underground pressure. On request, plants shall demonstrate to the Department that the water level stands at some height above the top of the aquifer.

G. **BOTTLED WATER** - water that is intended for human consumption and that is sealed in bottles or other **CONTAINERS** with no added ingredients except that it may optionally contain safe and suitable antimicrobial agents. It does not include those **FOOD** ingredients that are declared in ingredient labeling as "water," "carbonated water," "disinfected water," "filtered water," "seltzer water," "soda water," "**SPARKLING WATER**," and "tonic water."

H. **BOTTLING** - filling, capping, packaging, or enclosing in **CONTAINERS**.

I. **BOTTLING PLANT** - any establishment involved in the manufacturing or packaging of **SOFT DRINKS** and/or **BOTTLED WATERS**.

J. **BUSINESS DAY** - every official work day of the week excluding weekends and state holidays.

K. **BULK WATER** - source water collected at an **APPROVED** site remote from the **BOTTLING PLANT** and transported to the **BOTTLING PLANT** for further processing and **BOTTLING**.

L. **CODE OF FEDERAL REGULATION (CFR)** - a codification of the general and permanent rules and regulations (administrative **LAW**) published in the Federal Register by the executive departments and agencies of the federal government of the United States. Citations to the CFR in this regulation refer sequentially to the Title, Part, and Section numbers. For example, the citation 21 CFR 117.10 refers to Title 21, Part 117, Section 117.10.

M. **CONTAINER** - any material used for the packaging of **SOFT DRINKS**, **BOTTLED WATERS**, and **ICE**, whether of glass, plastic, metal, paper, or any combination thereof.

N. **DEMINERALIZED WATER - BOTTLED WATER** that is produced by distillation, deionization, reverse osmosis, or other suitable process, that meets the definition of **PURIFIED WATER** in the United States Pharmacopoeia, and is specified by the U. S. Food and Drug Administration (FDA) in 21 CFR 165.110.

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O. DEIONIZED WATER - BOTTLED WATER that has been produced by a process of deionization, that meets the definition of PURIFIED WATER in the United States Pharmacopoeia, and is specified by the FDA in 21 CFR 165.110.

P. DEPARTMENT - the South Carolina Department of Health and Environmental Control and its authorized representatives.

Q. DISTILLED WATER - BOTTLED WATER that has been produced by a process of distillation, meets the definition of PURIFIED WATER in the United States Pharmacopoeia, and is specified by FDA in 21 CFR Section 165.110.

R. DRINKING WATER - water that is intended for human consumption and that is sealed in bottles or other CONTAINERS with no added ingredients, except that it may optionally contain safe and suitable antimicrobial agents.

S. EMPLOYEE - a permit holder, PERSON in charge, PERSON having supervisory or managerial duties, PERSON on the payroll, family member, volunteer, PERSON performing work under a contractual agreement, or any other PERSON working in a BOTTLED WATER, SOFT DRINK, or ICE plant or distribution station.

T. EQUIPMENT - all machinery, utensils, conveyors, CONTAINERS, cases, and other articles used in the manufacturing of BOTTLED WATER, SOFT DRINKS, or ICE.

U. EXCLUSION - prevention of a PERSON from working as an EMPLOYEE in a BOTTLED WATER, SOFT DRINKS, or ICE plant or distribution station, or entering a BOTTLED WATER, SOFT DRINKS, or ICE plant or distribution station as an EMPLOYEE.

V. FDA - United States Food and Drug Administration.

W. FOOD - means FOOD as defined in section 201(f) of the Federal Food, Drug, and Cosmetic Act ("FD&C") and includes raw materials and ingredients.

X. GROUND WATER - water from a subsurface saturated zone that is under a pressure equal to or greater than atmospheric pressure. GROUND WATER must not be under the direct influence of surface water.

Y. ICE - the product, in any form, obtained as a result of freezing water by mechanical or artificial means.

Z. ICE VENDING MACHINES - any self-service machines that act as stand-alone units and may operate without full-time service personnel. These units are activated by the insertion of money; the ICE is bagged automatically or dispensed in bulk to the customer.

AA. IMMINENT HEALTH HAZARD - a significant threat or danger to health that is considered to exist when there is sufficient evidence to show that a product, practice, circumstance, or event creates a situation requiring immediate correction or cessation of operation to prevent illness or injury based on the number of potential illnesses or injuries, and the nature, severity, and duration of the anticipated illness or injury.

BB. LAW - applicable local, state, and federal statutes, regulations, and ordinances.

CC. MANUFACTURED BOTTLED WATER, SOFT DRINKS, AND/OR ICE PRODUCTS DISTRIBUTION STATION - any place or PREMISES, except RETAILERS, where manufactured BOTTLED WATER, SOFT DRINKS, and ICE products are received, stored, and dispensed to RETAILERS (may also be referred to as "Distribution Station").

DD. MANUFACTURED BOTTLED WATER, SOFT DRINKS, AND/OR ICE PRODUCTS DISTRIBUTOR - any PERSON, except a RETAILER, who receives, stores, and dispenses manufactured BOTTLED WATER, SOFT DRINKS, and ICE products to RETAILERS (may also be referred to as “Distributor”).

EE. MANUFACTURED BOTTLED WATER, SOFT DRINKS, AND/OR ICE PRODUCTS MANUFACTURER - any PERSON, except a RETAILER, who manufactures, processes, or freezes manufactured BOTTLED WATER, SOFT DRINKS, and ICE products for distribution or sale.

FF. MANUFACTURED BOTTLED WATER, SOFT DRINKS, AND/OR ICE PRODUCTS PLANT - any place or PREMISES, except RETAILERS, where manufactured BOTTLED WATER, SOFT DRINKS, and ICE products are manufactured, processed, or frozen for distribution or sale.

GG. MICROORGANISMS - means yeasts, molds, bacteria, viruses, protozoa, and microscopic parasites and includes species that are PATHOGENS. The term "undesirable MICROORGANISMS" includes those MICROORGANISMS that are PATHOGENS, that subject FOOD to decomposition, that indicate that FOOD is contaminated with filth, or that otherwise may cause FOOD to be ADULTERATED.

HH. MINERAL WATER - BOTTLED WATER containing not less than 250 parts per million (ppm) total dissolved solids (TDS), coming from a source tapped at one or more boreholes or springs, originating from a geologically and physically protected underground water source. MINERAL WATER is distinguished from other types of water by its constant level and relative proportions of minerals and trace elements at the point of emergence from the source, with consideration given to the cycles of natural fluctuations. No minerals may be added to this water.

II. NATURAL WATER - bottled spring, mineral, artesian, or WELL WATER that is derived from an underground formation or water from surface water that only requires minimal processing, is not derived from a municipal system or public water supply, and is unmodified except for limited treatment (e.g., filtration, ozonation, or equivalent disinfection process).

JJ. PACKAGED ICE - ICE products packaged by APPROVED manufacturers and sold through retail outlets.

KK. PATHOGEN - a microorganism of public health significance.

LL. PERMIT - the document issued by the DEPARTMENT that authorizes a PERSON or entity to operate a BOTTLED WATER, SOFT DRINKS, or ICE plant or distribution station.

MM. PERMIT HOLDER - the entity, such as the owner, the owner’s agent, or other PERSON, that possesses a valid PERMIT to operate a BOTTLED WATER, SOFT DRINKS, or ICE plant or distribution station and is legally responsible for its operation.

NN. PERSON - an association, a corporation, individual, partnership, other legal entity, government, or governmental subdivision or agency.

OO. PEST - any objectionable animals or insects including, but not limited to, birds, rodents, flies and larvae.

PP. PURIFIED WATER - BOTTLED WATER produced by distillation, deionization, reverse osmosis, or other suitable process, that meets the definition of PURIFIED WATER in the United States Pharmacopoeia, and is specified by the FDA in 21 CFR 165.110.

QQ. PREMISES -

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1. The physical facility, its contents, its land, and any adjacent or bordering contiguous land or property under the control of the PERMIT HOLDER; or

2. The physical facility, its contents, and land or property not described in (a) of this definition if the facilities and contents are under the control of the PERMIT HOLDER and may impact the BOTTLED WATER, SOFT DRINKS, or ICE plant or distribution station personnel, facilities, or operations, and the BOTTLED WATER, SOFT DRINKS, or ICE plant or distribution station is only one component of a larger operation, such as a healthcare facility, hotel, motel, school, recreational camp, or prison.

RR. RESTRICTION - limitation of the activities of an EMPLOYEE so that there is no risk of transmitting a disease that is transmissible through BOTTLED WATER, SOFT DRINKS, or ICE or their ingredients and the EMPLOYEE does not work with exposed BOTTLED WATER, SOFT DRINKS, or ICE or their ingredients, clean EQUIPMENT, utensils, linens, or unwrapped single-service or single-use articles.

SS. RETAIL FOOD ESTABLISHMENT - an establishment that sells FOOD products directly to consumers as its primary function. RETAIL FOOD ESTABLISHMENTS include, but are not limited to, grocery stores, convenience stores, roadside stands, farmers markets, and community supported agriculture (CSA) operations. Any business making FOOD (including a farm business) with at least 50.1 percent in direct to individual consumer FOOD sales satisfies the definition of a RETAIL FOOD ESTABLISHMENT and is exempt from the Bioterrorism Act registration regulations under the 2002 Bioterrorism Act (21 CFR 1.225) as a RETAIL FOOD ESTABLISHMENT. The term "consumers" does not include businesses. A RETAIL FOOD ESTABLISHMENT also includes certain farm-operated businesses selling FOOD directly to consumers as their primary function.

TT. RETAILER - any PERSON who sells, serves, or dispenses at retail manufactured BOTTLED WATER, SOFT DRINKS, or ICE products that have been processed in an APPROVED manufactured BOTTLED WATER, SOFT DRINKS, or ICE products plant.

UU. REMODELED - any enlarging, replacing of floors, walls, or ceilings, or changing in any respect the structure at which a SOFT DRINK, BOTTLED WATER, or ICE plant is housed. This does not apply to repainting or refinishing of floors or walls.

VV. REVERSE OSMOSIS WATER - BOTTLED WATER that is produced by a process of reverse osmosis, that meets the definition of "PURIFIED WATER" in the United States Pharmacopoeia, and is specified by the FDA in 21 CFR 165.110.

WW. RISK - the likelihood that an adverse health effect will occur within a population as a result of a hazard in a FOOD.

XX. SANITIZE - to ADEQUATELY treat cleaned surfaces by a DEPARTMENT -accepted process that is effective in destroying vegetative cells of PATHOGENS, and in substantially reducing numbers of other undesirable MICROORGANISMS, but without adversely affecting the product or its safety for the consumer.

YY. SOFT DRINK - any nonalcoholic, flavored carbonated beverage, including but not limited to soda or soda water, fruit flavored drink, nonalcoholic still beverage, and seltzer or club soda.

ZZ. SPARKLING BOTTLED WATER - BOTTLED WATER that, after treatment and possible replacement of carbon dioxide, contains the same amount of carbon dioxide that it had at the emergence from the source. Manufacturers may add carbonation to previously noncarbonated BOTTLED WATER products and label such water appropriately (e.g. sparkling SPRING WATER).

AAA. SPRING WATER - BOTTLED WATER derived from an underground formation from which water flows naturally to the surface of the earth. SPRING WATER must comply with the FDA standard of identity in 21 CFR 165.110.

BBB. STERILE WATER - BOTTLED WATER that meets the requirements under “Sterility Tests” <71> in the current United States Pharmacopoeia and specified by the FDA in 21 CFR 165.110.

CCC. UNEXPOSED PACKAGED FOOD - packaged FOOD that is not exposed to the environment.

DDD. WELL WATER - BOTTLED WATER from a hole bored, drilled, or otherwise constructed in the ground that taps the water of an aquifer.

Additional definitions related to this regulation are found in 21 CFR 117.3, as amended.

SECTION IV. ADULTERATED OR MISBRANDED BOTTLED WATER, SOFT DRINKS, OR ICE

A. No PERSON within South Carolina, or its jurisdiction, shall produce, provide, sell, offer, or expose for sale or have in possession with intent to sell, any BOTTLED WATER, SOFT DRINKS, or ICE that is ADULTERATED or misbranded. Any BOTTLED WATER, SOFT DRINK, or ICE that may contain any unwholesome substance, or that does not conform to an applicable standard of identity or other requirement specified under Section III for that particular BOTTLED WATER, SOFT DRINK, or ICE product, shall be deemed ADULTERATED and/or misbranded.

B. The DEPARTMENT may place a hold order on any BOTTLED WATER, SOFT DRINKS, or ICE it determines or has reason to believe:

1. originated from an unAPPROVED SOURCE;
2. may be unsafe, unwholesome, ADULTERATED, misbranded, or not honestly presented;
3. is not labeled according to LAW; or
4. is otherwise not in compliance with this regulation.

C. The DEPARTMENT may suspend a PERSON’s PERMIT for violating a hold order.

D. The DEPARTMENT may impound, condemn, forbid the sale of, or cause to be removed or destroyed, any FOOD that is determined to be in violation of this regulation, unwholesome, contaminated, ADULTERATED, misbranded, or from an unAPPROVED source.

E. The DEPARTMENT may issue a hold order to a PERMIT HOLDER or to a PERSON who owns or controls the FOOD, as specified above, without prior warning, notice of a hearing, or a hearing on the hold order.

F. The DEPARTMENT may examine BOTTLED WATER, SOFT DRINKS, and ICE as often as necessary to determine freedom from ADULTERATION or misbranding. Under a hold order, BOTTLED WATER, SOFT DRINKS, or ICE shall be suitably stored. No PERSON shall remove or alter a hold order, notice, or tag placed on BOTTLED WATER, SOFT DRINKS, or ICE by the DEPARTMENT. No PERSON shall relabel, repack, reprocess, alter, dispose of, or destroy such BOTTLED WATER, SOFT DRINKS, or ICE, or the CONTAINERS thereof, without permission of the DEPARTMENT, except on order by a court of competent jurisdiction.

G. When BOTTLED WATER, SOFT DRINKS or ICE are found to be ADULTERATED by pesticides, herbicides, or other poisonous substances, the PERSON or entity in possession of the product shall remove the

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product from the market, disposed of, and sale stopped until analysis provides the product to be free from ADULTERATION.

SECTION V. COMPLIANCE PROCEDURES

A. PERMIT.

1. It shall be unlawful for any PERSON to manufacture or distribute BOTTLED WATER, SOFT DRINKS, and/or ICE products in South Carolina without a valid PERMIT issued by the DEPARTMENT for the specific BOTTLED WATER, SOFT DRINK, or ICE products plant or distribution station. Grocery stores, restaurants, soda fountains, and similar establishments where BOTTLED WATER, SOFT DRINKS, or ICE are served or sold at retail, but not processed, may be exempt from the requirements of this section.

2. Every BOTTLED WATER, SOFT DRINKS, or ICE manufacturer and distributor must obtain and maintain a PERMIT. PERMITs are nontransferable with respect to PERSONs and/or locations.

B. Suspension of PERMIT.

1. The DEPARTMENT may suspend a PERMIT whenever:

- a. it has reason to believe a public health hazard exists;
- b. the PERMIT HOLDER has violated any of the requirements of this regulation;
- c. the PERMIT HOLDER has violated its PERMIT or an order of the DEPARTMENT, including but not limited to a hold order; or
- d. the PERMIT HOLDER has interfered with the DEPARTMENT in the performance of its duties.

A suspension shall remain in effect until the violation has been corrected to the satisfaction of the DEPARTMENT.

2. The DEPARTMENT may without prior warning, notice of a hearing, or hearing suspend a PERMIT to operate a BOTTLED WATER, SOFT DRINK, or ICE plant or distribution station when the DEPARTMENT determines that the operation of the BOTTLED WATER, SOFT DRINK, or ICE plant or distribution station, including but not limited to a willful refusal to permit authorized inspection, constitutes an IMMINENT HEALTH HAZARD. Upon summary PERMIT suspension, all manufacturing and distribution operations shall immediately cease. During the process, the PERMIT shall remain suspended unless the IMMINENT HEALTH HAZARD has been corrected.

3. Any BOTTLED WATER, SOFT DRINK, or ICE manufacturer or distributor whose PERMIT has been suspended may make written application for the reinstatement of the PERMIT.

4. Within seven (7) business days of receiving the written application, the DEPARTMENT shall make inspections and/or collect samples for analysis to determine whether the conditions cited in the notice of suspension no longer exist. If conditions warrant, the DEPARTMENT may reinstate the PERMIT.

C. Revocation of PERMIT.

1. The DEPARTMENT may revoke a PERMIT for repeated violations of any of the requirements of this regulation, the PERMIT, or an order of the DEPARTMENT, or for interference with the DEPARTMENT or its staff in the performance of duties. Notwithstanding any other provisions of this regulation, the PERMIT may be

revoked if the DEPARTMENT is threatened with bodily harm or physical interference in the performance of inspectional duties.

2. The DEPARTMENT may deny a new PERMIT based upon past noncompliance, including previous enforcement, suspension, or revocation history.

3. Any PERSON whose PERMIT is revoked shall not be eligible to apply for re-permitting within one (1) year from the date of revocation. Any PERSON whose PERMIT has previously been revoked and who obtains a subsequent PERMIT and violates the provisions of this regulation, resulting in revocation of the PERMIT for a second time, shall not be granted another PERMIT for a period of five (5) years.

SECTION VI. LABELING

All BOTTLED WATER, SOFT DRINK, and ICE products shall be labeled according to the requirements in 21 CFR Part 101, as amended.

SECTION VII. INSPECTION OF BOTTLED WATER, SOFT DRINK, AND ICE PLANTS AND DISTRIBUTION STATIONS

A. Each BOTTLED WATER, SOFT DRINK, or ICE manufacturer and distributor whose products are intended for consumption within South Carolina shall be inspected by the DEPARTMENT prior to the issuance of a PERMIT.

B. Following the issuance of a PERMIT, the DEPARTMENT shall inspect each BOTTLED WATER, SOFT DRINK, or ICE manufacturer and distributor at a frequency determined by the RISK level assigned to the product(s) being manufactured or distributed or as otherwise deemed necessary by the DEPARTMENT to determine compliance with this regulation.

C. A copy of the inspection report will be provided, either electronically or in paper form, to the PERMIT HOLDER, manager, or other duly authorized representative.

D. Every BOTTLED WATER, SOFT DRINK, or ICE manufacturer and distributor shall, upon request of a DEPARTMENT representative, permit DEPARTMENT access to all parts of the establishment or facilities to determine compliance with the provisions of this regulation. A PERMIT HOLDER, manager, or other duly authorized representative shall furnish the DEPARTMENT, upon request and for official use only, a true statement of the actual quantities of BOTTLED WATER, SOFT DRINK, or ICE product purchased and sold, a list of all sources of such BOTTLED WATER, SOFT DRINK, or ICE products, records of inspections, and records of tests.

E. It is unlawful for any PERSON who, in an official capacity, obtains any information under the provisions of this regulation which is entitled to protection as a trade secret to use such information to his own advantage or to reveal it to any unauthorized PERSON.

SECTION VIII. EXAMINATION OF BOTTLED WATER, SOFT DRINKS, AND ICE

A. Chemical, microbiological, or extraneous material testing procedures shall be used, where necessary, to identify sanitation failures or possible contamination. All FOOD that has become ADULTERATED shall be rejected, or if permissible, treated or processed to eliminate the contamination.

B. BOTTLED WATER manufacturers must perform weekly total coliform monitoring on the finished product of each BOTTLED WATER product type and conduct quarterly rinse/swab tests on BOTTLED WATER CONTAINERS (incoming, as well as those immediately from the washer) and closures. This monitoring and testing must be performed in-house or by an APPROVED LABORATORY as stipulated in 21 CFR Section

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129.80. For microbiological contaminants (total coliform), each BOTTLED WATER manufacturer must analyze a representative sample from a batch or segment of a continuous production run for each BOTTLED WATER product type produced by the plant.

C. Samples of source water shall be taken and analyzed by the BOTTLED WATER plant as often as necessary, but at a minimum frequency of once each year for chemical contaminants and once every four (4) years for radiological contaminants. Facilities that use a public water system for source water may substitute public water system testing results, or certificates showing full compliance with all provisions of the Environmental Protection Agency's National Primary and Secondary Drinking Water Regulations pertaining to chemical contaminants.

D. For chemical, physical, and radiological contaminants, a representative sample from a batch or segment of continuous production run for each type of finished BOTTLED WATER product produced by a water BOTTLING PLANT shall be analyzed annually to ensure that the product(s) complies with current FDA standards.

SECTION IX. BOTTLED WATER, SOFT DRINK, AND ICE PLANTS AND DISTRIBUTION STATIONS

A. Water supply for BOTTLED WATER, SOFT DRINK, and ICE plants and ICE and water vending.

1. The water supply shall be from an APPROVED public water system as defined in R.61-58, State Primary Drinking Water Regulations.

2. The design, operation, and maintenance of water purification systems used to further treat potable water shall be certified as meeting the specifications of the American National Standard Institute/National Sanitation Foundation (ANSI/NSF). All chemicals and products added to the potable water shall meet ANSI/NSF Standard 60. All materials and products installed that come into contact with the potable water shall meet ANSI/NSF Standard 61. The certifying party shall be accredited by the American National Standards Institute. They shall not be operated beyond their rated capacity and shall be maintained in a clean, sanitary condition at all times. This shall include dispensed water and ICE VENDING MACHINES.

3. Potable running water at a suitable temperature, and under pressure as needed, shall be provided in all areas where required for the processing of SOFT DRINKS, BOTTLED WATER, and ICE; for the cleaning of EQUIPMENT, utensils, and CONTAINERS; and for EMPLOYEE sanitary facilities.

4. Carbonated water shall be conveyed in APPROVED stainless steel or equal FOOD-grade piping and not in piping of galvanized iron, lead, zinc, or other deleterious materials.

5. All water storage and cooling tanks shall be of noncorrosive material, properly covered; air vents properly filtered, clean, and free from dust both inside and outside; and the inlet and outlet so arranged as to prevent contamination during filling and emptying.

B. Required rooms.

1. Except as APPROVED by the DEPARTMENT under paragraph B.2 below, each BOTTLED WATER and SOFT DRINK plant shall have a separate room (commonly called a syrup or blend room) or separate area of the filling room for mixing ingredients for BOTTLED WATER or SOFT DRINKS. This room or separate area of the filling room shall be used only for mixing ingredients and storage of mixed batches.

2. Each BOTTLED WATER and SOFT DRINK plant shall have a separate room for filling and sealing CONTAINERS (commonly called a filling or BOTTLING room). This room shall contain only necessary filling, sealing, electronic inspection, coding, and labeling EQUIPMENT. Only the exit end of the bottle washing

machine shall open into this room through a tight-fitting wall. If APPROVED by the DEPARTMENT, the mixing of ingredients and storage of mixed batches may be conducted in this room.

3. ICE for human consumption shall be processed and packaged only in rooms used exclusively for processing and packaging ICE for human consumption. ICE for human consumption shall not be processed or packaged on open platforms or on trucks or delivery vehicles, or in any manner which would allow contamination from overhead drip, condensation, dirt, or other contaminants.

C. Transportation of BULK WATER for BOTTLED WATER plants.

1. BULK WATER shall be from a public water system as APPROVED and defined in R.61-58 by the DEPARTMENT.

2. The means and methods of transporting BULK WATER shall be APPROVED by the DEPARTMENT. Bulk tanks, hoses, pumps, and connections used for loading, transporting, and unloading water shall be SANITIZED. Source water for transport shall be treated with an effective disinfectant APPROVED by the DEPARTMENT at an APPROVED concentration prior to being transported.

3. Tank filling and delivery hose connections shall be cleaned and SANITIZED on a regular basis. The tank shall be sealed at all times except when being filled, being cleaned and SANITIZED, and when the water is being unloaded. A record of such cleaning and SANITIZING shall be maintained with the vehicle and shall be available upon request by the DEPARTMENT. Pumps, hoses, connections, and fittings shall be capped and protected from contamination when not in use. The tank manhole shall not be used as a means of filling the tank. To prevent collapse of the tank during delivery of BULK WATER, the manhole may be opened but shall be provided with an air filter to prevent contamination.

4. All surfaces which come into contact with water during storage prior to transport shall be of smooth, impervious, nonabsorbent, corrosion resistant, and nontoxic material such as stainless steel of the American Iron and Steel Institute 300 Series, or equally corrosion resistant, nontoxic material. All water contact surfaces shall be free of substances that may render the water hazardous to health or may adversely affect the flavor, color, turbidity, odor, radiological, microbiological, or chemical quality of the water.

5. BULK WATER transport is intended to move source water from one area to another for the purpose of treatment, packaging, and human consumption. Such water shall not be dispensed directly to consumers from a BULK WATER transport tank or indirectly through some other vending device, unless otherwise APPROVED by the DEPARTMENT. In case of an emergency, such as a DRINKING WATER shortage or outage, or a contaminated water supply, treated water may be dispensed directly from a properly SANITIZED water transport tank.

D. Returnable CONTAINER cleaning.

1. All returnable CONTAINERS shall be ADEQUATELY, mechanically washed and SANITIZED prior to filling. Unless the CONTAINERS are sealed after washing, they shall be washed immediately prior to filling. Hand cleaning of CONTAINERS is prohibited except as a preliminary to subsequent mechanical washing.

2. Metal and glass CONTAINERS.

(a) All metal and glass CONTAINERS shall be exposed to a minimum three percent (3%) alkali solution of which not less than sixty percent (60%) is caustic soda (sodium hydroxide) by an APPROVED automatic mechanical method for a period of not less than five (5) minutes at a temperature of not less than 130°F, or to an equivalent cleaning and sanitizing process APPROVED by the DEPARTMENT.

(b) CONTAINERS shall be rinsed of all caustic soda with potable water.

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3. Polycarbonate CONTAINERS.

(a) Polycarbonate CONTAINERS shall be cleaned with APPROVED non-caustic detergents at their required concentrations by an APPROVED mechanical method.

(b) An APPROVED sanitizing rinse consisting of chlorine, bromine, iodine, quaternary ammonia, or ozonated water at the proper APPROVED temperature/time/concentration must follow the cleaning cycle.

4. A permanent record of key operating parameters of the CONTAINER washer should be maintained. These records or logs should include, but are not limited to, wash temperatures, concentrations of cleaners, concentrations of SANITIZERS, lack of carryover of cleaners or caustic in bottles, and maintenance on the washer. Tests on cleaner/SANITIZER concentrations and carryover should be carried out at start-up and regularly thereafter throughout the shift. All maintenance on the washer should be recorded, such as cleaning or aligning spray jets. All records shall be kept on file at least two (2) years for regulatory inspection. Each washer shall be equipped with an indicating thermometer.

E. Single-service CONTAINERS.

1. Single-service CONTAINERS shall be manufactured from FOOD-grade materials that do not impart odors or tastes to the product, nor contaminate the product with MICROORGANISMS, or toxic or injurious substances.

2. Single-service CONTAINERS shall be packaged and stored in a manner APPROVED by the DEPARTMENT prior to filling.

3. Unless otherwise APPROVED by the DEPARTMENT, all single-service CONTAINERS shall be inverted and rinsed with potable water, then treated by filtered compressed air or vacuumed to remove dust prior to filling.

F. Inspection of returnable CONTAINERS.

1. Bottles.

(a) All empty bottles shall be visually inspected immediately after the final rinse of the washing operation for defects, chips, foreign objects, and unclean product contact surfaces as the bottles pass on a conveyor before a well-illuminated background at a speed slow enough for the inspector to achieve high efficiency.

(b) Dirty bottles shall be removed from the production line and either destroyed or rewashed. Defective bottles shall be removed from the production line and destroyed. When inspectors break bottles for cullet, ADEQUATE protection shall be provided for exposed bottles in the immediate area to prevent glass fragments from entering them.

(c) Electronic inspection devices can be used in addition to visual inspection; however, electronic inspection devices shall not be substituted for visual inspection of returnable bottles without the approval of the DEPARTMENT. Inspectors shall have good eyesight, with or without corrective lenses, and shall be rotated to non-inspection work as often as is necessary to maintain high efficiency.

(d) Returnable bottles shall not be used where their condition or design may prevent proper inspection of the contents thereof.

2. Metal canisters.

(a) All metal canisters shall be visually inspected immediately after the final rinse of the washing operation for the presence of foreign objects or unclean product contact surfaces.

(b) Unclean canisters shall be either immediately returned to the washer or removed to the storage area for unclean canisters.

G. CONTAINER closures.

1. CONTAINER closures shall be manufactured from FOOD-grade materials which do not impart odors or tastes to the product, nor contaminate the product with MICROORGANISMS, or toxic or injurious substances.

2. CONTAINER closures shall be received by the BOTTLING PLANT in an undamaged package sealed by the manufacturer.

3. All CONTAINER closures shall be stored in a clean, dry place protected from insects, rodents, dust, splash, or other contamination. Closures which have been touched on the inner side by the operator, as may occur while adjusting EQUIPMENT, shall be discarded.

4. CONTAINER closures not used during the period of processing operations shall be resealed in their original CONTAINER or stored in an APPROVED tightly covered CONTAINER.

5. Only new CONTAINER closures shall be used.

H. Filling and sealing.

1. CONTAINERS shall be filled and sealed with APPROVED mechanical EQUIPMENT. Manual filling and sealing shall be prohibited, except when otherwise APPROVED by the DEPARTMENT for package sizes in which mechanical sealing EQUIPMENT is not yet readily available.

2. Filling EQUIPMENT which fills glass CONTAINERS under pressure should be provided with an ADEQUATE shield to protect against broken glass entering unsealed CONTAINERS. Whenever a glass bottle breaks while being filled or sealed, the machinery involved shall be stopped and all broken glass shall be removed from parts that touch the opening of bottles or contact the product. This shall be performed in such a manner to protect against transferring broken glass into nearby bottles that have exposed openings.

3. No PERSON or his clothing shall come in contact with any portion of the CONTAINER or EQUIPMENT that might result in contamination of the product.

4. The contents of all imperfectly sealed CONTAINERS shall be discarded.

I. SANITATION OF BOTTLED WATER, SOFT DRINK, AND ICE PLANTS AND DISTRIBUTION STATIONS

1. All BOTTLED WATER, SOFT DRINK, and ICE manufacturers and distributors, regardless of exemption status, shall comply with the requirements of 21 CFR Part 117, Subpart A - General Provisions, Subpart B - Current Good Manufacturing Practice, and Subpart F - Requirements Applying to Records That Must Be Established and Maintained, as amended.

2. All BOTTLED WATER, SOFT DRINK, and ICE plants and distribution stations that have been granted a Qualified Facility Exemption by the FDA or that are solely engaged in the storage of refrigerated UNEXPOSED PACKAGED FOODS when temperature controls are necessary to prevent PATHOGEN growth shall comply with the requirements of 21 CFR Part 117, Subpart A - General Provisions, Subpart B - Current Good Manufacturing Practice, Subpart D - Modified Requirements, and Subpart F - Requirements Applying to

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Records That Must Be Established and Maintained, and be familiar with Subpart E - Withdrawal of a Qualified Facility Exemption, as amended.

3. All BOTTLED WATER, SOFT DRINK, and ICE plants and distribution stations that have not been granted a Qualified Facility Exemption by the FDA shall comply with the requirements of 21 CFR Part 117, Subpart A - General Provisions, Subpart B - Current Good Manufacturing Practice, Subpart C - Hazard Analysis and Risk -Based Preventive Controls, and Subpart F- Requirements Applying to Records That Must Be Established and Maintained, as amended.

4. All BOTTLED WATER, SOFT DRINK, and ICE plants and distribution stations under an FDA order to withdraw their Qualified Facility Exemption are subject to the requirements of 21 CFR Part 117, Subpart E - Withdrawal of a Qualified Facility Exemption, as amended.

5. BOTTLED WATER, SOFT DRINK, and ICE plants and distribution stations that have not been granted a Qualified Facility Exemption by the FDA and have identified a hazard requiring a supply-chain applied control shall comply with the requirements of 21 CFR Part 117, Subpart G - Supply-Chain Program, as amended.

SECTION X. SUBMISSION OF PLANS

Before a SOFT DRINK, BOTTLED WATER, or ICE plant is constructed or extensively REMODELED, or when an existing structure is converted for use as a SOFT DRINK, BOTTLED WATER, or ICE plant, the BOTTLED WATER, SOFT DRINK, or ICE manufacturer must submit properly prepared plans and specifications for such construction, remodeling, or conversion to the DEPARTMENT for review and approval before construction, remodeling, or conversion. The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans, and construction materials of work areas, and the make and model number of proposed fixed EQUIPMENT and facilities.

SECTION XI. RECIPROCITY

A. BOTTLED WATER, SOFT DRINKS, and ICE from out of state or outside the United States may be sold in South Carolina only if the DEPARTMENT determines they are manufactured and distributed under provisions substantially equivalent to the requirements of this regulation and ADEQUATELY enforced.

B. Upon receiving from any PERSON, entity, or any regulatory agency outside this state a report of a possible violation of this regulation by a PERMIT HOLDER, the DEPARTMENT may conduct such inspection or investigation as it deems appropriate. Upon receiving information that SOFT DRINKS, BOTTLED WATER, or ICE manufactured outside this state and introduced into this state may have been manufactured in violation of applicable state or federal LAW, or not in conformance with prevailing and applicable standards and good public health practices, the DEPARTMENT may notify appropriate regulatory authorities located outside this state and request that such authorities take appropriate action.

SECTION XII. OUT-OF-STATE BOTTLED WATER IMPORTS

Due to additional FDA laboratory testing requirements for BOTTLED WATER products, out-of-state water bottlers shall submit the following to the DEPARTMENT: (a) a certification signed by the applicable regulatory agency with jurisdiction over the BOTTLING in the state of origin stating that the plant(s) is permitted or licensed as required, the source water supply meets all EPA public DRINKING WATER requirements, and is operated and maintained in a sanitary manner based on previous plant inspection(s); (b) the name, address, and phone number(s) of all plant(s) manufacturing bottled products for sale in South Carolina; (c) a copy of the latest finished BOTTLED WATER product water analyses (total coliform, inorganic, organic, radiological); and (d) the location(s) where the product(s) may be sampled in South Carolina.

SECTION XIII. RECALL

A. For BOTTLED WATER, SOFT DRINK, and ICE manufacturers and distributors that have not been granted a Qualified Facility Exemption by the FDA, the Recall Plan requirements of 21 CFR 117.139 supersede the requirements of this section.

B. Each SOFT DRINK, BOTTLED WATER, and ICE manufacturer and distributor shall develop and maintain procedures for the notification of regulatory officials, consumer notification, and product recall, and shall implement any said procedure as necessary with respect to any product for which the PERMIT HOLDER or the DEPARTMENT has reason to believe circumstances exist that may adversely affect its safety for the consumer. If the DEPARTMENT determines, based upon representative samples, RISK analysis, information provided by the SOFT DRINK, BOTTLED WATER, or ICE manufacturer or distributor, and/or other information available to the DEPARTMENT, that the circumstances present an IMMINENT HEALTH HAZARD and that a form of consumer notice or product recall can effectively avoid or significantly minimize the threat to public health, the DEPARTMENT may order the SOFT DRINK, BOTTLED WATER, or ICE manufacturer and/or distributor to initiate a level of product recall or, if appropriate, issue a form of notification to customers. Each SOFT DRINK, BOTTLED WATER, and ICE manufacturer and distributor shall be responsible for disseminating the notice in a manner designed to inform customers who may be affected by the problem.

SECTION XIV. EQUIPMENT AND FACILITIES IN OPERATION PRIOR TO JULY 1, 2020

A. EQUIPMENT and physical facilities of BOTTLED WATER, SOFT DRINK, and ICE plants and distribution stations in operation prior to July 1, 2020 are deemed in compliance even if they do not meet all construction, EQUIPMENT, and facilities requirements of this regulation if the facilities and EQUIPMENT:

1. are in compliance with the regulatory standards in place for such EQUIPMENT and facilities on January 1, 2020; and
2. are capable of being maintained in a sanitary condition; and
3. are not a public health hazard or nuisance; and
4. are replaced in the normal course of operation with EQUIPMENT and facilities that meet the requirements of this regulation.

B. This section shall not apply to EQUIPMENT installed or construction commenced on or after July 1, 2020.

SECTION XV. PROCEDURE WHEN INFECTION OR HIGH RISK INFECTION IS SUSPECTED

When reasonable cause exists to suspect the possibility of transmission of infection from any PERSON concerned with the handling of BOTTLED WATER, SOFT DRINKS, or ICE products, or their ingredients, the DEPARTMENT is authorized to require any or all of the following measures:

A. The immediate EXCLUSION or RESTRICTION of that PERSON from handling BOTTLED WATER, SOFT DRINKS, and ICE products, or their ingredients;

B. The immediate removal of the BOTTLED WATER, SOFT DRINKS, and ICE products concerned from distribution and use; and/or

C. ADEQUATE medical and bacteriological examination of the PERSON, of their associates, and of their bodily discharges.

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SECTION XVI. ENFORCEMENT PROVISIONS

This regulation is issued under the authority of S.C. Code Ann. Sections 44-1-140 and 44-1-150 and shall be enforced by the DEPARTMENT. Any PERSON found to be in violation of this regulation, in non-compliance with an issued PERMIT, or in violation of an order issued by the DEPARTMENT shall be subject to civil monetary penalties, PERMIT suspension, and/or PERMIT revocation. Each day of continued violation shall be a separate offense.

SECTION XVII. SEVERABILITY CLAUSE

Should any section, paragraph, sentence, clause or phrase of this regulation be declared unconstitutional or invalid for any reason, the remainder of said regulations shall not be affected thereby.

61-54. [Repealed].

Fiscal Impact Statement:

There are no anticipated new costs associated with the implementation of this regulation to the state or its political subdivisions.

Statement of Need and Reasonableness:

The following presents an analysis of the factors listed in 1976 Code Sections 1-23-115(C)(1)-(3) and (9)-(11):

DESCRIPTION OF REGULATION:

61-32, Soft Drink and Water Bottling Plants; and
61-54, Wholesale Commercial Ice Manufacturing.

Purpose: This amendment strikes the text of the existing regulations in total, repeals the text of R.61-54, and combines the revised text of both to align with current applicable federal standards. The existing regulations are based on 21 CFR Part 110, Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food, which has been replaced with 21 CFR Part 117, Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food. The new federal regulation updates good manufacturing processes to be implemented by the regulated community and incorporates new preventive controls for minimizing or preventing food safety hazards.

Legal Authority: 1976 Code Sections 44-1-140 and 44-1-150.

Plan for Implementation: The DHEC Regulation Development Update (accessible at <http://www.scdhec.gov/Agency/RegulationsAndUpdates/RegulationDevelopmentUpdate/>) provides a summary of and link to these amendments and repeals. Additionally, printed copies are available for a fee from the Department's Freedom of Information Office. Upon taking legal effect, Department personnel will take appropriate steps to inform the regulated community of the amendments and repeals and any associated information.

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

The purpose of R.61-32, Soft Drink and Water Bottling Plants, and R.61-54, Wholesale Commercial Ice Manufacturing, is to safeguard public health and provide consumers safe, unadulterated soft drinks, bottled water, and wholesale ice products manufactured in South Carolina to be sold and distributed both in state and out of state. These regulations govern the production, processing, storing, labeling, transportation, and distribution of soft drinks, bottled water, and wholesale ice products. The regulations are based on Title 21, Part

110, Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food, (21 CFR Part 110).

The Department of Health and Environmental Control (Department) last amended R.61-32 in 2004 and R.61-54 in 2008. Earlier this year, 21 CFR Part 110, Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food, was replaced with 21 CFR Part 117, Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food. There have been numerous changes in the manufactured food and beverage industry, including changes to food and beverage handling practices, food and beverage equipment technology, and food and beverage preparation processes, making R.61-32 and R.61-54 outdated. The new federal regulation updates good manufacturing processes to be implemented by the regulated community and incorporates new preventive controls for minimizing or preventing food safety hazards.

The Department is amending the provisions of R.61-32 and R.61-54 to incorporate the standards of the new federal regulation. The structure of the federal regulation also facilitates combining provisions governing manufactured water-based products into one streamlined regulation, instead of two separate regulations with repetitive content.

The amendments to these regulations serve to improve the overall clarity and effectiveness of applicable administrative, enforcement, and other requirements. In addition to clarification and updating of state-specific regulatory provisions, these amendments incorporate current federal standards which have replaced preexisting federal standards upon which the Department's existing, unrevised regulations are based. This serves to reduce administrative burdens on the regulated community by facilitating streamlined inspections and compliance under both state and federal requirements.

DETERMINATION OF COSTS AND BENEFITS:

There are no anticipated new costs associated with the implementation of this regulation. The amendments will benefit public health by ensuring safe, unadulterated bottled water, soft drinks, and wholesale ice products from manufacturing plants and throughout the distribution chain. The amendments to these regulations serve to improve the overall clarity and effectiveness of applicable administrative, enforcement, and other requirements. Furthermore, industry will benefit by only having an aligned set of rules to comply with for federal inspections that may be conducted by the FDA, those conducted by the Department for the FDA, and those conducted for the state under this regulation. Such alignment also allows for facilities to undergo one inspection, conducted by the Department under this regulation, to satisfy both federal and state oversight. The amendments also combine provisions governing manufactured water-based products into one streamlined regulation, instead of two separate regulations with repetitive content.

UNCERTAINTIES OF ESTIMATES:

None.

EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH:

Implementation of this regulation will not compromise the protection of the environment or the public health. The regulation will help to ensure that consumers are receiving safe, unadulterated bottled water, soft drinks, and wholesale ice products. The amendment of R.61-32 to conform to the most recent federal regulation provides effective means of reducing the risks of foodborne illnesses within food manufacturing plants, thus protecting consumers and industry from potentially devastating public health consequences and financial loss. Incorporation of the Food Safety Modernization Act compliant 21 CFR Part 117, Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food, and the new preventive controls provision for minimizing or preventing food safety hazards allows for better training and understanding of risk by those in charge of food safety in processing plants.

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

There will be no adverse effect on the environment if the regulations are not implemented.

Failure to adopt these amendments would prevent implementation of the latest sanitary standards and a comprehensive approach to food safety management needed in addressing food and beverage protection in the manufactured water-based products industry. This could have a detrimental effect on the health of South Carolina's citizens and visitors.

Statement of Rationale:

The Department is promulgating these amendments to ensure safe, unadulterated bottled water, soft drinks, and wholesale ice products from manufacturing plants and throughout the distribution chain. Furthermore, the amendments allow for one inspection, conducted by the Department under this regulation, to satisfy both federal and state oversight. The amendments also combine provisions governing manufactured water-based products into one streamlined regulation, instead of two separate regulations with repetitive content.

Document No. 4954

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL CHAPTER 61

Statutory Authority: 1976 Code Sections 44-7-260 et seq.

61-93. Standards for Licensing Facilities that Treat Individuals for Psychoactive Substance Abuse or Dependence.

Synopsis:

The Department of Health and Environmental Control ("Department") amends R.61-93 to update provisions in accordance with current practices and standards. The amendments incorporate and revise provisions relating to statutory mandates, update terminology to conform to the terminology widely used and understood within the provider community, and revise requirements for incident reporting, staffing and training requirements, medication management, patient care and services, infection control, meal service, emergency procedures, design and construction, fire and life safety, and other miscellaneous requirements for licensure. Revisions also include changing the name of the regulation and facility type to "Facility for Chemically Dependent or Addicted Persons." The Department makes this change to parallel the statutory term for this facility type. The facility type may also be referred to as "Substance Use Disorder Facilities" based on current terminology within the provider community. Additional revisions include those for clarity and readability, grammar, references, codification, and overall improvement to the text of the regulation.

A Notice of Drafting was published in the March 22, 2019, *South Carolina State Register*.

Instructions:

Replace R.61-93, Standards for Licensing Facilities That Treat Individuals for Psychoactive Substance Abuse or Dependence, in its entirety with this amendment.

Text:

61-93. Standards for Licensing Facilities for Chemically Dependent or Addicted Persons.

Statutory Authority: (S.C. Code Sections 44-7-260 et seq.)

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SECTION 100 – DEFINITIONS AND LICENSURE.

101. Definitions.

For the purpose of this regulation, the following definitions shall apply:

A. Abuse. Physical abuse or psychological abuse.

1. **Physical Abuse.** The act of intentionally inflicting or allowing infliction of physical injury on a Patient by an act or failure to act. Physical abuse includes, but is not limited to, slapping, hitting, kicking, biting, choking, pinching, burning, actual or attempted sexual battery, use of medication outside the standards of reasonable medical practice for the purpose of controlling behavior, and unreasonable confinement. Physical abuse also includes the use of a restrictive or physically intrusive procedure to control behavior for the purpose of punishment except that of a therapeutic procedure prescribed by a licensed physician or other legally authorized healthcare professional. Physical abuse does not include altercations or acts of assault between Patients.

2. **Psychological Abuse.** The deliberate use of any oral, written, or gestured language or depiction that includes disparaging or derogatory terms to a Patient or within the Patient's hearing distance, regardless of the Patient's age, ability to comprehend, or disability, including threats or harassment or other forms of intimidating behavior causing fear, humiliation, degradation, agitation, confusion, or other forms of serious emotional distress.

B. Administering Medication. The acts of preparing and giving of a single dose of a medication to the body of a Patient by injection, ingestion, or any other means in accordance with the orders of a Physician or other Authorized Healthcare Provider.

C. Administrator. The staff member designated by the Licensee to have the authority and responsibility to manage the Facility and who is in charge of all functions and activities of the Facility.

D. Adult. A person eighteen (18) years of age or older.

E. Aftercare/Continuing Care. Services provided to Patients after discharge from a Facility that facilitates the Patient's integration or reintegration into society. Activities may include self-help groups, supportive work programs, and staff follow-up contacts and interventions.

F. Annual. A time period that requires an activity to be performed at least every twelve (12) months.

G. Assessment. A procedure for determining the nature and extent of the problems and needs of a Patient or potential Patient to ascertain if the Facility can adequately address those problems, meet those needs, and to secure information for use in the development of the Individual Plan of Care.

H. Authorized Healthcare Provider. An individual authorized by law and currently licensed in South Carolina as a Physician, advanced practice registered nurse, or physician assistant to provide specific treatments, care, or services to Patients.

I. Blood Assay for *Mycobacterium tuberculosis* (“BAMT”). A general term to refer to in vitro diagnostic tests that assess for the presence of tuberculosis (“TB”) infection with *Mycobacterium tuberculosis*. This term includes, but is not limited to, IFN- γ release assays (“IGRA”).

J. Chemical Dependency. A disorder manifested by repeated use of alcohol or another substance to an extent that it interferes with a person’s health, social, or economic functioning; some degree of habituation and dependence may be implied. May also be referred to as Substance Use Disorder.

K. Clinical Services Supervisor. The designated individual with responsibility for clinical supervision of treatment Staff and interpretation of program policy and standards.

L. Consultation. A meeting with a licensed Facility and individuals authorized by the Department to provide information to Facilities in order to enable Facilities to better comply with the regulations.

M. Contact Investigation. Procedures that occur when a case of infectious Tuberculosis is identified, including finding persons (contacts) exposed to the case, testing and evaluation of contacts to identify Latent Tuberculosis Infection or Tuberculosis disease, and treatment of these persons, as indicated.

N. Controlled Substance. A medication or other substance included in Schedule I, II, III, IV, and V of the Federal Controlled Substances Act or the South Carolina Controlled Substances Act.

O. Counselor. An individual licensed by the South Carolina Department of Labor, Licensing and Regulation or certified as such by South Carolina Association of Alcoholism and Drug Abuse Counselors.

P. Department. The South Carolina Department of Health and Environmental Control.

Q. Dietitian. An individual currently licensed as a Dietitian by the South Carolina Department of Labor, Licensing and Regulation.

R. Direct Care Staff. Those individuals who provide care and services to the Patient.

S. Discharge. The point at which treatment, care, and services in a Facility are terminated and the Facility no longer maintains active responsibility for the care of the Patient, except for Continuing Care monitoring.

T. Elopement. An instance when a Patient who is physically, mentally, or chemically impaired wanders, walks, runs away, escapes, or otherwise leaves the Facility unsupervised or unnoticed.

U. Exploitation. (1) Causing or requiring a Patient to engage in an activity or labor that is improper, unlawful, or against the reasonable and rational wishes of a Patient. Exploitation does not include requiring a Patient to participate in an activity or labor that is a part of a written individual plan of care or prescribed or authorized by the Patient’s attending physician; (2) an improper, unlawful, or unauthorized use of the funds, assets, property, power of attorney, guardianship, or conservatorship of a Patient by an individual for the profit or advantage of that individual or another individual; or (3) causing a Patient to purchase goods or services for the profit or advantage of the seller or another individual through undue influence, harassment, duress, force, coercion, or swindling by overreaching, cheating, or defrauding the Patient through cunning arts or devices that delude the Patient and cause him or her to lose money or other property.

V. Facility for Chemically Dependent or Addicted Persons (Facility or Substance Use Disorder Facility). A Facility organized to provide Outpatient or Residential Services to Chemically Dependent or Addicted Persons

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and their families based on an Individual Plan of Care including diagnostic treatment, individual and group counseling, family therapy, vocational and educational development counseling, and referral services.

W. Follow-up. Intermittent contact with a Patient following discharge from the program, for assessment of Patient status and needs.

X. Health Assessment. An evaluation of the health status of a staff member/volunteer by a Physician, other Authorized Healthcare Provider, or a registered nurse. A registered nurse may complete the Health Assessment pursuant to standing orders approved by a Physician as evidenced by the Physician's signature. The standing orders shall be reviewed annually by the Physician, with a copy of the review maintained at the Facility.

Y. Individual Plan of Care. A written action plan based on assessment data that identifies the Patient's diagnosis and/or needs, the strategy for providing services to meet those needs, treatment goals and objectives, and the criteria for terminating the specified interventions.

Z. In-process Counselor. A counselor accepted by the South Carolina Association of Alcoholism and Drug Abuse Counselors as enrolled for certification.

AA. Inspection. A visit by the Department for the purpose of determining compliance with this regulation.

BB. Intake. The administrative and assessment process for admission to a program.

CC. Interdisciplinary Team. A group designated by the Facility to provide or supervise care, treatment, and services. The group normally includes but is not limited to the following persons: Counselors, social workers, Physicians and other Authorized Healthcare Providers, pharmacists, peer support specialists, etc.

DD. Investigation. A visit by Department representatives to a licensed or unlicensed entity for the purpose of determining the validity of allegations received by the Department relating to statutory and regulatory compliance.

EE. Legend Medications.

1. A Controlled Substance, when under federal law, is required, prior to being dispensed or delivered to be labeled with any of the following statements:

a. "Caution: Federal law prohibits dispensing without prescription."

b. "Rx only"; or

2. A Controlled Substance which is required by any applicable federal or state law to be dispensed pursuant only to a prescription drug order or is restricted to use by practitioners only;

3. Any Controlled Substance considered to be a public health threat, after notice and public hearing as designated by the South Carolina Board of Pharmacy; or

4. Any prescribed compounded prescription Controlled Substance within the meaning of the South Carolina Pharmacy Practice Act.

FF. License. The authorization to operate a Substance Use Disorder Facility as defined in this regulation and as evidenced by a certificate issued by the Department to a Facility.

GG. Licensed Nurse. A person to whom the South Carolina Board of Nursing has issued a license as a registered nurse or licensed practical nurse, or an individual licensed as a registered nurse or licensed practical

nurse who resides in another state that has been granted multi-state licensing privileges by the South Carolina Board of Nursing and may practice nursing in any Facility or activity licensed by the Department subject to the provisions and conditions as indicated in the Nurse Licensure Compact Act.

HH. Licensee. The individual, corporation, organization, or public entity licensed pursuant to this regulation to provide dependency and Substance Use Disorder treatment services.

II. Medical Withdrawal Management Program. A program in a Residential Facility providing for medically-supervised Withdrawal Management, with the capacity to provide screening for medical complications of Substance Use Disorder, a structured program of counseling, if appropriate, and referral for further rehabilitation.

JJ. Medication. A substance that has therapeutic effects, including, but not limited to, Legend, Non-Legend, over-the counter, and nonprescription Medications, herbal products, vitamins, and nutritional supplements.

KK. Medication Unit. A Satellite location established as part of, but geographically separate, from a licensed Opioid Treatment Program to only administer Medications and conduct substance use screening.

LL. Methadone. A synthetic opioid Medication usually administered on a daily basis.

MM. Minor. Any person whose age does not meet the criteria indicated in Section 101.C.

NN. Neglect. The failure or omission of a direct care staff member to provide the care, goods, or services necessary to maintain the health or safety of a Patient including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services. Failure to provide adequate supervision resulting in harm to Patients, including altercations or acts of assault between Patients, may constitute neglect. Neglect may be repeated conduct or a single incident that has produced or could result in physical or psychological harm or substantial risk of death. Noncompliance with regulatory standards alone does not constitute neglect.

OO. Non-Legend Medications. A substance which may be sold without a prescription and which is labeled for use by the consumer in accordance with state and federal law.

PP. Opioid Treatment Program. A program within an Outpatient Facility providing services using Methadone or other opioid treatment Medication, and offering a range of treatment procedures and services for the rehabilitation of persons dependent on opium, morphine, heroin, or any derivative or synthetic Controlled Substance of that group.

QQ. Outpatient Facility. A Facility providing Outpatient Services.

RR. Outpatient Services. Non-Residential services for persons with Substance Use Disorder and/or their families.

SS. Patient. Any individual who receives Outpatient or Residential Services from a licensed Facility.

TT. Physical Examination. An examination of a Patient by a Physician or other Authorized Healthcare Provider which addresses those issues identified in Section 1100 of this regulation.

UU. Primary Counselor. An individual who is assigned by a Facility to develop, implement, and periodically review the Patient's Individual Plan of Care and to monitor a Patient's progress in treatment.

VV. Quality Improvement Program. The process used by a Facility to examine its methods and practices of providing care services, identify the ways to improve its performance, and take actions that result in improved quality of care for the Facility's Patients.

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WW. Repeat Violation. The recurrence of a violation cited under the same section of the regulation within a twenty-four (24) month period.

XX. Residential Facility. A twenty-four (24) hour Facility offering Residential Treatment Program, Medical Withdrawal Management, and Social Withdrawal Management services in a Residential setting including services for parents with children.

YY. Residential Treatment Program. A program in a Residential Facility that is designed to improve the Patient's ability to structure and organize the tasks of daily living and foster recovery through planned clinical activities, counseling, and clinical monitoring in order to promote successful involvement or re-involvement in regular, productive daily activity, and, as indicated, successful reintegration into family living.

ZZ. Revocation of License. An action by the Department to cancel or annul a Facility License by recalling, withdrawing, or rescinding its authority to operate.

AAA. Satellite Facility. An approved Outpatient Facility at a location other than the main Outpatient Facility that is owned or operated by the same licensee.

BBB. Self-Administration. A procedure by which any Medication is taken orally, injected, inserted, or topically or otherwise administered by a Patient to himself or herself without prompting. The procedure is performed without assistance and includes removing an individual dose from a previously dispensed and labeled container (including a unit dose container), verifying it with the directions on the label, taking it orally, injecting, inserting, or applying topically or otherwise administering the Medication.

CCC. Social Withdrawal Management Program. A program in a Residential Facility providing supervised Withdrawal Management in which neither the Patient's level of intoxication nor physical condition is severe enough to warrant direct medical supervision or the use of Medications to assist in withdrawal, but which maintains medical backup and provides a structured program of counseling (if appropriate), educational services, and referral for further rehabilitation.

DDD. Staff. Those individuals who are employees (full and part-time) of the Facility, to include those individuals contracted to provide care and services for the Patients.

EEE. Substance Use Disorder. A recurrent use of alcohol or other substance causing clinically and functionally significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.

FFF. Suspension of License. An action by the Department requiring a Facility to cease operations for a period of time or to require a Facility to cease admitting Patients, until such time as the Department rescinds that restriction.

GGG. Tuberculosis Risk Assessment. An initial and ongoing evaluation of the risk for transmission of Mycobacterium Tuberculosis in a particular healthcare setting. To perform a risk assessment, the following factors shall be considered: the community rate of Tuberculosis, number of Tuberculosis Patients encountered in the setting, and the speed with which Patients with Tuberculosis disease are suspected, isolated, and evaluated. The Tuberculosis Risk Assessment determines the types of administrative and environmental controls and respiratory protection needed for a setting.

HHH. Volunteer. An individual who performs tasks that are associated with the operation of the Facility without pay and at the direction of the Administrator or his or her designee.

III. Withdrawal Management. A process of withdrawing a Patient from a specific psychoactive substance in a safe and effective manner.

102. License Requirements.

A. License. No person, private or public organization, political subdivision, or governmental agency shall establish, operate, maintain, represent, advertise, or market itself as a Facility in South Carolina without first obtaining a License from the Department. No Facility shall admit Patients prior to the effective date of the License. When it has been determined by the Department that services for Substance Use Disorder are being provided at a location, and the owner has not been issued a License from the Department, the owner shall cease operation immediately and ensure the safety, health, and well-being of the Patients. Current and/or previous violations of the South Carolina Code or Department regulations may jeopardize the issuance of a License for the Facility or the licensing of any other Facility or addition to an existing Facility that is owned/operated by the licensee. The Facility shall provide only the treatment, services, and care it is licensed to provide pursuant to the definition in Section 101.V. of this regulation. (I)

B. Compliance. An initial License shall not be issued to a proposed Facility until the Licensee has demonstrated to the Department that the proposed Facility is in substantial compliance with the licensing standards. In the event a current Licensee who already has a Facility or activity makes application for another Facility, the currently licensed Facility/activity shall be in substantial compliance with the applicable standards prior to the Department issuing a License to the proposed Facility or amended License to the existing Facility. A paper or electronic copy of the licensing standards shall be maintained at the Facility and accessible to all Staff members and Volunteers. Facilities shall comply with applicable local, state, and federal laws, codes, and regulations.

C. Licensed Services. No Facility shall provide services outside the limits of the type Facility identified on the face of the License and/or which the Facility has been authorized to provide. (I)

D. Satellite Facilities.

1. Outpatient Satellite locations, other than Medication Units, are authorized only in the same county as the main Facility or in contiguous counties to the county in which the main Facility is located.

2. Medication Units. A Licensed Outpatient Facility providing an Opioid Treatment Program may establish a Medication Unit. A Medication Unit shall only administer Medications and conduct substance use screening. Other required services shall be provided at the licensed Facility's primary location. The Medication Unit shall meet the regulatory requirements for Medication administration, staffing, substance use screening, and construction.

a. Medication Units shall be opened no closer than forty-five (45) miles and no further than ninety (90) miles from the primary Opioid Treatment Program.

b. The Facility shall obtain a registration from the Department's Bureau of Drug Control and a Controlled Substances registration from the federal Drug Enforcement Administration for each Medication Unit.

c. The Facility shall not establish, operate, or maintain a Medication Unit without submitting an application to and receiving approval from the Department. The Facility's application for the Medication Unit shall include documentation from the Department evidencing that the applicant received either a Certificate of Need or a determination by the Department that Certificate of Need review is not required.

E. Licensed Bed Capacity. No Residential Facility that has been authorized to provide a set number of licensed beds, as identified on the face of the License, shall exceed the licensed bed capacity. No Facility shall establish new care or services or occupy additional beds or renovated space without first obtaining authorization from the Department. Licensed beds shall not be utilized by any individuals other than Facility Patients. (I)

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F. Persons Received in Excess of Licensed Bed Capacity. No Residential Facility shall receive for treatment, care, or services persons in excess of the licensed bed capacity, except in cases of justified emergencies (See Section 1400). (I)

G. Living Quarters for Staff in Residential Facilities. In addition to Patients, only Staff members, Volunteers, or owners of the Facility and members of the owner's immediate family may reside in Facilities licensed under this regulation. Patient rooms shall not be utilized by any individuals other than Facility Patients, nor shall bedrooms of Staff members or family members of the owner or the Licensee be utilized by Patients. Staff members or family members of the owner or Licensee, or Volunteers shall not use Patient living rooms, recreational areas, or dining rooms unless they are on duty.

H. Issuance and Terms of License.

1. The License issued by the Department shall be posted by the Licensee in a conspicuous place in a public area within the Facility.

2. The issuance of a License does not guarantee adequacy of individual care, services, personal safety, fire safety, or the well-being of any Patient or occupant of a Facility.

3. A License is not assignable or transferable and is subject to revocation at any time by the Department for the Licensee's failure to comply with the laws and regulations of this state.

4. A License shall be effective for a specified Facility, at a specific location, for a specified period following the date of issue as determined by the Department. A License shall remain in effect until the Department notifies the Licensee of a change in the status.

5. Facilities owned by the same entity but which are not located on the same adjoining or contiguous property shall be separately licensed. Roads or local streets, except limited access, shall not be considered as dividing otherwise adjoining or contiguous property. For Facilities owned by the same entity, separate Licenses are not required for separate buildings on the same or adjoining grounds where a single type of service is provided.

6. Facilities providing Outpatient and Residential Services on the same premises shall be licensed separately even though owned by the same entity.

I. Facility Name. No proposed Facility shall be named nor shall any existing Facility have its name changed to the same or similar name as any other Facility licensed in South Carolina. The Department shall determine if names are similar. If the Facility is part of a "chain operation" it shall then have the geographic area in which it is located as part of its name.

J. Application. Applicants for a License shall submit to the Department a completed application on a form prescribed, prepared, and furnished by the Department prior to initial licensing. Applicants for a License shall file an application with the Department that includes an oath assuring the contents of the application are accurate and true and in compliance with this regulation.

K. Required Documentation. The application for initial licensure shall include:

1. Completed application;

2. Proof of ownership of real property on which the Facility is located or a rental or lease agreement allowing the Licensee to occupy the real property on which the Facility is located;

3. Verification of emergency evacuation plan (see Section 1401); and

4. Verification of Administrator’s qualifications.

L. Licensing Fees. Each applicant shall pay a License fee prior to the issuance of a License.

1. The initial and annual License fee shall be seventy-five dollars (\$75.00) for Outpatient Facilities. The initial and annual License fee for Outpatient Facility satellite locations shall be fifty dollars (\$50.00) per Satellite Facility.

2. For Residential Facilities, the annual License fee shall be ten dollars (\$10.00) per bed or seventy-five dollars (\$75.00), whichever is greater.

M. Licensing Late Fees. Failure to submit a renewal application and fee to the Department by the License expiration date shall result in a late fee of seventy-five dollars (\$75.00) or twenty-five percent (25%) of the licensing fee amount, whichever is greater, in addition to the licensing fee. Failure to submit the licensing fee and licensing late fee to the Department within thirty (30) days of the licensure expiration date shall render the Facility unlicensed. (II)

N. License Renewal. For a License to be renewed, applicants shall file an application with the Department, pay a License fee, and shall not be under consideration for, or undergoing, enforcement actions by the Department. Annual licensing fees shall also include any outstanding Inspection fees. All fees are non-refundable, shall be made payable by check or credit card to the Department or online, and shall be submitted with the application.

O. Amended License. No facility shall establish new care or services or occupy additional beds or renovated space without first obtaining authorization from the Department. A Facility shall request issuance of an amended License by application to the Department prior to any of the following circumstances:

1. Change of licensed bed capacity;
2. Change of Facility location from one geographic site to another;
3. Changes in Facility name or address (as notified by the post office); or
4. Change in Facility service type.

P. Change of Licensee. A Facility shall request issuance of a new License by application to the Department prior to any of the following circumstances:

1. A change in the controlling interest even if, in the case of a corporation or partnership, the legal entity retains its identity and name; or
2. A change in the type of the legal entity, for example, sole proprietorship to or from a corporation, partnership to or from a corporation, even if the controlling interest does not change.

Q. Variance. A variance is an alternative method that ensures the equivalent level of compliance with the standards in this regulation. The Facility may request a variance to this regulation in a format as determined by the Department. Variances shall be considered on a case by case basis by the Department. The Department may revoke issued variances as determined to be appropriate by the Department.

SECTION 200 – ENFORCEMENT OF REGULATIONS

201. General.

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The Department shall utilize Inspections, Investigations, Consultations, and other pertinent documentation regarding a proposed or licensed Facility in order to enforce this regulation.

202. Inspections and Investigations.

A. Inspections by the Department shall be conducted prior to initial licensing of a Facility and subsequent Inspections conducted as deemed appropriate by the Department.

B. All Facilities are subject to Inspection and/or Investigation at any time without prior notice by individuals authorized by the South Carolina Code of Laws. When Staff members and /or Patients are absent, the Facility shall post information at the entrance of the Facility to those seeking legitimate access to the Facility, including visitors. The posted information shall include contact information and the expected time of return of the Staff members and Patients. The contact information shall include the name of a designated contact and his or her telephone number. The telephone number for the designated contact shall not be the Facility's telephone number.

(I)

C. Individuals authorized by South Carolina law shall be allowed to enter the Facility for the purpose of Inspection and/or Investigation and granted access to all properties and areas, objects, requested records, and documentation at the time of the Inspection or Investigation. The Department shall have the authority to require the Facility to make photocopies of those documents required in the course of Inspections or Investigations. Photocopies shall be used only for purposes of enforcement of regulations and confidentiality shall be maintained except to verify the identity of individuals in enforcement action proceedings. The physical area of Department Inspections and Investigations shall be determined by the Department based on the potential impact or effect upon patients. (I)

D. When there is noncompliance with the licensing standards, the Facility shall submit an acceptable plan of correction in a format determined by the Department. The plan of correction shall be signed by the Administrator and returned by the date specified on the report of Inspection and/or Investigation. The plan of correction shall describe: (II)

1. The actions taken to correct each cited deficiency;
2. The actions taken to prevent recurrences (actual and similar); and
3. The actual or expected completion dates of those actions.

E. In accordance with South Carolina Code Section 44-7-270, the Department may charge a fee for Inspections.

1. Residential Facilities. The fee for initial, relocation, and routine Inspections shall be three hundred fifty dollars (\$350.00), plus twenty-five dollars (\$25.00) per licensed bed. The Inspection fee for a bed increase and/or service modification is two hundred dollars (\$200.00), plus twenty-five dollars (\$25.00) per licensed bed. The fee for all follow-up Inspections shall be two hundred dollars (\$200.00), plus twenty-five dollars (\$25.00) per licensed bed.

2. Outpatient Facilities. The fee for initial, relocation, and routine Inspections shall be four hundred fifty dollars (\$450.00). The Inspection fee for service modification, including the establishment of a Satellite Facility, and follow-up Inspections is two hundred fifty dollars (\$250.00).

F. The Licensee shall pay the following Inspection fees during the construction phase of the project. The plan Inspection fee is based on the total estimated cost of the project whether new construction, an addition, or a renovation. The fees are detailed in the table below.

Construction Inspection Fees	
Plan Inspection	
Total Project Cost	Fee
< \$10,001	\$750
\$10,001 - \$100,000	\$1,500
\$100,001 - \$500,000	\$2,000
> \$500,000	\$2,500 plus \$100 for each additional \$100,000 in project cost
Site Inspection	
50% Inspection	\$500
80% Inspection	\$500
100% Inspection	\$500

203. Consultations.

Consultations shall be provided by the Department as requested by the Facility or as deemed appropriate by the Department.

SECTION 300 – ENFORCEMENT ACTIONS

301. General.

When the Department determines that a Facility is in violation of any statutory provision or regulation relating to the operation or maintenance of such Facility, the Department, upon proper notice to the Licensee, may deny, suspend, or revoke Licenses, or assess a monetary penalty, or both.

302. Violation Classifications.

A. Violations of standards in this regulation are classified as follows:

1. Class I violations are those that present an imminent danger to the health, safety, or well-being of the persons in the Facility or a substantial probability that death or serious physical harm could result therefrom. A physical condition or one or more practices, means, methods, or operations in use in a Facility may constitute such a violation. The condition or practice constituting a Class I violation shall be abated or eliminated immediately unless a fixed period of time, as stipulated by the Department, is required for correction. Each day such violation exists after expiration of the time established by the Department shall be considered a subsequent violation.

2. Class II violations are those, other than Class I violations, that have a negative impact on the health, safety, or well-being of persons in the Facility. The citation of a Class II violation shall specify the time within which the violation is required to be corrected. Each day such violation exists after expiration of this time shall be considered a subsequent violation.

3. Class III violations are those that are not classified as Class I or II in this regulation or those that are against the best practices. The citation of a Class III violation shall specify the time within which the violation is required to be corrected. Each day such violation exists after expiration of this time shall be considered a subsequent violation.

B. The notations, “(I)” or “(II),” placed within sections of this regulation, indicate those standards are considered Class I or II violations if they are not met, respectively. Failure to meet standards not so annotated are considered Class III violations.

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C. In determining an enforcement action, the Department shall consider the following factors:

1. Specific conditions and their impact or potential impact on health, safety, or well-being of the Patients including, but not limited to:

- a. Deficiencies in Medication management; critical waste water problems; housekeeping, or fire and life safety-related problems that pose a health threat to the Patients;
- b. Power, water, gas, or other utility and/or service outages;
- c. Patients exposed to air temperature extremes that jeopardize their health;
- d. Unsafe condition of the building or structure;
- e. Indictment of an Administrator for malfeasance or a felony, which by its nature indicates a threat to the Patients;
- f. Direct evidence of Abuse, Neglect, or Exploitation;
- g. Lack of food or evidence that the Patients are not being fed properly;
- h. No Staff available at the Facility with Patients present;
- i. Unsafe procedures and/or treatment being practiced by Staff; (I)

2. Repeated failure of the Licensee or Facility to pay assessed charges for utilities and/or services resulting in repeated or ongoing threats to terminate the contracted utilities and/or services; (II)

3. Efforts by the Facility to correct cited violations;

4. Overall conditions of the Facility;

5. History of compliance; and

6. Any other pertinent conditions that may be applicable to current statutes and regulations.

D. When imposing monetary penalties, the Department may invoke South Carolina Code Section 44-7-320(C) to determine the dollar amount or may utilize the following schedule:

FREQUENCY	CLASS I	CLASS II	CLASS III
1st	\$ 500-1,500	\$ 300-800	\$100-300
2nd	1,000-3,000	500-1,500	300-800
3rd	2,000-5,000	1,000-3,000	500-1,500
4th	5,000	2,000-5,000	1,000-3,000
5th	5,000	5,000	2,000-5,000
6th	5,000	5,000	5,000

SECTION 400 – POLICIES AND PROCEDURES (II)

A. The Facility shall maintain and adhere to written policies and procedures addressing the manner in which the requirements of this regulation shall be met. The Facility shall be in full compliance with the policies and procedures.

B. The written policies and procedures shall include the following:

1. Staffing and training;
2. Reporting incidents, accidents, reportable diseases, closure and zero census;
3. Patient records;
4. Admission and Discharge;
5. Patient care, treatment, and services;
6. Medication management;
7. Maintenance including doors, windows, heating, ventilation, air conditioning, fire alarm, electrical, mechanical, plumbing, and for all equipment;
8. Infection control and housekeeping;
9. Quality Improvement Program; and
10. Fire Prevention;

C. The Facility shall establish a time period for review, not to exceed two (2) years, of all policies and procedures, and such reviews shall be documented and signed by the Administrator. All policies and procedures shall be accessible to Facility staff, printed or electronically, at all times.

SECTION 500 – STAFF AND TRAINING

501. General (II).

A. The Facility shall develop and implement policies and procedures to provide for appropriate Staff and/or Volunteers in numbers and training to suit the needs and condition of the Patients and meet the demands of effective emergency on-site action that might arise. Training requirements/qualifications for the tasks each performs shall be in compliance with all local, state, and federal laws, and current professional organizational standards.

B. The Facility shall maintain accurate information regarding all Staff and/or Volunteers of the Facility. The documentation shall include at least current address, phone number, health and work and/or training background, as well as current information. The Facility shall ensure all employees are assigned certain duties and responsibilities that shall be in writing and in accordance with the individual's capability. (II)

C. When a Facility engages a source other than the Facility to provide services normally provided by the Facility, the Facility shall maintain documentation of the written agreement with the source that describes how and when the services are to be provided, the exact services to be provided, and that these services are to be provided by qualified individuals. The source shall comply with this regulation in regard to Patient care, services, and rights.

D. The Facility shall maintain documentation to ensure the Facility meets staffing requirements in Sections 503, 504, and 505.

502. Administrator (II).

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A. Each Facility shall have a full-time Administrator who is responsible for the overall management and operation of the Facility and has at least a bachelor's degree in a related field.

B. A Staff member shall be designated by name or position, in writing, to act in the absence of the Administrator, for example, a listing of the lines of authority by position title, including the names of the individuals filling these positions.

503. Staffing for Residential Facilities (I).

A. All Staff members and/or Volunteers on duty shall be present, awake, and dressed at all times when Patients are present in the Facility. All Staff members and/or Volunteers shall know how to respond to Patient needs and emergencies.

B. Additional Staff shall be provided if it is determined that the minimum Staff requirements are inadequate to provide appropriate services and supervision to the Patients of a Facility.

C. Staffing for Residential Treatment Programs.

1. The number of Staff members that shall be maintained in all Facilities:

a. In each building, there shall be at least one (1) Staff member and/or Volunteer on duty for each ten (10) Patients or fraction thereof present from 7:00 am until 7:00 p.m.

b. In each building, there shall be at least one (1) Staff member and/or Volunteer for each twenty (20) Patients or fraction thereof from 7:00 p.m. until 7:00 a.m.

2. The Facility shall have at least one (1) Physician available during Facility operating hours, either in person or by telephone for consultation and for emergencies.

D. Staffing for Withdrawal Management Programs.

1. In each building, there shall be at least one (1) Direct Care or Counselor Staff member for each ten (10) Patients or fraction thereof on duty at all times.

2. In Residential Facilities providing Medical Withdrawal Management, Staff members and Volunteers shall be under the general supervision of a Physician or registered nurse; a Physician, Licensed Nurse, or other Authorized Healthcare Provider shall be present at all times.

505. Staffing for Opioid Treatment Programs (I).

A. The Opioid Treatment Program Physician shall have authority over all medical aspects of care and make treatment decisions in consultation with treatment Staff consistent with the needs of the Patient, clinical protocols, and research findings. The Facility shall have at least one (1) Physician available during dosing and Facility operating hours, either in person or by telephone for consultation and for emergencies.

B. The Facility shall have a pharmacist or other person licensed to dispense Opioid Treatment Program Medications pursuant to the South Carolina Code of Laws who is responsible for dispensing the amounts of Opioid Treatment Program Medications administered and shall record and countersign all changes in dosing schedules.

C. The Facility shall have one (1) Licensed Nurse present at all times Medications are being administered to Patients.

D. The Opioid Treatment Program shall have a least one (1) full-time counselor on staff for every fifty (50) Patients or fraction thereof. Counselors shall be qualified as specified in Section 508.

506. Inservice Training (II).

A. All Facilities shall provide Staff and Volunteers the necessary training to perform the duties for which they are responsible in an effective manner. The Facility shall require all Staff members and Volunteers to complete the necessary training to perform their duties and responsibilities. The Facility shall document all in-service training. Staff training shall be signed and dated by the individual providing the training and the person receiving the training. The signature for the individual providing the training may be omitted for online training.

B. All Facilities shall provide the following training to all Staff and Volunteers prior to Patient contact and at a frequency as determined by the Facility, but at least annually:

1. The nature of Substance Use Disorder, complications of Chemical Dependency, and withdrawal symptoms.

2. Confidentiality of Patient information and records and the protection of Patient rights.

C. All Residential Facilities shall provide the following training to all Staff and Volunteers prior to Patient contact and at a frequency as determined by the Facility, but at least annually:

1. Cardio-pulmonary resuscitation to ensure that there is at least one (1) certified individual present when Patients are in the Facility;

2. Basic first-aid to include emergency procedures as well as procedures to manage and/or care for minor accidents or injuries;

3. Procedures for checking and recording vital signs;

4. Management/care of persons with contagious and/or communicable disease;

5. Medication management;

6. Use of restraints and seclusion;

7. Seizure response training; and

8. OSHA standards regarding bloodborne pathogens.

D. All Opioid Treatment Programs shall provide opioid Medication treatment training to all Staff and Volunteers prior to Patient contact and at a frequency as determined by the Facility, but at least annually.

E. All Staff members and Volunteers shall have documented orientation to the purpose and environment of the Facility within twenty-four (24) hours of their first day on the job in the Facility.

507. Health Status (I).

A. All Staff and Volunteers who have contact with Patients, including food services Staff and Volunteers, shall have a Health Assessment, as defined in Section 101.X, within twelve (12) months prior to initial Patient contact. The Health Assessment shall include tuberculin skin testing as described in Section 1702.

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B. For Staff members and/or Volunteers working at multiple Facilities operated by the same Licensee, the documented Health Assessment shall be accessible at each Facility, provided the information is in compliance with this regulation.

508. Counselors (II).

A. Each Facility shall have at least one (1) Staff Counselor who is fully-certified or licensed. All non-certified and/or licensed Counselors shall be under the direct supervision of an on-site fully-certified or licensed Counselor.

B. Staff and Volunteers providing clinical counseling services shall have one (1) of the following qualifications:

1. Certification:

a. Certification under the system administered by the South Carolina Association of Alcohol and Drug Abuse Counselors Certification Commission, or currently engaged, as verified and documented in the individual's personnel file, in the South Carolina Association of Alcohol and Drug Abuse Counselors certification process that is to be completed within a three (3)-year period from date of hire as a Counselor; or

b. Certification as a Counselor by:

(1) The National Association of Alcohol and Drug Abuse Counselors;

(2) An International Certification Reciprocity Consortium-approved certification board; or

(3) Any other South Carolina Department of Alcohol and Other Drug Abuse Services -approved credentialing or certification association or commission; or

2. Licensure:

a. Licensed as a Psychiatrist by the South Carolina Board of Medical Examiners;

b. Licensed as a Psychologist by the South Carolina Board of Examiners in Psychology;

c. Licensed as a Social worker by the South Carolina Board of Social Work Examiners; or

d. Licensed as a Counselor or therapist by the South Carolina Board of Examiners for Licensure of Professional Counselors, Marriage and Family Therapists, Addiction Counselors and Psycho-Educational Specialists, pursuant to Section 40-75-30, of the South Carolina Code of Laws, 1976.; or

3. Licensure as a Licensed Addiction Counselor Associate by the South Carolina Board of Examiners for Licensure of Professional Counselors, Marriage and Family Therapists, Addiction Counselors and Psycho-Educational Specialists, pursuant to Section 40-75-30, of the South Carolina Code of Laws, 1976, under appropriate supervision. Full licensure must be completed within a three (3)-year period from date of hire as a Counselor.

C. Counselors in Opioid Treatment Programs shall have one (1) of the following qualifications:

1. Any of the certifications or licensures in 508.B above; or

2. The American Academy of Health Care Providers in the Addictive Disorders; or

3. The National Board for Certified Counselors; or

4. Any other equivalent, nationally-recognized, and South Carolina Department of Alcohol and Other Drug Abuse Services-approved association or accrediting body that includes similar competency-based testing, supervision, educational, and substantial experience.

D. In Facilities providing prevention services, Counselors shall have one (1) of the following qualifications:

1. Certification by the South Carolina Association of Prevention Professionals and Advocates as a Prevention Professional or Senior Prevention Professional; or

2. In-process of becoming certified as a Prevention Professional. This certification shall be achieved within a thirty-six (36)-month period of time from the date of hire as a prevention Counselor.

E. Any individual employed as a direct Patient Counselor, Opioid Treatment Program Counselor, or prevention services professional, to include contracted Staff, who does not obtain his or her certification or licensing within the above time-periods, shall cease providing counseling services until that certification or licensing status is achieved.

F. The Facility shall verify and maintain documentation of each Counselor’s qualifications in the individual’s Staff record.

SECTION 600 – REPORTING

601. Accidents and Incidents (II).

A. The Facility shall maintain a record of each accident and/or incident, including usage of mechanical and/or physical restraints, involving Patients, Staff members or Volunteers, occurring in the Facility or on the Facility grounds. The Facility shall retain all documented incidents reported pursuant to this section six (6) years after the Patient stops receiving services at the Facility.

B. The Facility shall report the following types of incidents to the next of kin or responsible party at the earliest practicable hour, not exceeding twenty-four (24) hours of the incident. The Facility shall report the following types of incidents to the Department immediately, not to exceed twenty-four (24) hours, via the Department’s electronic reporting system or as otherwise determined by the Department. incidents requiring reporting include, but are not limited to:

1. Confirmed or Suspected Abuse, Neglect or Exploitation against a Patient by Facility Staff;
2. Crimes committed against Patients;
3. Death: For Residential Facilities, any Patient’s death in the Facility or on the Facility grounds; for Opioid Treatment Programs, any Patient’s death regardless of location;
4. Overdose reversal (naloxone);
5. Elopement (Residential Facility only);
6. Bone fracture or joint fracture;
7. Hospitalization as a result of accident and/or incident;
8. Medication Error;

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9. Attempted Suicide; and

10. Severe injury involving use of restraint.

C. The Facility shall submit a separate written investigation report within five (5) days of every incident required to be immediately reported to the Department pursuant to Section 601.B via the Department's electronic reporting system or as otherwise determined by the Department. Reports submitted to the Department shall contain only: Facility name, License number, type of accident and/or incident, the date of accident and/or incident occurred, number of Patients directly injured or affected, Patient medical record identification number, Patient age and sex, number of Staff directly injured or affected, number of visitors directly injured or affected, witness(es) name(s), identified cause of accident and/or incident, internal investigation results if cause unknown, a brief description of the accident and/or incident including location where occurred, and treatment of injuries.

602. Fire and Disasters (II).

A. The Facility's Administrator or his or her designee shall notify the Department immediately via telephone, e-mail, or fax of any fire in the Facility. The Facility shall submit a complete written report to include fire reports within a time-period determined by the Facility, but not to exceed forty-eight (48) hours from the occurrence of the fire.

B. The Facility's Administrator, or his or her designee, shall notify the Department immediately of any natural disaster or fire that requires displacement of the Patients, or jeopardizes or potentially jeopardizes the safety of the Patients. The Facility shall submit a complete written report that includes the fire report from the local fire department within a time-period as determined by the Facility, but not to exceed forty-eight (48) hours.

603. Communicable Diseases and Animal Bites (I).

The Facility shall report all cases of diseases and animal bites that are required to be reported to the appropriate county health department in accordance with R.61-20, Communicable Diseases.

604. Administrator Change.

The Licensee shall notify the Department via email, or a means as otherwise determined by the Department within seventy-two (72) hours of any change in Administrator status. The Licensee shall provide the Department in writing within ten (10) days the name of the newly-appointed Administrator and the effective date of the appointment.

605. Joint Annual Report.

Residential Facilities providing a Medical Withdrawal Management Program and Outpatient Facilities providing an Opioid Treatment Program, shall complete and return a "Joint Annual Report" to the South Carolina Revenue and Fiscal Affairs Office within the time-period specified by the Department.

606. Accounting of Controlled Substances (I).

Any Facility registered with the Department's Bureau of Drug Control and the federal Drug Enforcement Agency shall report any theft or loss of Controlled Substances to local law enforcement and to the Department's Bureau of Drug Control within seventy-two (72) hours of the discovery of the loss and/or theft. Any Facility permitted by the South Carolina Board of Pharmacy shall report the loss or theft of drugs or devices in accordance with Section 40-43-91 of the South Carolina Code of Laws.

607. Facility Closure.

A. Prior to the permanent closure of a Facility, the Licensee shall notify the Department in writing of the intent to close and the effective closure date. Within ten (10) days of the closure, the Facility shall notify the Department of the provisions for the maintenance of the records, the identification of those Patients displaced, the relocated site, and the dates. On the date of closure, the License shall be returned to the Department.

B. In instances where a Facility temporarily closes, the Licensee shall notify the Department in writing within fifteen (15) calendar days prior to temporary closure. In the event of temporary closure due to an emergency, the Facility shall notify the Department within twenty-four (24) hours of the closure via telephone, email, or fax. At a minimum this notification shall include, but not be limited to: the reason for the temporary closure, the location where the Patients have been and/or will be transferred, the manner in which the records are being stored, and the anticipated date for re-opening.

C. The Department shall consider, upon appropriate review, the necessity of inspecting and determining the applicability of current construction standards of the Facility prior to its reopening. If the Facility is closed for a period longer than one (1) year, and there is a desire to re-open, the Facility shall re-apply to the Department for licensure and shall be subject to all licensing requirements at the time of that application, including construction-related requirements for a new Facility.

608. Zero Census.

In instances when there have been no Patients in a Facility for any reason for a period of ninety (90) days or more, the Facility shall notify the Department in writing that there have been no admissions, no later than the one hundredth (100th) calendar day following the date of departure of the last active Patient. At the time of that notification, the Department shall consider, upon appropriate review of the situation, the necessity of inspecting the Facility prior to any new and/or readmissions to the Facility. In the event the Facility is at zero census or temporarily closed, the Licensee is still required to apply and pay the licensing fee to keep the License active. If the Facility has no Patients for a period longer than one (1) year and there is a desire to admit a Patient, the Facility shall re-apply to the Department for licensure and shall be subject to all licensing requirements at the time of that application, including construction-related requirements for a new Facility.

SECTION 700 - PATIENT RECORDS

701. Content (II).

A. The Facility shall initiate and maintain a Patient record for every individual screened, assessed and/or treated. The record shall contain sufficient information to identify the Patient and the agency and/or person responsible for each Patient, support the diagnosis, justify the treatment, and describe the response and/or reaction to treatment. The record contents shall also include the provisions for release of information, Patient rights, consent for treatment (approval by parent and/or guardian of Patient), Medications prescribed and administered, and diet (Residential Facilities only), documentation of the course and results, and promote continuity of treatment among treatment providers, consistent with acceptable standards of practice. In Facilities providing services for Parents with children, the name and age of each child shall be maintained in the Facility. All entries shall be written legibly in ink, typed, or electronic media, and signed and dated or documented in the electronic medical record.

B. If the Facility permits any portion of a Patient's record to be generated by electronic or optical means, there shall be policies and procedures to prohibit the use or authentication by unauthorized users.

C. Specific entries and documentation shall include at a minimum:

1. Consultations by Physicians or other Authorized Healthcare Providers;

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2. Signed and dated orders and recommendations for all Medication, care, services, and diet (Residential Facilities only) from Physicians or other Authorized Healthcare Providers, which shall be completed prior to, or at the time of admission, and subsequently, as warranted; (I)

3. Intake screening and initial physical assessment completed by the nurse or Counselor;

4. A signed and dated original consent for treatment; (I)

5. The report of the mental status examination and other mental health assessments as defined in Section 101.G. as appropriate;

6. Notes of counseling sessions and any other changes in the Patient's mental and physical condition; and

7. Medication management and administration, and treatment records.

8. Discharge summary, completed within a time-period as determined by the Facility, but no later than three (3) business days, and shall include at minimum:

a. Time and circumstances of Discharge or transfer, including condition at Discharge or transfer, or death; and

b. The recommendations and arrangements for further treatments, including Aftercare.

D. Electronic signatures may be used in the Patient record if they are in accordance with applicable laws and regulations, and require a signature. Electronic authorization shall be limited to a unique identifier (confidential code) used only by the individual making the entry to preclude the improper or unauthorized use of any electronic signature

702. Screening (I).

A. The Facility shall have written protocols for screening individuals presenting for admission. The Facility shall maintain documentation of the rationale for the denial of admission and referral of the individual as applicable.

B. All screening shall be documented for each individual presenting to the Facility.

C. For Facilities providing a Medical Withdrawal Management Program, the Intake screening shall be conducted by a Physician or other Authorized Healthcare Provider to determine the need for medical services or referral for serious medical complications.

D. For Facilities providing Social Withdrawal Management, the Intake screening shall be provided by Staff or Volunteers trained to monitor the Patient's physical condition.

E. For Facilities providing an Opioid Treatment Program, screening shall include:

1. Evidence of tolerance to an opioid;

2. History of physiological dependence for at least one (1) year prior to admission. The Opioid Treatment Program Physician may waive the one (1)-year history of dependence when the Patient seeking admission meets one (1) of the following criteria:

a. The Patient has been recently released from a penal or chronic care Facility with a high risk of relapse;

- b. The Patient has been previously treated and is at risk of relapse;
- c. The Patient is pregnant and does not exhibit objective signs of opioid withdrawal or physiological dependence;
- 3. Evidence of multiple and daily self-administration of an opioid;
- 4. Reasonable attempts to confirm that the applicant is not enrolled in one (1) or more other Opioid Treatments Programs;
- 5. Controlled Substance history to determine dependence on opium, morphine, heroin, or any derivative or synthetic controlled substance of that group. The substance history shall include:
 - a. Controlled Substance(s) utilized;
 - b. Frequency of use;
 - c. Amount utilized;
 - d. Duration of use;
 - e. Age when first utilized;
 - f. Route of administration;
 - g. Previous treatment(s);
 - h. Unsuccessful efforts to control use; and
 - i. Inappropriate use of prescribed opioids.

703. Assessment for Residential Treatment Programs (II).

A written assessment of the Patient in accordance with Section 101.G shall be conducted by a designated Counselor as evidenced by his or her signature and date within a time-period determined by the Facility, but no later than five (5) business days after admission.

704. Assessment for Withdrawal Management Programs (II).

A written clinical Assessment of the Patient completed by a Licensed Nurse as evidenced by his or her signature and date in accordance with Section 101.G shall be conducted prior to the delivery of treatment. The clinical Assessment shall include a review of the Patient's Controlled Substance misuse/usage and treatment history.

705. Bio-Psycho-Social Assessment for Opioid Treatment Program (II).

A comprehensive Bio-Psycho-Social Assessment shall be completed by the Patient's primary Counselor once the Patient is stabilized but not later than thirty (30) calendar days following admission. The Assessment shall include:

- A. A description of the historical course of the Chemical Dependence to include substances of misuse such as alcohol and tobacco, amount, frequency of use, duration, potency, and method of administration, previous

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withdrawal from Opioid Treatment Program Medication and/or treatment attempts, and any psychological or social complication.

B. A health history regarding chronic or acute medical conditions, such as HIV, STDs, hepatitis (B, C, D), TB, diabetes, anemia, sickle cell trait, pregnancy, chronic pulmonary diseases, and renal diseases.

C. Information related to the family of the Patient.

706. Individual Plan of Care (II).

The Facility shall develop an Individual Plan of Care with participation by the Patient or responsible party and Interdisciplinary Team as evidenced by their signatures and dates. The Individual Plan of Care shall contain specific goal-related objectives based on the needs of the Patient as identified during the Assessment phase, including adjunct support service needs and other special needs. The Individual Plan of Care shall also include the methods and strategies for achieving these objectives and meeting these needs in measurable terms with expected achievement dates. The type and frequency of counseling, as well as Counselor assignment, shall be included. The criteria for terminating specified interventions shall be included in the Individual Plan of Care. Individual Plan of Care shall be reviewed on a periodic basis as determined by the Facility and/or revised as changes in Patient needs occur.

A. In Residential Treatment Programs, an Individual Plan of Care shall be completed no later than seven (7) calendar days after admission.

B. For a Residential Facility offering a Withdrawal Management Program, an Individual Plan of Care shall be completed for supervised withdrawal within a time-period determined by the Facility's policies and procedures, but no later than seven (7) business days after admission.

707. Individual Plan of Care for Opioid Treatment Program (II).

A. The Facility shall develop and document an Individual Plan of Care within thirty (30) calendar days of admission with participation by the Patient and the primary Counselor.

B. The primary Counselor shall review the Patient progress in treatment and accomplishment of Individual Plan of Care goals not less than every ninety (90) calendar days during the first year of treatment and every six (6) months thereafter. The Counselor and Patient or responsible party shall sign and date any changes.

708. Record Maintenance.

A. The Licensee shall provide accommodations, space, supplies, and equipment for the protection, storage, and maintenance of Patient records. Patient records shall be stored in an organized manner.

B. The Patient record is confidential and shall be made available only to individuals authorized by the Facility and in accordance with local, state, and federal laws, codes, and regulations. (II)

C. The Facility shall maintain records generated by organizations or individuals contracted by the Facility for care or services.

D. Upon Discharge of a Patient, the record shall be completed within thirty (30) calendar days and filed in an inactive or closed file maintained by the Licensee.

E. Records of adult Patients may be destroyed after six (6) years following Discharge of the Patient. Records of Minors shall be retained for six (6) years or until majority, whichever period of time is greater. Other

regulation-required documents, e.g., Medication destruction, fire drills, etc., shall be retained for at least twelve (12) months or since the last Department routine Inspection, whichever is the longer period.

F. Records of current Patients are the property of the Facility and shall be maintained at the Facility and shall not be removed without court order.

G. In the event of change of ownership, all active Patient records or copies of active Patient records shall be transferred to the new owner(s).

H. When a Patient transfers from one licensed Facility to another within the provider network (same Licensee) the original record may follow the Patient; the sending Facility shall maintain documentation of the Patient's transfer and/or Discharge dates and identification information.

SECTION 800 – ADMISSION (I)

801. General.

Individuals seeking admission shall be identified as appropriate for the level of care or services, treatment, or procedures offered. The Facility shall establish admission criteria that are consistently applied and comply with state and federal laws and regulations. The Facility shall admit only those persons whose needs can be met within the accommodations and services provided by the Facility.

802. Residential Facilities.

A. Residential Facilities shall not admit any person who, because of acute mental illness or intoxication, presents an immediate threat of harm to him or herself and/or others

B. Parental consent shall be obtained for all persons under eighteen (18) years of age prior to admission to a Residential Facility. If any court of competent jurisdiction declares a person under eighteen (18) years of age an emancipated Minor, such person may be admitted to the Facility without parental consent.

C. Residential Treatment Programs shall not admit any person needing Withdrawal Management services, hospitalization, or nursing home care.

D. Withdrawal Management Programs.

1. Appropriate admission to a Facility providing Withdrawal Management shall be determined by a licensed or certified Counselor and subsequently shall be authorized by a Physician or other Authorized Healthcare Provider in accordance with Section 1100.

2. Withdrawal Management Programs shall not admit any person needing hospitalization, Residential Treatment Program, or nursing home care.

3. Parental consent shall be obtained for all persons under eighteen (18) years of age prior to admission to a Residential Treatment Program. If any court of competent jurisdiction declares a person under eighteen (18) years of age an emancipated Minor, then such person may be admitted to the program without parental consent.

803. Opioid Treatment Programs.

A. Persons shall not be admitted to the Opioid Treatment Program to receive opioids for pain management only. Appropriate referrals by the Opioid Treatment Program Physician shall be made as necessary, e.g., pain management specialist.

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B. No person under eighteen (18) years of age shall be admitted to an Opioid Treatment Program unless a parent, legal guardian, or responsible adult consents in writing to such treatment.

SECTION 900 – PATIENT CARE, TREATMENT, AND SERVICES

901. General.

A. The Facility shall provide Patient care and services , including routine and emergency medical care , as identified in the Patient record and as ordered by a Physician or other Authorized Health Care Provider. Care and services shall be provided and coordinated among those responsible during the treatment process and modified as warranted based on any changing needs of the Patient, and detailed in the Individual Plan of Care. (I)

B. Care, treatment, and services shall be rendered effectively and safely in accordance with orders from Physicians, other Authorized Healthcare Providers, and certified and/or licensed Counselors, and precautions taken for Patients with special conditions, e.g., pacemakers, wheelchairs, etc. (I)

C. The Facility shall document that Patients were offered the opportunity to participate in Aftercare and/or Continuing Care programs offered by the Facility or through referral. (II)

D. In the event of closure of a Facility for any reason, the Facility shall ensure continuity of treatment and/or care by promptly notifying the Patient’s attending Physician or other Authorized Healthcare Provider or Counselor and arranging for referral to other Facilities at the direction of the Physician or other Authorized Healthcare Provider or Counselor. The facility shall document the notification and referral in the Patient’s medical record.

902. Residential Facilities. (II)

A. Patients shall receive assistance in activities of daily living as documented in the Individual Plan of Care.

B. Patients shall be provided necessary items and assistance to maintain their personal hygiene.

C. Opportunities shall be provided for participation in religious services. Assistance in obtaining pastoral counseling shall be provided upon request by the Patient.

D. Precautions shall be taken for the protection of the personal possessions of the Patients, including their personal funds. The Facility may secure the personal funds of the Patient provided the Patient authorizes the Facility to do so. The Facility shall maintain an accurate accounting of the funds, including evidence of purchases by Facility on behalf of the Patients. No personal monies shall be given to anyone, including family members, without written consent of the Patient. If money is given to anyone by the Facility, a receipt shall be obtained.

E. Residential Treatment Programs shall document in the Patient’s medical record that the Facility has provided or made available the following:

1. Specialized professional consultation, supervision, and direct affiliation with other levels of treatment;
2. Arrangements for appropriate laboratory and toxicology tests as needed;
3. Counselors to assess and treat Patients for Substance Use Disorders and obtain and interpret information regarding the needs of the Patients;
4. Counselors to provide a planned regimen of twenty-four (24) hour professionally-directed evaluation, care, and treatment services for persons with Substance Use Disorders and their families to include individual,

group, and/or family counseling directed toward specific Patient goals indicated in his or her Individual Plan of Care;

5. Educational guidance and educational program referral when indicated; and

6. Vocational counseling for any Patient when indicated. For those not employed, Staff and/or Volunteers shall facilitate the Patient's pursuit of employment search;

F. Withdrawal Management Programs.

1. Facilities Offering a Medical Withdrawal Management Program shall document in the Patient's medical record that the facility has provided the following:

a. Continuing observation and monitoring of each Patient's condition to recognize and evaluate significant signs and symptoms of medical distress and take appropriate action. Each Patient's general condition, including vital signs, shall be documented at a frequency as determined by the Facility, but not less than three (3) times during the first seventy-two (72) hours of admission to the Facility;

b. A plan for supervised withdrawal, to be implemented upon admission;

c. Counseling designed to motivate Patients to continue in the treatment process and referral to the appropriate treatment modality.

2. Facilities offering a Social Withdrawal Management Program shall document in the Patient's medical record that the Facility has provided the following:

a. Development of an Individual Plan of Care for supervised withdrawal;

b. Continuing observation of each Patient's condition to recognize and evaluate significant signs and symptoms of medical distress and take appropriate action; and

c. Counseling designed to motivate Patients to continue in the treatment process.

3. Facilities providing a Withdrawal Management Program shall provide room, dietary service, care, and supervision necessary for the maintenance of the Patient.

903. Facilities Providing an Opioid Treatment Program.

A. Services (II).

1. Services shall be directed toward reducing or eliminating the use of illicit Controlled Substances, criminal activity, or the spread of infectious disease while improving the quality of life and functioning of the Patient. Opioid Treatment Programs shall follow rehabilitation stages in sufficient duration to meet the needs of the Patient. These stages include initial treatment, early stabilization, long-term treatment, medical maintenance, and immediate emergency treatment when needed.

2. The Opioid Treatment Program shall directly provide, contract, or make referrals, for services based upon the needs of the Patient.

3. As part of Substance Use Disorder rehabilitative services provided by the Opioid Treatment Program, each Patient shall be provided with individual, group, and family counseling as based on needs identified during the assessment. The frequency and duration of counseling provided to Patients shall be determined by the needs of the Patient and be consistent with the Individual Plan of Care. Counseling shall address, as a minimum:

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a. Treatment and recovery objectives included in the Individual Plan of Care, as well as education regarding HIV, Hepatitis, and other infectious diseases. HIV testing shall be made available as appropriate, while maintaining Patient confidentiality;

b. Concurrent substance misuse;

c. Involvement of family and significant others with the informed consent of the Patient;

d. Providing treatment groups; and

e. Guidance in seeking alternative therapies, if applicable.

B. Support Services.

1. The Opioid Treatment Program shall ensure that a comprehensive range of support services, including, but not limited to, vocational, educational, employment, legal, mental health and family problems, medical, Substance Use Disorder, HIV or other communicable diseases, pregnancy and prenatal care, and social services are made available to Patients who demonstrate a need for such services. Support services may be provided either directly or by appropriate referral. Support services recommended and utilized shall be documented in the Patient record.

2. When appropriate, the Opioid Treatment Program shall link the Patient with an educational program, and vocational employment services. Deviations from compliance with these outcomes shall be documented in the Patient's record.

3. The Opioid Treatment Program shall establish and utilize formal linkages with community-based treatment services, through an established set of procedures for coordinating care with Physicians or other health or behavioral care providers when appropriate.

4. The Opioid Treatment Program shall establish linkages with the criminal justice system to encourage continuous treatment of individuals incarcerated or on probation and parole.

C. Services to Pregnant Patients in an Opioid Treatment Program (II).

1. The Facility shall make reasonable effort to ensure that pregnant Patients receive prenatal care by a Physician and that the Physician is notified of the Patient's participation in the Opioid Treatment Program when the Facility becomes aware of the pregnancy.

2. The Opioid Treatment Program shall provide, through in-house services or referral, and document in the Individual Plan of Care, appropriate services and interventions for the pregnant Patient to include:

a. Physician consultation at least monthly;

b. Nutrition counseling; and

c. Parenting training to include newborn care, health and safety, parent/infant interaction, and bonding.

3. The Facility shall maintain signed documentation of a Patient's acknowledgement of refusal of prenatal care.

4. Opioid Treatment Program FDA-approved Medication for opioid treatment dosage levels shall be maintained at an appropriate level for pregnant Patients as determined by the Opioid Treatment Program Physician and documented in the Patient's record. (I)

5. When a pregnant Patient chooses to discontinue participation in the Opioid Treatment Program, the program Physician, in coordination with the attending obstetrician, shall supervise the termination process.

904. Substance Use Testing for Opioid Treatment Programs (II).

A. Substance use testing shall be used as a clinical tool for the purposes of diagnosis and in the development of Individual Plans of Care.

B. Substance use testing for the presence of Opioid Treatment Program Medication, benzodiazepines, cocaine, opiates, marijuana, amphetamines, and barbiturates, as well as other substances, when clinically indicated by the Opioid Treatment Program Physician, shall be conducted at a frequency as determined by the Opioid Treatment Program.

C. Results of substance use testing shall be addressed by the primary Counselor with the Patient, in order to intervene in Controlled Substance use behavior.

D. The Opioid Treatment Program shall establish and implement written testing procedures, including random collection of substance testing samples, to effectively minimize the possibility of falsification of the sample, to include security measures for prevention of tampering.

E. Patients granted take home dosages shall undergo random substance use testing on a monthly basis. For Patients whose substance use testing reports indicate positive results for any illicit substances, non prescription Medications, or a negative result of Opioid Treatment Program Medication, the frequency for substance use testing shall be determined by the Opioid Treatment Program Physician or other Authorized Healthcare Provider. Documentation of the rationale for the frequency shall be documented in the Patient’s medical record.

F. Only those laboratories certified in accordance with the federal Clinical Laboratories Improvement Amendments shall be utilized by the Opioid Treatment Program for urinalysis.

905. Orientation for Patients Admitted to an Opioid Treatment Program.

Patient orientation shall be accomplished within seven (7) calendar days of admission and documented in the Patient record. The orientation shall include:

- A. Opioid Treatment Program guidelines, rules, and regulations;
- B. Confidentiality;
- C. Substance use testing procedure;
- D. Administering Opioid Treatment Program Medication;
- E. Signs and symptoms of an overdose and when to seek emergency assistance;
- F. Discharge procedures;
- G. Treatment phases;
- H. HIV/AIDS information and education;
- I. Patient rights (See Section 1000);

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J. The nature of Substance Use Disorders and recovery including misunderstandings regarding methadone or other opioid treatment Medication; and

K. For pregnant Patients, risk to the unborn child.

906. Transportation.

Residential Facilities shall provide or assist in securing local transportation for Patients for emergent or non-emergent health reasons to health care providers such as, but not limited to, Physicians, dentists, physical therapists, or for treatment at renal dialysis clinics.

907. Safety Precautions and Restraints (I).

A. Periodic or continuous mechanical, physical, or chemical restraints during routine care of a Patient shall not be used, nor shall Patients be restrained for Staff convenience or as a substitute for care or services. However, in cases of extreme emergencies when a Patient is a danger to him or herself or others, mechanical and/or physical restraints may be used as ordered by a Physician or other Authorized Healthcare Provider, and until appropriate medical care can be secured. Only those devices specifically designed as restraints may be used.

B. Emergency restraint orders shall specify the reason for the use of the restraint, the type of restraint to be used, the maximum time the restraint may be used, and instructions for observing the Patient while restrained, if different from the Facility's written procedures. Patients certified by a Physician or other Authorized Healthcare Provider as requiring restraint for more than twenty-four (24) hours shall be transferred to an appropriate Facility.

C. During emergency restraint, Patients shall be monitored at least every fifteen (15) minutes and provided with an opportunity for motion and exercise at least every thirty (30) minutes. Prescribed Medications and treatments shall be administered as ordered, and Patients shall be offered nourishment and fluids and given bathroom privileges.

D. The use of mechanical restraints shall be documented in the Patient's record, and shall include the date and time implemented, the length of time restrained, observations while Patient is restrained.

908. Services for Minors (II).

A. In Residential Facilities, Minors shall be housed separately from adults except in Facilities providing services for Parents with children.

B. In those instances where Minors are served, the Facility shall ensure that the special needs of these Patients are addressed, including, but not limited to, education-related considerations.

C. The Facility shall ensure treatment and counseling are conducted to meet the physical, mental, and emotional developmental needs of the Minor.

D. The Facility shall refer Minors who require special medical needs to a Physician who has clinical experience with Minors and dependency. The Facility shall monitor Minors for treatment reactions that may be developmentally detrimental. A plan shall be in place in the event that special medical care is required.

909. Referral Services.

A. Referrals for care and/or services shall not be made to unlicensed Facilities if such Facilities are required to be licensed. (II)

B. The Facility shall provide information regarding appropriate self-help groups to Patients and encourage their participation in such activities, and document the information was provided in the Patient's record.

C. The facility shall maintain documentation of the rationale for the denial of admission and referral for services offered to the Patient as applicable.

D. A community resource file shall be developed, maintained, and used for proper Patient referral and placement. The file shall include a listing of services, fees, hours of operation, and contact person as well as material to be provided to the Patient. The Facility shall provide the Patient with information and offer referral for community resources such as transportation, hospital emergency services, and ambulance services.

SECTION 1000 – PATIENT RIGHTS AND ASSURANCES

1001. Informed Consent (II).

A. Upon admission, there shall be a written, signed, and dated informed consent between the Patient and the Facility. The informed consent shall include at least the following:

1. An explanation of the specific care, services, and/or equipment provided by the Facility, such as, administration of Medication, provision of special diet as necessary, assistance with bathing, toileting, feeding, dressing, and mobility;

2. Discharge and transfer provisions to include the conditions under which the Patient may be Discharged, and the agreement terminated, and the disposition of personal belongings; and

3. Documentation of the explanation of the Patient's rights (see Section 1002) and the grievance procedure.

4. Each person enrolling in an Opioid Treatment Program shall be notified of the autopsy provision in South Carolina Code Section 44 53 750 as a part of such person's informed consent.

B. The provision of care and services to Patients shall be guided by the recognition of and respect for cultural differences to ensure reasonable accommodations shall be made for Patients with regard to differences, such as, but not limited to, religious practice and dietary preferences.

1002. Patient Rights (II).

A. Patient rights shall be guaranteed and prominently displayed in a public area. Documentation of the explanation of the Patient's Bill of Rights shall be maintained in the Patient's medical record. The Patient rights shall include:

1. The opportunity to participate in the Individual Plan of Care;

2. Informed consent for treatment;

3. Grievance and/or complaint procedures, including the address and phone number of the Department, and a provision prohibiting retaliation should the grievance right be exercised;

4. Confidentiality of Patient records;

5. Respect for the Patient's property (Residential Facilities Only);

6. Freedom from Abuse, Neglect, and Exploitation; (I)

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7. Privacy in visits unless contraindicated in the recovery and treatment process or as ordered by a Physician or other Authorized Healthcare Provider;

8. Privacy during treatment and while receiving personal care; and

9. Respect and dignity in receiving care, treatment, and services.

B. For Facilities providing Residential Services, the Patients shall be assured freedom of movement. Patients shall not be locked in or out of their rooms or any common usage areas, , in the Facility, or in or out of the Facility building. (I)

C. Care and services and items provided by the Facility, the charge, and those services that are the responsibility of the Patient shall be delineated in writing and the Patient shall be made aware of such charges and services as verified by his or her signature.

D. The Facility shall comply with all current federal, state, and local laws and regulations related to discrimination, e.g., Title VII, Section 601 of the Civil Rights Act of 1964, ADA, and ensure that there is no discrimination with regard to source of payment in the recruitment, location of Patient, acceptance or provision of goods and services to Patients or potential Patients, provided that payment offered is not less than the cost of providing services.

E. In Residential Facilities, no care and/or treatment and/or services shall be provided to individuals who are not Patients of the Facility, except those services provided to family members as part of the Patient's recovery plan.

1003. Discharge and Transfer.

A. Unless a Patient is under court order or detained subject to a pending judicial process, a Patient may be transferred or Discharged only for medical reasons, the welfare of the Patient, the welfare of other Patients of the Facility, lack of progress or participation in treatment, or successful completion of the program. He or she shall be given written notice of Discharge except when the health, safety, or well-being of other Patients of the Facility would be endangered.

B. When a Patient is transferred from one Facility to another, a transfer summary, to include copies of relevant documents, shall be forwarded to the receiving Facility within a time-period as determined by the Facility but not to exceed seventy-two (72) hours from transfer. The Facility shall ensure that Medication, personal possessions and funds of the Patient are forwarded to the receiving Facility and/or site in a manner that ensures continuity of care and/or treatment and/or services and maximum convenience to the Patient.

C. A Patient transferring from another Opioid Treatment Program shall have a Physical Examination upon admission and have his or her dose determined by a Physician prior to receiving the first dosage.

SECTION 1100 – PATIENT PHYSICAL EXAMINATION

A. Residential Facilities. A Physical Examination shall be completed by a Physician or other Authorized Healthcare Provider for Patients within thirty (30) calendar days prior to admission or two (2) business days of admission for Patients . Physical Examinations conducted by Physicians or other Authorized Healthcare Providers licensed in other states are permitted for new admissions under the condition that the Patient undergoes a second Physical Examination by a South Carolina licensed Physician or other Authorized Healthcare Provider within thirty (30) calendar days of admission to the Facility. The Physical Examination shall address:

1. The appropriateness of level of services;

2. Identification of special conditions and/or care required;
3. A tuberculin skin test, as described in Section 1702, unless there is a previously documented positive reaction;
4. If a Patient or potential Patient has a communicable disease, the Facility shall follow the recommendations made by a Physician or other Authorized Healthcare Provider in order to:
 - a. Ensure that the Facility has the capability of providing adequate care and preventing the spread of that condition, and that Staff and Volunteers are adequately trained; or
 - b. Transfer the Patient to an appropriate Facility, if necessary; and
5. A substance use test. Following the test, the Physician or Authorized Healthcare Provider shall determine the frequency of subsequent testing based on the Patient's clinical presentation.

B. In Facilities providing services for parents with children, there shall be a report of an examination for each child by a Physician or other Authorized Healthcare Provider attesting to the health status and special care needs that may impact the child, his/ or her parent, and/or others within the Facility. The examination shall be conducted not earlier than thirty (30) calendar days prior to the parent's admission or no later than forty-eight (48) hours after admission.

C. Opioid Treatment Program.

1. Physical Examination. A Physical Examination conducted by the Opioid Treatment Program Physician or other Authorized Healthcare Provider shall be completed within seventy-two (72) hours prior to the first dose of Opioid Treatment Program Medication and shall address the following at a minimum: (I)
 - a. Evidence of communicable or Infectious disease;
 - b. Pulmonary, liver, renal, and cardiac abnormalities;
 - c. Neurological issues;
 - d. Vital signs;
 - e. Evidence of clinical signs of dependency; and
 - f. Examination of head, ears, eyes, nose, throat, thyroid, chest (including heart, lungs and breast), abdomen, extremities, and skin.
2. Medical Laboratory Analysis. A medical laboratory analysis shall be conducted within seven (7) calendar days of admission and shall include:
 - a. Serological test for Infectious disease;
 - b. Initial substance use testing for Controlled Substance profile;
 - c. Liver profile; and
 - d. If indicated, an electrocardiogram, chest x-ray, and/or a biological pregnancy test.
3. In the event the medical staff are unable to obtain an adequate blood draw for the medical laboratory analysis on the first attempt, the Facility shall reattempt within the seven (7) days of admission. After three (3)

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documented attempts within the seven (7) days of admission, the Opioid Treatment Program Physician or other Authorized Healthcare Provider may waive the blood testing requirements. The Physician's decision shall be documented in the Patient's medical record. The Facility shall follow its policies and procedures related to infection control if the Physician waives the blood testing requirement.

D. In the event that a Patient transfers from one Residential Facility to another, an additional admission Physical Examination and/or tuberculin skin test shall not be necessary, provided the Physical was conducted not earlier than twelve (12) months prior to the admission of the Patient, and the Physical meets all other requirements specified in Section 1100.A.1, unless the receiving Facility has an indication that the health status of the Patient has changed significantly. In such instances of transfer, issues of appropriateness of level of treatment placement shall be addressed in the Patient record.

SECTION 1200 – MEDICATION MANAGEMENT

1201. General (I).

A. Medications, including Controlled Substances, medical supplies, and those items necessary for the rendering of first aid shall be properly managed in accordance with local, state, and federal law and regulations, which includes the securing, storing, and administering, dispensing, and delivering of medications, medical supplies, and biologicals, their disposal when discontinued or outdated, and their disposition at Discharge, death, or transfer of a Patient. All Facilities that manage Medication of Patients shall comply with this section.

B. Applicable reference materials published within the previous three (3) years shall be available at the Facility in order to provide Staff and/or Volunteers with adequate information concerning Medications.

1202. Medication Orders (I).

A. Medication, including oxygen, shall be administered and delivered to Patients only upon orders of a Physician or other Authorized Healthcare Provider. Medications accompanying Patients at admission may be administered and/or delivered to Patients, provided the Medication is in the original container and the order/authorization is subsequently obtained as a part of the admission Physical Examination. If there are concerns regarding whether or not such Medications should be administered and/or delivered due to the condition or state of the Medication, e.g., old, expired, makeshift labels, or the condition or state of health of the newly-admitted individual, Staff and Volunteers shall consult with or make arrangements to have the Patient examined by a Physician or other Authorized Healthcare Provider, or at the local hospital emergency room prior to administering or delivering any Medications.

B. All orders (including verbal orders) shall be signed and dated by a Physician or other Authorized Healthcare Provider within a time-period as designated by the Facility, but no later than seventy-two (72) hours after the order is given.

C. In an Opioid Treatment Program, all orders shall be documented, signed, and dated by the Opioid Treatment Program Physician. The Opioid Treatment Program Physician shall determine the initial and subsequent dosage and schedule, and prescribe such dose and schedule to include changes by verbal or written order to the pharmacist and Licensed Nurse. However, the verbal order shall be documented, signed, and dated by the Opioid Treatment Program Physician within seventy-two (72) hours.

D. Orders for Controlled Substances shall be authenticated by the prescribing Physician or designee.

E. Medications and medical supplies ordered for a specific Patient shall not be administered and/or delivered to any other Patient.

1203. Administering Medication (I).

A. Doses of Medication shall be administered by the same Licensed Nurse who prepared them for administration. Preparation shall occur no earlier than one (1) hour prior to administering. Preparation of doses for more than one (1) scheduled administration shall not be permitted. Each Medication dose administered shall be recorded on the Patient's Medication administration record ("MAR") as it is administered. Should an ordered dose of Medication not be administered, an explanation as to the reason shall be recorded on the MAR. The recording of Medication administration shall include: the medication name, dosage, mode of administration, date, time, and the signature of the individual administering or supervising the taking of the Medication. Initials in lieu of signatures are acceptable provided such initials can be readily identified on the MAR. If the ordered dosage is to be given on a varying schedule, for example, "take two tablets the first day and one tablet every other day by mouth with noon meal," the number of tablets shall also be recorded.

B. When a Physician or other Authorized Healthcare Provider changes the dosage of a Medication, a new entry reflecting the change shall be documented in the Medication administration record ("MAR"). No dose shall be administered until the Patient's identity has been verified and the dosage compared with the currently ordered and documented dosage level. Ingestion shall be observed and verified by the person authorized to administer the Medication.

C. Opioid Treatment Program Only:

1. The Facility shall not administer a Patient's initial dose of Opioid Treatment Program Medication until the program Physician or other Authorized Healthcare Provider has determined that all admission criteria have been met, to include a completed Physical Examination by the program Physician or other Authorized Healthcare Provider and confirmation of current Medication regimen being taken by the applicant.

2. The initial dose of methadone shall not exceed thirty (30) milligrams and the initial total daily dose for the first day shall not exceed forty (40) milligrams unless the Opioid Treatment Program Physician or other Authorized Healthcare Provider justifies in the Patient record that forty (40) milligrams did not suppress the abstinence symptoms after three (3) hours of observation following the initial dose. There shall be written justification in the Patient record, signed and dated by the Opioid Treatment Program Physician or other Authorized Healthcare Provider, for doses in excess of one hundred (100) milligrams of methadone per day after the first day.

3. A Patient's scheduled dose may be temporarily delayed if necessary, e.g., to obtain a urine sample or for Counselor consultation. The dose shall not be withheld, however, for failure to comply with the Opioid Treatment Program rules or procedures unless the decision is made to terminate the Patient's participation in the Opioid Treatment Program. A dose may be withheld only when the Opioid Treatment Program Physician or other Authorized Healthcare Provider determines that such action is medically indicated.

4. When the Opioid Treatment Program Physician prescribes Controlled Substances other than Opioid Treatment Program Medications, such prescriptions shall not be administered to any Patient unless the Opioid Treatment Program Physician or other Authorized Healthcare Provider first examines the Patient and assesses his or her potential for misuse of such Medications.

D. Self-administration of Medications shall be allowed only on the specific written orders of a Physician or other Authorized Healthcare Provider. An appropriate Staff member delivering the Medication shall document the delivery. Such documentation shall include the date, time, and the signature of the individual delivering the Medication.

E. When Patients who cannot Self-Administer Medications leave the Facility for an extended time, the proper amount of Medications, placed into a prescription vial or bottle, along with dosage, mode, date, and time of administration, shall be given to a responsible person who will be in charge of the Patient during his or her

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absence from the Facility and properly documented in the Medication administration record. If there is no designated responsible party for the Patient, then the attending Physician or other Authorized Healthcare Provider shall be contacted for proper instructions.

F. The Medications prescribed for a Patient shall be protected from use by other Patients, visitors, and Staff and Volunteers. For those Patients who have been authorized by a Physician or other Authorized Healthcare Provider to Self-Administer Medications, such Medications (nitroglycerin, rescue inhalers, epinephrine auto-injectors) may be kept on the Patient's person, i.e., a pocketbook, pocket, or any other method that would enable the Patient to control the items.

1204. Pharmacy Services (I).

A. Any pharmacy within the Facility shall be provided by or under the direction of a licensed pharmacist in accordance with accepted professional principles and appropriate federal, state, and local laws and regulations.

B. Facilities that maintain stocks of Medications and biologicals for Patient use within the Facility shall obtain and maintain from the South Carolina Board of Pharmacy a valid, current, non-dispensing drug outlet permit that is displayed in a conspicuous location in the Facility.

C. Labeling of Medications dispensed to Patients shall be in compliance with local, state, and federal laws and regulations applicable to retail pharmacies.

1205. Medication Containers (I).

A. Medications for Patients shall be obtained from a permitted pharmacy or Authorized Healthcare Provider as allowed by law on an individual prescription basis. These Medications shall bear a label affixed to the container that reflects at least the following: name of pharmacy, name of Patient, name of the prescribing Physician or other Authorized Healthcare Provider, date and prescription number, directions for use, and the name and dosage unit of the Medication. The label shall be brought into accord with the directions of the Physician or other Authorized Healthcare Provider each time the prescription is refilled. Medication containers having soiled, damaged, incomplete, illegible, or makeshift labels shall be returned to the pharmacy for re-labeling or disposal.

B. Medications for each Patient shall be kept in the original container(s) including unit dose systems; there shall be no transferring between containers or opening blister packs to remove Medications for destruction or adding new Medications for administration, except under the direction of a pharmacist. In addition, for those Facilities that utilize the unit dose system or multi-dose system, an on-site review of the Medication program by a pharmacist shall be conducted on at least a quarterly basis to ensure the program has been properly implemented and maintained. For changes in dosage, the new packaging shall be available in the Facility no later than the next administration time subsequent to the order. This shall be documented and signed by the pharmacist.

C. Medications for Patients shall be obtained from a permitted pharmacy or prescriber on an individual prescription basis. These Medications shall bear a label affixed to the container that reflects at least the following: name of pharmacy, name of Patient, name of the prescribing Physician or dentist, date and prescription number, directions for use, and the name and dosage unit of the Medication.

D. When a Physician or other legally Authorized Healthcare Provider changes the dosage of a Medication, such information shall be documented in the Medication administration record and a label that does not obscure the original label shall be attached to the container that states, "Directions changed; refer to MAR and Physician or other Authorized Healthcare Provider orders for current administration instructions."

1206. Medication Storage (I).

A. Medications may be stored in a separate locked box within a refrigerator at or near the Medication storage area, either behind a locked door or the refrigerator shall be locked.

B. Controlled Substances and ethyl alcohol shall be stored in accordance with applicable state and federal laws. A record of the stock and distribution of all Controlled Substances shall be maintained in such a manner that the disposition of any particular item may be readily traced.

C. Medications shall be stored:

1. Separately from poisonous Controlled Substances or body fluids;
2. In a manner which provides for separation between topical and oral Medications, and which provides for separation of each individual Patient's Medication.

D. Stock Medications

1. Unless the Facility has a permitted pharmacy, stocks of Legend Medications shall not be stored except those specifically prescribed for individual Patients.

2. Non-legend Medications may be retained and labeled as stock in the Facility for administration as ordered by a Physician or other Authorized Healthcare Provider.

3. Stocks of naloxone may be stored for emergency overdose crises, with or without specific prescription for individual Patients.

4. If stock non-Patient specific Controlled Substances are to be used, a Controlled Substances registration from the Department's Bureau of Drug Control and a Controlled Substances registration from the federal Drug Enforcement Administration shall be obtained. The registrations shall be displayed in a conspicuous location within the Facility.

E. No Medications may be left in a Patient's room unless the Facility provides an individual cabinet/compartments that is kept locked in the room of each Patient who has been authorized to Self-Administer in writing by a Physician, or other Authorized Healthcare Provider. In lieu of a locked cabinet or compartment, a room that can be locked and is licensed for a capacity of one (1) Patient is acceptable provided the Medications are not accessible by unauthorized persons, the room is kept locked when the Patient is not in the room, the Medications are not Controlled Substances, and all other requirements of this section are met.

F. The Medications prescribed for a Patient shall be protected from use by other Patients, visitors and Staff and Volunteers. For those Patients who have been authorized by a Physician or other Authorized Healthcare Provider to self-administer Medications, such Medications may be kept on the Patient's person, i.e., a pocketbook, pocket, or any other method that would enable the Patient to control the items.

G. During nighttime hours in semi-private rooms, only Medications that a Physician or other Authorized Healthcare Provider has ordered in writing for emergency/immediate use, e.g., nitroglycerin, rescue inhalers, or epinephrine auto-injectors may be kept unlocked in or upon a cabinet or bedside table, and only when the Patient to whom that Medication belongs is present in the Patient room.

1207. Disposition of Medications (I).

A. The Facility shall release Medications to the Patient upon Discharge, unless specifically prohibited by the ordering Physician or Authorized Healthcare Provider.

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B. Patient's Medications shall be destroyed by the Facility Administrator or his or her designee or returned to dispensing pharmacy when:

1. Medication has deteriorated or exceeded its safe shelf-life; and
2. Unused portions remain due to death, Discharge, or discontinuance of the Medications. Medications that have been discontinued by order may be stored for a period not to exceed thirty (30) calendar days provided they are stored separately from current Medications.

C. The destruction of Medication shall occur within five (5) days of the above-mentioned circumstances, be witnessed by the Administrator or his or her designee, and the mode of destruction indicated.

D. The destruction of controlled substances Medications shall be accomplished only by the Administrator or his or her designee on-site and witnessed by a Licensed Nurse or pharmacist, or by returning them to the dispensing pharmacy and obtaining a receipt from the pharmacy.

1208. Opioid Treatment Program Take-home Medication (II).

A. Opioid Treatment Program Medication, including guest and take-home doses, shall be administered to Patients in single doses. Take-home bottles shall be labeled in accordance with federal and state law and regulations and shall contain necessary cautionary statements; caps shall be childproof.

B. Take-home Opioid Treatment Program Medication may be given to Patients who demonstrate a need for a more flexible schedule in order to enhance and continue the rehabilitative process. However, since Opioid Treatment Program Medication is an opioid subject to misuse if not managed properly, precautions shall be taken to prevent its potential misuse. The Opioid Treatment Program Physician shall ensure that take-home Medication is given to those Patients who meet the following criteria for eligibility:

1. Adherence to Opioid Treatment Program rules, regulations, and policies;
2. Length of time in the Opioid Treatment Program and level of maintenance treatment;
3. Presence of Opioid Treatment Program Medication in substance use testing;
4. Potential complications from concurrent health problems;
5. Lengthy travel distance to the Facility; and
6. Progress in maintaining a stable lifestyle as evidenced by:
 - a. Absence of misuse of opioids and non-opioids;
 - b. Absence of alcohol misuse, or determination that the using alcohol and is in treatment for the alcohol misuse problem;
 - c. Regularity of attendance at the Opioid Treatment Program, to include required counseling sessions;
 - d. Absence of serious behavior problems, including loitering at the Opioid Treatment Program;
 - e. Absence of known recent criminal activity;
 - f. Employment, school attendance, or other appropriate activity; and

g. Assurance that take-home Medication can be securely transported and stored by the Patient for his or her use only.

C. The decision to provide take-home Medication to Opioid Treatment Program Patients and the amount provided shall be based upon and determined by the reasonable clinical judgment of the Opioid Treatment Program Physician and appropriately documented and recorded in the Patient's file prior to the initiation of the take-home dose. The Opioid Treatment Program Physician shall document compliance by the Patient with all of the aforementioned requirements prior to providing the first take-home dose. (I)

D. The Patient's take-home status shall be reviewed and documented at least on a quarterly basis by the primary Counselor.

E. If a Patient, due to special circumstances, such as illness, personal or family crisis, travel, or other hardship, is unable to conform to the applicable treatment schedule, he or she may be permitted to receive up to a two (2)-week supply of Opioid Treatment Program Medication, based on the clinical judgment of the Opioid Treatment Program Physician. The justification for permitting the adjusted schedule shall be recorded in the Patient's record by the Opioid Treatment Program Physician.

F. One-time or temporary (usually not to exceed three (3) days) take-home Medication shall be approved by the Facility for family or medical emergencies or other exceptional circumstances.

G. A Patient transferring from another Opioid Treatment Program or readmitted after having left the Opioid Treatment Program voluntarily and who has complied with Facility rules and program policies and procedures may be granted an initial take-home schedule that is no greater than that allowed at the time of transfer or voluntary Discharge provided all criteria other than length of treatment are met.

H. A Patient discharged from another Opioid Treatment Program shall only be initially granted take-home privileges from the new admitting Opioid Treatment Program provided the requirements of Section 1209 are met.

I. Take-home Medication shall be labeled with the name of the Opioid Treatment Program, address, telephone number, and packaged in conformance with state and federal regulations.

J. A diversion control plan shall be established to assure quality care while preventing the diversion of Opioid Treatment Program Medication from treatment to illicit use. The plan shall include:

1. Clinical and administrative continuous monitoring;
2. Problem identification, correction and prevention;
3. Accountability to the Patient and community; and
4. Opioid Treatment Program Medication usage and amount accountability.

1209. Opioid Treatment Program Guest-Dosing (II).

A. When a Patient is separated from his or her Opioid Treatment Program for an extended period, and the Patient is in the vicinity of another Licensed Opioid Treatment Program, guest-dosing may occur provided there is: (I)

1. Authorization in writing from the sending Opioid Treatment Program Physician or other Authorized Healthcare Provider; and

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2. Information from the sending Opioid Treatment Program to include at least the following: Patient name, identifying information, means of identity verification, dates of guest-dosing, amount of each day's dose, number of take-home doses (if any), urinalysis history, and any other information requested by the authorizing treatment Opioid Treatment Program.

B. Records of guest-dosing shall be maintained at the Opioid Treatment Program providing the guest-dosing.

C. Guest-dose status for a Patient shall not exceed twenty-eight (28) days unless there are special circumstances, and an extension of time is agreed upon by the two (2) Opioid Treatment Programs involved.

D. A Facility desiring to administer guest dosing for Patients from neighboring states in the event of a natural disaster or emergency shall:

1. Request that the Department concur that an emergency situation exists by contacting the Department;

2. Administer the guest-dosing only upon written orders from the Facility's Opioid Treatment Program physician; and

3. Maintain documentation of the physician's rationale for the dosing protocol and information utilized to make the decision.

1210. Security of Medications (I).

A. The areas where Opioid Treatment Program stock Medications are maintained or administered shall be secured. Access to Controlled Substances, which include Opioid Treatment Program Medications, shall be limited to persons licensed or registered to order, administer, or dispense those Medications.

B. Immediately after administering, the remaining contents of the containers shall be purged to prevent the accumulation of residual Opioid Treatment Program Medications. The Opioid Treatment Program shall ensure that take-home Medications bottles are returned to the Opioid Treatment Program. All used containers, as well as take-home bottles given to Patients, shall be made inaccessible to unauthorized individuals. Used containers shall be disposed of by the Opioid Treatment Program.

SECTION 1300 – MEAL SERVICE

1301. General (II).

A. All Facilities that prepare food on-site shall be approved by the Department, and shall be regulated, inspected, and graded pursuant to R.61-25, Retail Food Establishments. Facilities preparing food on-site, licensed for sixteen (16) beds or more subsequent to the promulgation of this regulation shall have commercial kitchens. Existing Facilities with sixteen (16) licensed beds or more may continue to operate with equipment currently in use; however, only commercial kitchen equipment shall be used when replacements are necessary. Those Facilities with fifteen (15) beds or less shall be regulated pursuant to R.61-25 with certain exceptions in regard to equipment (may utilize domestic kitchen equipment).

B. When meals are catered to a Facility, such meals shall be obtained from a food service establishment permitted by the Department, pursuant to R.61-25 and there shall be a written executed contract with the food service establishment on file in the Facility.

C. All food to be served to Patients shall be transported, received, stored, and handled in accordance with R.61-25. Washing and sanitation of all food contact and non-food contact surfaces, equipment, and utensils shall meet the standards required by R.61-25. A handwash lavatory shall be provided in the food service area equipped with liquid soap and a hand drying provision. Hand sanitizers shall not be used in lieu of liquid soap.

D. If food is prepared at a central kitchen and delivered to separate Facilities or separate buildings and/or floors of the same Facility, provisions shall be made and approved by the Department for proper maintenance of food temperatures and a sanitary mode of transportation.

E. Food shall be prepared by methods that conserve the nutritive value, flavor, and appearance. The food shall be palatable, properly prepared, and sufficient in quantity and quality to meet the daily nutritional needs of the Patients in accordance with written dietary policies and procedures. Efforts shall be made to accommodate the religious, cultural, and ethnic preferences of each individual Patient and consider variations of eating habits, unless the orders of a Physician or other Authorized Healthcare Provider contraindicate.

1302. Food and Food Storage (II).

Residential Facilities shall maintain at least a one (1)-week supply of staple foods and a two (2)-day supply of perishable foods on the premises. Supplies shall be appropriate to meet the requirements of the menu and special diets.

1303. Meals and Services.

A. Residential Facilities shall serve a minimum of three (3) nutritionally-adequate meals in each twenty-four (24)-hour period unless otherwise directed by the Patient’s Physician or other Authorized Healthcare Provider. Not more than fourteen (14) hours shall elapse between the serving of the evening meal and breakfast the following day. (II)

B. Specific times for serving meals shall be established, documented on a posted menu, and followed.

C. Suitable food and snacks shall be available and offered between meals at no additional cost to the Patients. (II)

1304. Meal Service Personnel for Residential Facilities (II).

A. The health, disease control, and cleanliness of all those engaged in food preparation and serving shall be in accordance with R.61-25.

B. Dietary services shall be organized with established lines of accountability and clearly defined job assignments for those engaged in food preparation and serving. There shall be trained Staff and/or Volunteers to supervise the preparation and serving of the proper diet to the Patients . Patients may engage in food preparation in accordance with Facility guidelines; however, trained Staff and/or Volunteers shall supervise.

1305. Menus.

A. Menus shall be planned and written at a minimum of one (1) week in advance and dated as served. The current week’s menu, including routine and special diets and any substitutions or changes made, shall be readily available or posted in one (1) or more conspicuous places in a public area. All substitutions made on the master menu shall be recorded in writing.

B. If the Facility accepts Patients in need of medically-prescribed special diets, the menus for such diets shall be planned by a professionally qualified Dietitian, or shall be reviewed and approved by a Physician or other Authorized Healthcare Provider. The Facility shall maintain documentation that each of these menus has been planned by a Dietitian, a Physician, or other Authorized Healthcare Provider. At a minimum, documentation for each Patient’s special diet menu shall include the signature of the Dietitian, the Physician, or other Authorized Healthcare Provider, his or her title, and the date he or she signed the menu.

C. Records of menus as served shall be maintained for at least thirty (30) days.

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SECTION 1400 – EMERGENCY PROCEDURES AND DISASTER PREPAREDNESS

1401. Disaster Preparedness (II).

A. All Residential Facilities shall develop, by contact and consultation with their county emergency preparedness agency, a written plan for actions to be taken in the event of a disaster and implement the written plan for actions at the time of need. Prior to initial licensing of a Facility by the Department, the completed plan shall be submitted to the Department for review. At the time of each License renewal, a completed form prescribed and furnished by the Department addressing specific components of the plan shall be included with each application submitted to the Department. All Staff and Volunteers shall be made familiar with this plan and instructed as to any required actions. A copy of the plan shall be available for Inspection by the Patient and/or responsible party and the Department upon request. The plan shall be reviewed and updated Annually, and as appropriate. The Facility shall conduct and document a rehearsal of the emergency and disaster evacuation plan at least Annually and shall not require Patient participation.

B. The disaster plan for Residential Facilities shall include, but not be limited to:

1. A sheltering plan to include:

a. The licensed bed capacity and average occupancy rate;

b. Name, address, and phone number of the sheltering facility(ies) to which the Patients will be relocated during a disaster; and

c. A letter of agreement signed by an authorized representative of each sheltering facility that shall include: the number of relocated Patients that can be accommodated; sleeping, feeding, and medication plans for the relocated Patients; and provisions for accommodating relocated staff. The letter shall be updated annually with the sheltering facility and whenever significant changes occur. For those facilities located in Beaufort, Berkeley, Charleston, Colleton, Dorchester, Horry, Jasper, and Georgetown counties, at least one (1) sheltering facility must be located in a county other than these counties.

2. A transportation plan to include agreements with entities for relocating Patients that addresses:

a. The number and type of vehicles required;

b. How and when the vehicles are to be obtained;

c. Who (by name or organization) will provide drivers;

d. Procedures for providing appropriate medical support during relocation;

e. The estimated time to accomplish the relocation; and

f. The primary and secondary routes to be taken to the sheltering facility.

3. A staffing plan for the relocated Patients to include:

a. How care will be provided to the relocated Patients including the number and type of Staff;

b. Plans for relocating Staff or assuring transportation to the sheltering facility; and

c. Co-signed statement by an authorized representative of the sheltering facility if staffing will be provided by the sheltering facility.

4. A written, signed, and dated statement from the county emergency preparedness agency verifying the Facility's plan was developed and reviewed through contact and consultation with the county emergency preparedness agency.

C. During any emergent event, the Facility shall provide data, Facility and evacuation status, and other requested information as determined by the Department, and at a frequency as determined by the Department.

D. Evacuation is a temporary measure in order to evacuate Patients from potentially hazardous and/or harmful circumstances and shall not exceed seven (7) calendar days. In the event evacuated Patients are unable to return to the Facility within seven (7) days due to damage to the Facility or its components, the lack of electricity and/or water, or other similar reasons, the Facility shall endeavor to assess each Patient's current condition and identify each Patient's current needs and preferences. Based on the resources available, the Facility shall implement each Patient's Discharge plan. For Patients needing assistance or support following Discharge, the Facility shall coordinate the transfer of the Patients to their responsible parties or to appropriately licensed Facilities capable of meeting the Patients' needs. Prior to the seventh (7th) day, if the Facility determines an extension of time is needed, the Facility may request approval from the Department.

1402. Licensed Capacity During an Emergency (II).

A. In the event that the Facility temporarily provides shelter for evacuees who have been displaced due to a disaster, then for the duration of that emergency, provided the health, safety, and well-being of any Patient is not compromised, it is permissible to temporarily exceed the licensed capacity for the Facility in order to accommodate these individuals.

B. A Facility desiring to temporarily admit Patients in excess of its licensed bed capacity due to an emergency shall:

1. Request that the Department concur that an emergency situation exists by contacting the Department;
2. Determine the maximum number of Patients to be temporarily admitted;
3. Establish an anticipated date for Discharge of the temporary Patients;
4. Outline how and where the temporary Patients will be housed; and
5. Contact the county emergency preparedness agency to advise them of additional Patients.

C. The Facility shall not require the Patients temporarily admitted during the emergency situation to undergo tuberculin screening or submit to an admission history and physical examination.

D. The Facility shall notify the Department when the Patient census has returned to, or moves below, normal bed capacity by Discharge or transfer to licensed beds.

E. If the event occurs after normal business hours, the Facility shall contact the Department promptly during the next business day.

F. The Facility shall resolve in advance all other issues related to the temporary Patients (for example, Staff, Physician orders, additional food, and handling of Medications) by memorandum of agreements, internal policies and procedures, and emergency planning documents

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1403. Emergency Call Numbers (II).

Emergency call data shall be posted in a conspicuous place and shall include at least the telephone numbers of fire and police departments, an ambulance service, and the poison control center. Other emergency call information shall be available, to include the names, addresses, and telephone numbers of the Staff to be notified in case of emergency, and the Physician or other Authorized Healthcare Provider on-call.

1404. Continuity of Essential Services (II).

There shall be a written plan to be implemented to assure the continuation of essential Patient supportive services for such reasons as power outage, water shortage, or in the event of the absence from work of any portion of the work force resulting from inclement weather or other causes.

SECTION 1500 – FIRE PREVENTION

1501. Arrangements for Fire Department Response (I).

A. Each Facility shall develop, in coordination with its supporting fire department and/or disaster preparedness agency, suitable written plans for actions to be taken in the event of fire.

B. Facilities located outside of a service area or range of a public fire department shall arrange for the nearest fire department to respond in case of fire by written agreement with that fire department. A copy of the agreement shall be kept on file in the Facility and a copy shall be forwarded to the Department. If the agreement is changed, a copy shall be forwarded to the Department.

1502. Fire Response Training (I).

A. Each Staff member and Volunteer shall receive training within twenty-four (24) hours of his or her first day of employment in the Facility, and at least Annually thereafter, addressing at a minimum, the following:

1. The Facility fire plan including evacuation routes and procedures;
2. Reporting a fire;
3. Use of the fire alarm system, if applicable;
4. Location and use of fire-fighting equipment;
5. Methods of fire containment; and
6. Specific responsibilities, tasks, or duties of each individual.

B. Documentation of the fire response training shall be signed and dated by both the individual providing the training and the individual receiving the training, and maintained in the individual's Staff record.

1503. Fire Drills (I).

A. A plan for the evacuation of Patients, Staff members, and visitors, to include evacuation routes and procedures, in case of fire or other emergencies, shall be established and posted in conspicuous public areas throughout the Facility.

B. Patients shall be made familiar with the fire plan and evacuation plan upon admission. The Facility shall maintain documentation of the review of the fire plan and evacuation plan with the Patient in the Patient's record.

C. All Patients capable of assisting in their own evacuation shall be trained in the proper actions to take in the event of a fire.

D. For Residential Facilities only:

1. Unless otherwise mandated by statute or regulation, an unannounced fire drill shall be conducted at least quarterly for all shifts. Each Staff member and Volunteer shall participate in a fire drill at least once each year. Records of drills shall be maintained at the Facility, indicating the date, time, shift, description, and evaluation of the drill, and the names of Staff and Volunteers and number of Patients directly involved in responding to the drill.

2. All Patients at the time of the fire drill shall participate in the drill. In instances when a Patient refuses to participate in a drill, efforts shall be made to encourage participation, e.g., counseling, implementation of incentives rewarding patients for participation, specific Staff-to-Patient and Volunteer-to-Patient assignments to promote Patient participation. Continued refusal may necessitate implementation of the Discharge planning process to place the Patient in a setting more appropriate to their needs and abilities.

SECTION 1600 – MAINTENANCE

1601. General (II).

A. The Facility shall keep all equipment and building components (for example, doors, windows, lighting fixtures, plumbing fixtures) in good repair and operating condition. The Facility shall document preventive maintenance. The Facility shall comply with the provisions of the codes officially adopted by the South Carolina Building Codes Council and the South Carolina State Fire Marshal applicable to the Facility. (II)

B. If applicable, a documented and implemented procedure shall be developed for calibrating Medication-dispensing instruments consistent with manufacturer’s recommendations to ensure accurate dosing and tracking.

1602. Preventive Maintenance of Emergency Equipment and Supplies (II).

Each Facility shall develop and implement a written preventive maintenance program for all fire alarm, electrical, mechanical, plumbing, fire protection systems and for all equipment and supplies including, but not limited to, all Patient monitoring equipment, isolated electrical systems, conductive flooring, Patient grounding systems, and medical gas systems. Facilities shall check and/or test this equipment at intervals ensuring proper operation and state of good repair. After repairs and/or alterations to any equipment or system, the Facility shall thoroughly test the equipment or system for proper operation before returning it to service. The Facility shall maintain records for each piece of emergency equipment to indicate its history of testing and maintenance.

SECTION 1700 – INFECTION CONTROL AND ENVIRONMENT

1701. Staff Practices.

Staff practices shall promote conditions that prevent the spread of infectious, contagious, or communicable diseases and provide for proper disposal of toxic and hazardous substances. These preventive measures and/or practices shall be in compliance with applicable guidelines of Bloodborne Pathogens Standard of the Occupational Safety and Health Act of 1970; the Centers for Disease Control and Prevention and R.61-105, Infectious Waste Management; and other applicable federal, state, and local laws and regulations.

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1702. Tuberculosis Risk Assessment and Screening (I).

A. Tuberculosis Testing. The Facility may utilize either Tuberculin skin testing or Blood Assay for *Mycobacterium tuberculosis* (“BAMT”) for detecting *Mycobacterium tuberculosis* infection:

1. Tuberculin skin testing. A small dose (0.1 mil) of purified protein derivative (PPD) tuberculin is injected just beneath the surface of the skin (by the intradermal Mantoux method), and the area is examined for induration (hard, dense, raised area at the site of the TST administration) forty-eight to seventy-two (48 to 72) hours after the injection (but positive reactions can still be measurable up to a week after administering the TST). The size of the indurated area is measured with a millimeter ruler and the reading is recorded in millimeters, including zero (0) millimeters to represent no induration. Redness and/or erythema is insignificant and is not measured or recorded. Authorized Healthcare Providers are permitted to perform tuberculin skin testing and symptom screening.

2. Blood Assay for *Mycobacterium tuberculosis* (“BAMT”). A general term to refer to in vitro diagnostic tests that assess for the presence of tuberculosis (“TB”) infection with *Mycobacterium tuberculosis*. This term includes, but is not limited to, IFN- γ release assays (“IGRA”).

B. The Facility shall conduct an annual tuberculosis risk assessment in accordance with the Centers for Disease Control guidelines to guide the Facility’s infection control policies and procedures related to the appropriateness and frequency of tuberculosis screening and other tuberculosis related measures to be taken.

C. Baseline Status.

1. The Facility shall determine the baseline status of all staff according to current Centers for Disease Control and Departmental Tuberculosis guidelines.

2. Tuberculosis Screening. All staff within three (3) months prior to Patient contact shall have a baseline two-step Tuberculin Skin Test (“TST”) or a single Blood Assay for *Mycobacterium tuberculosis* (“BAMT”). If a newly employed staff or volunteer has had a documented negative TST or a BAMT result within the previous twelve (12) months, a single TST (or the single BAMT) can be administered and read to serve as the baseline prior to Patient contact.

D. Post Exposure. After known exposure to a person with potentially infectious tuberculosis disease without use of adequate personal protection, the tuberculosis status of all staff shall be determined in a manner prescribed in the Centers for Disease Control and Department’s most current tuberculosis guidelines.

E. Annual Tuberculosis Training. All staff shall receive annual training regarding tuberculosis to include risk factors and signs and symptoms of tuberculosis disease. The annual tuberculosis training shall be documented in a staff record and maintained at the Facility.

F. Serial Screening. The Facility shall follow the Centers for Disease Control and Department’s most current tuberculosis guidelines related to serial screening.

1703. Tuberculosis Screening for Patients (I).

A. At baseline, Patients in Residential Facilities shall have evidence of a two-step tuberculin skin test or single Blood Assay for *Mycobacterium tuberculosis*. If the Patient in a Residential Facility has a documented negative tuberculin skin test (at least single-step) within the previous twelve (12) months, the Patient shall have only one (1) tuberculin skin test or single Blood Assay for *Mycobacterium tuberculosis* to establish a baseline status.

B. Patients in Residential Facilities shall have at least the first step within thirty (30) days prior to admission and no later than forty-eight (48) hours after admission.

C. Patients in the Opioid Treatment Program shall receive the first step of the two-step tuberculin test within seventy-two (72) hours of admission to the Facility. The second step of the two-step tuberculin skin test must be administered within the next seven to fourteen (7 to 14) days.

D. Patients with Positive Tuberculosis Results.

1. Patients with a baseline positive or newly positive test result for Mycobacterium tuberculosis infection (i.e., tuberculosis skin test or Blood Assay for Mycobacterium Tuberculosis) or documentation of treatment for latent tuberculosis infection, tuberculosis disease or signs or symptoms of tuberculosis, e.g., cough, weight loss, night sweats, fever, shall have a chest radiograph performed immediately to exclude tuberculosis disease (or evaluate an interpretable copy taken within the previous three (3) months). Routine repeat chest radiographs are not required unless symptoms or signs of TB tuberculosis disease develop or unless recommended by a Physician. These Patients will be evaluated for the need for treatment of TB tuberculosis disease or latent tuberculosis infection and will be encouraged to follow the recommendations made by a Physician with tuberculosis expertise (i.e., the Department’s Tuberculosis Control program).

2. Patients who are known or suspected to have tuberculosis disease shall be transferred from the Facility if the Facility does not have an Airborne Infection Isolation room, required to undergo evaluation by a Physician, and permitted to return to the Facility only with approval by the Department’s Tuberculosis Control program.

1704. Housekeeping (II).

A. The Facility and its grounds shall be neat, clean, free of vermin, and free of offensive odors.

B. Interior housekeeping shall at a minimum include:

1. Cleaning each specific area of the Facility;
2. Cleaning and disinfection, as needed, of equipment used and/or maintained in each area, appropriate to the area and the equipment’s purpose or use;
3. Chemicals indicated as harmful on the product label, cleaning materials and supplies shall be in locked storage areas and inaccessible to Patients; and
4. During use of chemicals indicated as harmful on the product label, cleaning materials and supplies shall be in direct possession of the Staff member and monitored at all times.

C. Exterior housekeeping shall at a minimum include:

1. Cleaning of all exterior areas, such as porches and ramps, and removal of safety impediments such as water, snow, and ice; and
2. Keeping Facility grounds free of weeds, rubbish, overgrown landscaping, and other potential breeding sources for vermin.

1705. Infectious Waste (I).

Accumulated waste, including all contaminated sharps, dressings, pathological, and/or similar infectious waste, shall be disposed of in a manner compliant with R.61-105, Infectious Waste Management, and the OSHA Bloodborne Pathogens Standard.

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1706. Pets (II).

A. Healthy animals that are free of fleas, ticks, and intestinal parasites, and have been examined by a veterinarian prior to entering the Facility, have received required inoculations, if applicable, and that present no apparent threat to the health, safety, and well-being of the Patients, shall be permitted in the Facility, provided they are sufficiently fed, and cared for, and that the pets and their housing and food containers are kept clean.

B. Pets shall not be allowed near Patients who have allergic sensitivities to pets, or for other reasons, such as Patients who do not wish to have pets near them.

C. Pets shall not be allowed in the kitchen area. Pets shall be permitted in Patient dining and activities areas only during times when food is not being served. If the dining and activities area is adjacent to a food preparation or storage area, those areas shall be effectively separated by walls and closed doors while pets are present.

1707. Clean and Soiled Linen and Clothing for Residential Facilities (II).

A. Clean Linen and Clothing.

1. A supply of clean, sanitary linen and clothing shall be available at all times;
2. In order to prevent the contamination of clean linen and clothing by dust or other airborne particles or organisms, clean linen and clothing shall be stored and transported in a sanitary manner, for example, enclosed and covered; and
3. Clean linen and clothing shall be separated from storage for other purposes.

B. Soiled Linen and Clothing.

1. Soiled linen and clothing shall not be sorted, rinsed, or washed outside of the laundry service area;
2. Provisions shall be made for collecting, transporting, and storing soiled linen and clothing;
3. Soiled linen and clothing shall be kept in enclosed, covered, and leak proof containers; and
4. Laundry operations shall not be conducted in Patient rooms, dining rooms, or in locations where food is prepared, served, or stored. Patients may sort, rinse, and handwash their own soiled, delicate, personal items, e.g., pantyhose, underwear, socks, handkerchiefs, clothing, accessories, heirloom linens, needlepoint, crocheted, or knitted pillows or pillowcases, or other similar items personally owned and cared for by, in a private bathroom or sink, provided the practice does not create a safety hazard, e.g. water on the floor.

SECTION 1800 – QUALITY IMPROVEMENT PROGRAM (II)

A. Facilities shall maintain a written, implemented Quality Improvement Program that provides effective self-assessment and implementation of changes designed to improve the treatment/care/services provided by the Facility.

B. The Quality Improvement Program, at a minimum, shall:

1. Establish desired outcomes and the criteria by which policy and procedure effectiveness is regularly, systematically, and objectively accomplished;
2. Identify, evaluate, and determine the causes of any deviation from the desired outcomes;

3. Identify the action taken to correct deviations and prevent future deviation, and the person(s) responsible for implementation of these actions;
4. Establish ways to measure the quality of Patient care and Staff performance, as well as the degree to which the policies and procedures are followed;
5. Analyze the appropriateness of Individual Plans of Care and the necessity of treatment/care/services rendered;
6. Analyze the effectiveness of the fire plan;
7. Analyze all incidents and accidents to include Patient deaths;
8. Analyze any infection, epidemic outbreaks, or other unusual occurrences which threaten the health, safety, or well-being of the Patients; and
9. Establish a systematic method of obtaining feedback from Patients and other interested persons, e.g., family members and peer organizations, as expressed by the level of satisfaction with treatment/care/services received.

SECTION 1900 – DESIGN AND CONSTRUCTION

1901. Codes and Standards.

All Facilities shall be planned, designed, and equipped to provide and promote the health, safety, and well-being of each Patient. Facility design shall be such that all Patients have access to required services.

1902. Local and State Codes and Standards (II).

A. Facilities shall comply with provisions of the codes officially adopted by the South Carolina Building Codes Council and the South Carolina State Fire Marshal applicable to the type of Facility. No Facility shall be licensed unless the Department has assurance that responsible local zoning and building officials have approved the Facility for code compliance.

B. All Facilities shall meet the construction codes and regulations for the building and its essential equipment and systems in effect at the time the License was issued unless specifically required otherwise in writing by the Department.

C. Facilities shall ensure all additions, alterations, or renovations meet the codes, regulations, and requirements in effect at the time of the plan's approval.

D. Any Facility that closes or has its License revoked and for which application for licensure is made at the same site shall be considered a new building and shall meet the current codes, regulations, and requirements for the building and its essential equipment and systems in effect at the time of application for licensing.

1903. Submission of Plans and Specifications (II).

A. Prior to construction for new buildings, additions, major alterations or replacement to existing buildings, when a building is licensed for the first time, when a building changes License type, or a Facility increases occupant load/licensed capacity, plans and specifications shall be submitted to the Department for review, unless otherwise agreed to with the Department. Final plans and specifications shall be prepared by an architect and/or engineer registered in South Carolina and shall bear their seals and signatures. Architectural plans shall also bear the seal of a South Carolina registered architectural corporation. These submissions shall be made in at least

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three (3) stages: schematic, design development, and final. All plans shall be drawn to scale with the title, stage of submission, and date shown thereon. Any construction changes from the approved documents shall be approved by the Department. Construction work shall not commence until a construction plan approval has been received from the Department. During construction the owner and/or Licensee shall employ a registered architect and/or engineer for supervision and Inspections.

B. The Facility shall submit plans and specifications to the Department for review and approval for projects that have an effect on:

1. The function of a space;
2. The accessibility to or of an area;
3. The structural integrity of the Facility;
4. The active and/or passive fire safety systems;
5. Doors;
6. Walls;
7. Ceiling system assemblies;
8. Exit corridors;
9. Life safety systems; or
10. That increase the occupant load or capacity of the Facility.

C. Cosmetic changes utilizing paint, wall covering, floor covering, etc., that are required to have a flame-spread rating or other safety criteria shall be documented with copies of the documentation and certifications, kept on file at the Facility, and made available to the Department.

D. All subsequent addenda, change orders, field orders, and documents altering the Department review must be submitted. Any substantial deviation from the accepted documents shall require written notification, review, and re-approval from the Department.

1904. Construction Inspections.

Construction work that violates applicable codes or standards shall be brought into compliance. All projects shall obtain all required permits from the locality having jurisdiction. Construction without a proper permit shall not be inspected by the Department.

SECTION 2000 – FIRE PROTECTION, PREVENTION, AND LIFE SAFETY (I)

A. Facilities with six (6) or more licensed Residential beds shall have a partial, manual, automatic, supervised fire alarm system. The Facility shall arrange the system to transmit an alarm automatically to a third party. The alarm system shall notify by audible and visual alarm all areas and floors of the building. The alarm system shall shut down central recirculation systems and outside air units that serve the area(s) of alarm origination as a minimum.

B. For Residential Facilities only, all fire, smoke, heat, sprinkler flow, and manual fire alarming devices shall be connected to and activate the main fire alarm system when activated.

C. The fire-resistive ratings for the various structural components shall comply with the applicable code(s) in Section 1900. Fire-resistive ratings of various materials and assemblies not specifically listed in the codes can be found in publications of recognized testing agencies such as Underwriters Laboratories - Building Materials List and Underwriters Laboratories - Fire Resistance Directory.

D. The Facility shall not have single and multi-station smoke alarms.

SECTION 2100 – [RESERVED]

SECTION 2200 – [RESERVED]

SECTION 2300 – [RESERVED]

SECTION 2400 – ELECTRICAL

2401. Receptacles (II).

A. Patient Room. Each Patient room shall have duplex grounding type receptacles located to include one (1) at the head of each bed.

B. Corridors. Duplex receptacles for general use shall be installed approximately fifty (50) feet apart in all corridors and within twenty-five (25) feet of the ends of corridors.

2402. Ground Fault Protection (I).

A. Ground fault circuit-interrupter protection shall be provided for all outside receptacles and bathrooms.

B. The Facility shall provide ground fault circuit-interrupter protection for any receptacles within six (6) feet of a sink or any other wet location. If the sink is an integral part of the metal splashboard grounded by the sink, the entire metal area is considered part of the wet location.

2403. Exit Signs (I).

A. In Facilities licensed for six (6) or more beds, required exits and ways to access thereto shall be identified by electrically-illuminated exit signs.

B. Changes in egress direction shall be marked with exit signs with directional arrows.

C. Exit signs in corridors shall be provided to indicate two (2) directions of exit.

2404. Emergency Electric Service (I).

Emergency electric services shall be provided as follows:

A. Exit lights, if required;

B. Exit access corridor lighting;

C. Illumination of means of egress; and

D. Fire detection and alarm system, if required.

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2405. Emergency Generator Service.

A. Residential Facilities shall have an emergency generator and shall provide certification that construction and installation of emergency generator service complies with requirements of all adopted state, federal, or local codes, ordinances, and regulations.

B. Residential Facilities shall have an emergency generator that provides emergency electrical service during interruption of the normal electrical service and shall be provided to the distribution system as follows:

1. Exit lights and exit directional signs;
2. Exit access corridor lighting;
3. Lighting of means of egress and Staff work areas;
4. Fire detection and alarm systems;
5. In Patient care areas;
6. Signal system;
7. Equipment necessary for maintaining telephone service;
8. Elevator service that will reach every Patient floor when rooms are located on other than the ground floor;
9. Fire pump (if applicable);
10. Equipment for heating and cooling Patient rooms;
11. Public restrooms;
12. Essential mechanical equipment rooms;
13. Battery-operated lighting and a receptacle in the vicinity of the emergency generator;
14. Alarm systems, water flow alarm devices, and alarms required for medical gas systems; and
15. Patient records when solely electronically based.

SECTION 2500 – [RESERVED]

SECTION 2600 – PHYSICAL PLANT

2601. Facility Accommodations and Floor Area (II).

A. Residential Facilities shall provide sufficient living arrangements for all Patients, including quiet reading, study, relaxation, entertainment, or recreation.

B. Residential Facilities shall meet minimum square footage requirements as follows: (II)

1. Twenty (20) square feet per licensed bed of living and recreational areas combined, excluding bedrooms, halls, kitchens, dining rooms, bathrooms, and rooms not available to the Patients. In Facilities for parents with

children, there shall be at least twenty (20) square feet per licensed bed and ten (10) square feet per child of living and recreational areas together.

2. Fifteen (15) square feet of floor space in the dining area per licensed bed. In Facilities for parents with children, dining space shall accommodate fifteen (15) square feet per licensed bed and seven and a half (7.5) square feet per child.

C. Residential Facilities shall not require Patients to ambulate from one site to another outside the building and shall not impede Patients from ambulating from one site to another due to the presence of physical barriers.

D. Residential Facilities shall make accommodations available to meet group needs of Patients and their visitors.

E. Residential Facilities shall ensure visual and auditory privacy between Patients and Staff and Volunteers.

2602. Design (I).

Facilities shall be planned, designed, and equipped to provide and promote the health, safety, and well-being of each Patient. Facility design shall be such that all Patients have access to required services. There shall be two hundred (200) gross square feet per licensed bed in Residential Facilities ten (10) beds or less, and an additional one hundred (100) gross square feet per licensed bed for each licensed bed over ten (10).

2603. Furnishings and Equipment (I).

A. Facilities shall ensure the physical plant is free of fire hazards and impediments to fire prevention.

B. Facilities shall not have any portable electric or unvented fuel heaters.

C. Facilities shall ensure that fireplaces and fossil-fuel stoves have partitions, screens, or other means to prevent burns. Facilities shall ensure that fireplaces are vented to the outside and shall prohibit “unvented” type gas logs. Facilities shall ensure that gas fireplaces have a remote gas shutoff within the room but not inside the fireplace.

2604. Exits (I).

A. If exit doors and cross-corridor doors are locked, the requirements under Special Locking Arrangements shall be met as applicable to the code listed in Section 1900.

B. Facilities shall maintain halls, corridors, and all other means of egress from the building free of obstructions.

C. Facilities shall not assign Patients needing physical or verbal assistance to exit the building to rooms located above or below the floor of exit discharge.

D. Facilities shall ensure that each Patient room opens directly to an approved exit access corridor without passage through another occupied space or has an approved exit directly to the outside at grade level and accessible to a public space free of encumbrances. When two (2) Patient rooms share a common “sitting” area, the “sitting” area shall open onto the exit access corridor.

2605. Water Supply and Hygiene (II).

Facilities shall ensure that Patient and Staff handwashing lavatories, and Patient showers and tubs are supplied with hot and cold water at all times.

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2606. Temperature Control (I).

A. Facilities shall ensure that plumbing fixtures accessible to Patients and requiring hot water to have a water supply that is thermostatically controlled to a temperature of at least one hundred (100) degrees Fahrenheit and not to exceed one hundred and twenty (120) degrees Fahrenheit at the fixture.

B. Residential Facilities shall ensure that water heaters provide at least six (6) gallons of water per hour per bed at the above temperature range. (II)

C. Hot water supplied to the kitchen equipment/utensil washing sink shall be supplied at one hundred and twenty (120) degrees Fahrenheit provided all kitchen equipment/utensils are chemically sanitized. For those Facilities sanitizing with hot water, the sanitizing compartment of the kitchen equipment and utensil washing sink shall be capable of maintaining the water at a temperature of at least one hundred and seventy one (171) degrees Fahrenheit.

D. Hot water provided for washing linen and clothing shall not be less than one hundred and sixty (160) degrees Fahrenheit. Should chlorine additives or other chemicals which contribute to the margin of safety in disinfecting linen/clothing be a part of the washing cycle, the minimum hot water temperature shall not be less than one hundred and ten (110) degrees Fahrenheit, provided hot air drying is used. (II)

2607. Cross-connections (I).

Facilities shall ensure that there are no cross-connections in plumbing between safe and potentially unsafe water supplies. Facilities shall ensure water is delivered at least two (2) delivery pipe diameters above the rim or points of overflow to each fixture, equipment, and service unless protected against back-siphonage by approved vacuum breakers or other approved back-flow preventers. Facilities shall ensure that all faucets and fixtures which may be attached to a hose have an approved vacuum breaker or other approved back-flow preventer.

2608. Wastewater Systems (I).

A. Residential Facilities shall ensure the wastewater system for commercial kitchens is in accordance with R.61-25, Retail Food Establishments.

B. Facilities shall dispose of liquid waste in a wastewater system approved by the local authority.

2609. Electric Wiring (I).

Facilities shall ensure that a licensed electrician, registered engineer, or certified building inspector inspects the electric wiring at least annually.

2610. Panelboards (II).

Facilities shall label the panelboard directory to conform to the actual room numbers or designations and shall maintain clear access to the panelboard.

2611. Lighting.

A. Facilities shall maintain lighting in spaces occupied by persons, machinery, and equipment within buildings, approaches to buildings, and parking lots. (II)

B. Facilities shall provide artificial light with sufficient illumination for reading, observation, and activities.

C. Residential Facilities shall maintain general lighting in all parts of Patients' rooms, and shall provide at least one (1) light fixture for night lighting in each Patient room. Residential Facilities shall provide a reading light to each Patient.

D. Facilities shall maintain lighted hallways, stairs, and all other means of egress at all times.

2612. Heating, Ventilation, and Air Conditioning (II).

A. Facilities shall ensure that a certified or licensed technician inspects the heating, ventilation, and air conditioning system at least annually.

B. Facilities shall maintain a temperature between seventy-two (72) and seventy-eight (78) degrees Fahrenheit in Patient areas.

C. Facilities shall ensure that heating, ventilation, and air conditioning supplies and return grills are installed at least three (3) feet away from a smoke detector. (I)

D. Facilities shall ensure that heating, ventilation, and air conditioning grills are not installed in the floors.

E. Facilities shall ensure that intake air ducts are filtered and maintained to prevent the entrance of dust, dirt, and other contaminating materials. Facilities shall ensure discharge from the heating, ventilation, and air conditioning system does not irritate Patients, Staff, and Volunteers.

F. Facilities shall have operable windows or approved mechanical ventilation in every bathroom and restroom.

G. Facilities shall ensure all kitchen areas are ventilated to prevent excessive heat, steam, condensation, vapors, smoke, and fumes.

2613. Patient Rooms.

A. Residential Facilities shall provide the following equipment in each Patient room for each Patient:

1. A comfortable single bed having a mattress with moisture-proof cover, sheets, blankets, pillow and pillowcases. Roll-away type beds, cots, bunkbeds, and folding beds are not permitted. Facilities are permitted to remove a Patient bed and place the mattress on a platform or pallet, or utilize a recliner, upon approval by the Physician or other Authorized Healthcare Provider and documentation is provided in the Individual Plan of Care. (II)

2. A closet or wardrobe, a bureau consisting of at least three (3) drawers, and a compartmentalized bedside table or nightstand to adequately accommodate each Patient's personal clothing, belongings, and toilet articles. Facilities are permitted to utilize built-in storage.

3. A comfortable chair for each Patient occupying the room. If the available square footage of the Patient room will not accommodate a chair for each Patient or if the provision of multiple chairs impedes Patient ability to freely and safely move about within their room, Facilities shall provide at least one (1) chair and make additional chairs available for temporary use in the Patient's room for visitors.

B. Facilities that use hospital-type beds shall maintain at least two (2) lockable casters on each bed, located either diagonally or on the same side of the bed.

C. Facilities shall not place beds in corridors, solarium, or other locations not designated as Patient room areas. (I)

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D. Facilities shall ensure Patient rooms have a maximum of three (3) beds. Facilities with mothers with children shall ensure Patient rooms have a maximum of one (1) licensed bed and two (2) cribs or beds. (II)

E. Facilities shall not have any Patient rooms in a basement.

F. Facilities shall not provide access to a Patient room through another Patient room, toilet, bathroom or kitchen.

G. Facilities shall provide bed pans, urinals, hot water bottles, and any other equipment necessary to meet Patient needs. Facilities are permitted to have portable toilets in Patient rooms only at night or in case of temporary illness, and shall keep them stored at all other times. Facilities are permitted to permanently position a portable toilet at a Patient's bedside if the toilet is sanitary and the Patient room is private and of a sufficient size. (II)

H. Facilities are permitted to utilize side rails when required for safety and when ordered by a Physician or other Authorized Healthcare Provider. (II)

I. Facilities shall ensure privacy when personal care is being given to a Patient in a semi-private room.

J. Facilities shall consider Patient compatibility in the assignment of rooms for which there is multiple occupancy.

K. Facilities shall have at least one (1) private room available in the Facility in order to provide assistance in addressing Patient compatibility issues, Patient preferences, and accommodations for Patients with communicable disease.

2614. Patient Room Floor Area.

A. Except for Residential Facilities of five (5) beds or less, each Patient room is considered a tenant space and shall be enclosed by one (1)-hour fire-resistive construction with a twenty (20)-minute fire-rated door, opening onto an exit access corridor. (I)

B. Each Patient room shall be an outside room with an outside window or door for exit in case of emergency. This window or door may not open onto a common screened porch. (I)

C. The Patient room floor area is a usable or net area and does not include wardrobes (built-in or freestanding), closets, or the entry alcove to the room. The following allowance of floor space shall be as a minimum: (II)

1. Rooms for only one (1) Patient: one hundred (100) square feet;

2. Rooms for more than one (1) Patient: eighty (80) square feet per Patient.

3. In Facilities for mothers with children, rooms for Patient and child: eighty (80) square feet per licensed bed and forty (40) square feet per child with a maximum of two (2) children per Patient. When a bed is required in lieu of a crib for a child, the square footage shall be fifty (50) square feet per child.

D. Facilities shall maintain at least three (3) feet between beds. (II)

2615. Bathrooms and Restrooms (II).

A. Privacy shall be provided at toilets, urinals, bathtubs, and showers.

B. An adequate supply of toilet tissue shall be maintained in each bathroom.

C. There shall be at least one (1) handwash lavatory adjacent to each toilet. Liquid soap shall be provided in public restrooms and bathrooms used by more than one (1) Patient. Communal use of bar soap is prohibited. A sanitary individualized method of drying hands shall be available at each lavatory.

D. Easily cleanable receptacles shall be provided for waste materials. Such receptacles in toilet rooms for women shall be covered. The Facility shall ensure receptacles are non-combustible or fire resistant as required by building codes reference in Section 1900.

E. All bathroom floors shall be entirely covered with an approved nonabsorbent covering. Walls shall be nonabsorbent, washable surfaces to the highest level of splash.

F. There shall be a mirror above each bathroom lavatory for Patients' grooming.

G. In Residential Facilities:

1. Facilities shall provide an ample number of toilets to serve the needs of the Patients Staff members, Volunteers, and the public. Facilities shall provide Patients with a minimum of one (1) toilet for each six (6) licensed beds or fraction thereof.

2. All bathtubs, toilets, and showers used by Patients shall have approved grab bars securely fastened in a usable fashion.

3. There shall be one (1) bathtub or shower for each eight (8) beds or fraction thereof.

4. Separate bathrooms shall be provided for Staff members, Volunteers, and the public.

5. Toilet facilities shall be at or adjacent to the kitchen for kitchen employees.

6. Soap, bath towels, and washcloths shall be provided to each Patient as needed. Bath linens assigned to specific Patients may not be stored in centrally-located bathrooms. Provisions shall be made for each Patient to properly keep their bath linens in their room, such as, on a towel hook or bar designated for each Patient occupying that room, or bath linens to meet Patient needs shall be distributed as needed, and collected after use and stored properly, per Section 1707.

H. Facilities shall have bathrooms and restrooms equipped for handicapped persons as required by building codes referenced in Section 1900.

2617. Patient Care Unit and Station for Medical Withdrawal Management Programs (II).

A. Each Patient care unit shall have a Patient care station.

B. A Patient care unit shall contain not more than forty-four (44) licensed beds; and the Patient care station shall not be more than one hundred fifty (150) feet from a Patient room, and shall be located and arranged to permit visual observation of the unit corridor(s).

C. Each Patient care station shall contain separate spaces for the storage of wheelchairs and general supplies/equipment for that station.

D. There shall be at, or near each Patient care station, a separate medicine preparation room with a cabinet with one or more locked sections for Controlled Substances, work space for preparation of medicine, and a sink. As an alternative, a medicine preparation area with counter, cabinet space, and a sink shall be required on those units where there is:

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1. A unit dose system in which final Medication preparation is not performed on the Patient care station; or
2. A twenty-four (24) hour pharmacy on the premises; or
3. Procedures that preclude Medication preparation at the Patient care station.

2618. Doors (II).

- A. All Patient rooms and bathrooms and restrooms shall have opaque doors for the purpose of privacy.
- B. All glass doors, including sliding or patio type doors shall have a contrasting or other indicator that causes the glass to be observable.
- C. Bathroom and restroom door widths shall be not less than thirty-six (36) inches.
- D. Doors to Patient occupied rooms shall be at least thirty-six (36) inches wide.
- E. Doors that have locks shall be unlockable and openable with one action.
- F. If Patient room doors are lockable, there shall be provisions for emergency entry. There shall not be locks that cannot be unlocked and operated from inside the room.
- G. All Patient room doors shall be solid-core.

2619. Elevators (II).

Facilities shall ensure that a certified elevator inspector inspects and tests elevators upon installation prior to first use and annually thereafter.

2620. Screens (II).

Facilities shall equip windows, doors, and openings intended for ventilation with insect screens.

2621. Janitor's Closet (II).

Residential Facilities shall maintain a lockable janitor's closet equipped with a mop sink or receptor and space for the storage of supplies and equipment.

2622. Storage Areas.

A. Facilities shall provide adequate general storage areas for Patient and Staff and Volunteer belongings, equipment, and supplies.

B. Facilities shall ensure that areas used for storage of combustible materials and storage areas exceeding one hundred (100) square feet in area are equipped with a National Fire Protection Association-approved automatic sprinkler system. (I)

C. In storage areas provided with a sprinkler system, a minimum vertical distance of eighteen (18) inches shall be maintained between the top of stored items and the sprinkler heads. The tops of storage cabinets and shelves attached to or built into the perimeter walls may be closer than eighteen (18) inches below the sprinkler heads. In non-sprinklered storage areas, there shall be at least twenty-four (24) inches of space from the ceiling. (I)

D. All ceilings, floor assemblies, and walls enclosing storage areas of one hundred (100) square feet or greater shall be of not less than one (1) hour fire-resistive construction with three-fourths (3/4) hour fire-rated door(s) and closer(s). (I)

E. Facilities shall ensure that storage buildings on the premises meet the applicable code listed in Section 1900 regarding distance from the licensed building. An appropriate controlled environment shall be provided if necessary for storage of items requiring such an environment.

F. Facilities shall ensure that items stored in mechanical rooms are located away from mechanical equipment and are not a type of storage that might create a fire or other hazard. (I)

G. Facilities shall not store supplies and equipment directly on the floor. Facilities shall not store supplies and equipment susceptible to water damage and contamination under sinks or other areas with a propensity for water leakage.

H. Facilities licensed for more than fifteen (15) beds shall maintain a soiled linen storage room designed, enclosed, and used solely for that purpose and equipped with mechanical exhaust directly to the outside.

2623. Telephone Service.

A. Facilities shall provide at least one (1) telephone on each floor of the Facility with at least one (1) active main or fixed-line telephone service available.

B. Facilities shall provide at least one (1) telephone on each floor for Staff members and Volunteers to conduct routine business of the Facility and to summon assistance in the event of an emergency. The Facility shall ensure Patients have privacy when using the telephone.

2624. Location.

A. Facilities shall ensure that roads serving the Facility are passable at all times.

B. Facilities shall provide parking space to meet the needs of Patients, Staff, Volunteers, and visitors.

C. Facilities shall maintain adequate access to and around the building for firefighting equipment. (I)

D. Facilities providing an Opioid Treatment Program shall not operate within five hundred (500) feet of:

1. The property line of a church;
2. The property line of a public or private elementary or secondary school;
3. A boundary of any Residential district;
4. A public park adjacent to any Residential district; or
5. The property line of a lot devoted to Residential use.

2625. Outdoor Area.

A. Facilities shall ensure outdoor areas where unsafe, unprotected physical hazards exist are enclosed by a fence or a natural barrier of a size, shape, and density that effectively impedes travel to the hazardous area. (I)

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B. Facilities shall protect mechanical and equipment rooms that open to the outside of the Facility from unauthorized individuals.

SECTION 2700 – SEVERABILITY

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

SECTION 2800 - GENERAL

Conditions that have not been addressed in this regulation shall be managed in accordance with the best practices as interpreted by the Department.

Fiscal Impact Statement:

Implementation of these amendments will not require additional resources. There is no anticipated additional cost by the Department or state government due to any inherent requirements of these amendments.

Statement of Need and Reasonableness:

The following presents an analysis of the factors listed in 1976 Code Sections 1-23-115(C)(1)-(3) and (9)-(11):

DESCRIPTION OF REGULATION: 61-93, Standards for Licensing Facilities that Treat Individuals for Psychoactive Substance Abuse or Dependence

Purpose: The Department amends R.61-93 to update provisions in accordance with current practices and standards. The Department also changes the name of the regulation and facility type to parallel the statutory term for this facility type. Additional revisions include those for clarity and readability, grammar, references, codification, and overall improvement to the text of the regulation.

Legal Authority: 1976 Code Sections 44-7-260 et seq.

Plan for Implementation: The DHEC Regulation Development Update (accessible at <http://www.scdhec.gov/Agency/RegulationsAndUpdates/RegulationDevelopmentUpdate/>) will provide a summary of and link to a copy of the amendment. Additionally, printed copies are available for a fee from the Department's Freedom of Information Office. Upon taking legal effect, Department personnel will take appropriate steps to inform the regulated community of the amended regulation and any associated information.

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

These amendments are necessary to change the name of the regulation and the definition of the facility within the regulation to parallel the statutory term for this facility type, which is "Facility for Chemically Dependent or Addicted Persons." The facility type may also be referred to as "Substance Use Disorder Facilities" based on current terminology within the provider community, thereby reducing provider confusion. The new amendments herein include the Bureau of Health Facilities Licensing's effort to incorporate provisions relating to statutory mandates, update terminology used in the regulation to conform to the terminology widely used and understood within the provider community, incident reporting, staffing and training requirements, medication management, patient care and services, infection control, meal service, emergency procedures, design and construction, fire and life safety, and other miscellaneous requirements for licensure. In addition, corrections have been made for organization, clarity and readability, grammar, references, codification, and overall improvement to the text of the regulation.

DETERMINATION OF COSTS AND BENEFITS:

Implementation of these amendments will not require additional resources. There is no anticipated additional cost to the Department or state government due to any inherent requirements of these amendments. There are no anticipated additional costs to the regulated community.

UNCERTAINTIES OF ESTIMATES:

None.

EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH:

The amendments to R.61-93 seek to support the Department's goals relating to the protection of public health through the anticipated benefits of facilities adhering to the updated language and provisions highlighted above. There are no anticipated effects on the environment.

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

There is no anticipated detrimental effect on the environment. If the revision is not implemented, the regulation will be maintained in its current form without realizing the benefits of the amendments herein.

Statement of Rationale:

Here below is the Statement of Rationale pursuant to S.C. Code Section 1-23-110(h):

The Department amends R.61-93 to update provisions in accordance with current practices and standards. Amendments include updated language for facilities applying for licensure and incorporate provisions delineating new requirements in training staff members, as well as new nursing and medical staff requirements. The amendments incorporate and revise provisions relating to statutory mandates, update terminology to conform to the terminology widely used and understood within the provider community, and revise requirements for incident reporting, staffing and training requirements, medication management, patient care and services, infection control, meal service, emergency procedures, design and construction, fire and life safety, and other miscellaneous requirements for licensure. The Department also changes the name of the regulation and facility type to parallel the statutory term for this facility type. Additional revisions include those for clarity and readability, grammar, references, codification, and overall improvement to the text of the regulation.

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Document No. 4953

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL CHAPTER 61

Statutory Authority: 1976 Code Sections 44-7-260 et seq.

61-97. Standards for Licensing Renal Dialysis Facilities.

Synopsis:

The Department of Health and Environmental Control (“Department”) amends R.61-97 to update provisions in accordance with current practices and standards. Amendments incorporate and revise provisions relating to statutory mandates, update terminology to conform to the terminology widely used and understood within the provider community, and revise requirements for incident reporting, staffing and training requirements, medication management, patient care and services, infection control, meal service, emergency procedures, design and construction, fire and life safety, and other miscellaneous requirements for licensure. The Department further revises for clarity and readability, grammar, references, codification, and overall improvement to the text of the regulation. R.61-97 was last amended in 2010.

A Notice of Drafting was published in the March 22, 2019, *South Carolina State Register*.

Changes made at the request of the House Regulations and Administrative Procedures Committee by letter dated February 19, 2020:

Section 1902.B was amended to remove “applicable” and replace with “effective.”

Section 2401 was amended to update language regarding emergency generators and include new language for building and power requirements.

Instructions:

Replace R.61-97, Standards for Licensing Renal Dialysis Facilities, in its entirety with this amendment.

Text:

61-97. Standards for Licensing Renal Dialysis Facilities.

Statutory Authority: 1976 Code Sections 44-7-260 et seq.

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SECTION 100 – DEFINITIONS AND LICENSURE

101. Definitions.

For the purpose of these standards, the following definitions shall apply:

A. Abuse. Physical abuse or psychological abuse.

1. **Physical Abuse.** The act of intentionally inflicting or allowing infliction of physical injury on a patient by an act or failure to act. Physical abuse includes, but is not limited to, slapping, hitting, kicking, biting, choking, pinching, burning, actual or attempted sexual battery, use of medication outside the standards of reasonable medical practice for the purpose of controlling behavior, and unreasonable confinement. Physical abuse also includes the use of a restrictive or physically intrusive procedure to control behavior for the purpose of punishment except that of a therapeutic procedure prescribed by a licensed physician or other legally authorized healthcare professional. Physical abuse does not include altercations or acts of assault between patients.

2. **Psychological Abuse.** The deliberate use of any oral, written, or gestured language or depiction that includes disparaging or derogatory terms to a patient or within the patient's hearing distance, regardless of the patient's age, ability to comprehend, or disability, including threats or harassment or other forms of intimidating behavior causing fear, humiliation, degradation, agitation, confusion, or other forms of serious emotional distress.

B. Administering Medication. The acts of preparing and giving a single dose of a medication to the body of a Patient by injection, ingestion, or any other means in accordance with the orders of a physician or other Authorized Healthcare Provider.

C. Administrator. The staff member designated by the Licensee to have the authority and responsibility to manage the Facility and oversees all functions and activities of the Facility.

D. Annual. A time period that requires an activity to be performed at least every twelve (12) months.

E. Assessment. A procedure for determining the nature and extent of the problems and needs of a Patient, or potential Patient, to ascertain if the Facility can adequately address those problems and needs, and to secure information for use in the development of the Individual Plan of Care.

F. Authorized Healthcare Provider. An individual authorized by law and currently licensed in South Carolina as a physician, advanced practice registered nurse, or physician assistant to provide specific treatments, care, or services to Patients.

G. Consultation. A meeting with a licensed Facility and individuals authorized by the Department to provide information to Facilities to enable/encourage Facilities to better comply with the regulations.

H. Continuous Ambulatory Peritoneal Dialysis. A continuous manual exchange of dialysate into and from the peritoneal cavity (usually every four to six hours).

I. Continuous Cycling Peritoneal Dialysis. The use of a machine to warm and cycle the dialysate in and out of the peritoneal cavity (usually every four hours).

J. Controlled Substance. A medication or other substance included in Schedule I, II, III, IV, and V of the Federal Controlled Substances Act or the South Carolina Controlled Substances Act.

K. Department. The South Carolina Department of Health and Environmental Control. **L. Designee.** A staff member designated by the Administrator to act on his or her behalf.

M. Dialysis. A process by which dissolved substances are removed from a Patient's body by diffusion from one fluid compartment to another across a semipermeable membrane.

N. Dietitian. An individual currently licensed as a Dietitian by the South Carolina Department of Labor, Licensing and Regulation.

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O. Direct Care Staff. Those individuals who are employees (full- and part-time) of the Facility providing direct treatment, care, and services to Patients, and those individuals contracted to provide treatment, care, and services to Patients.

P. Discharge. The point at which treatment, care, and services in a Facility are terminated and the Facility no longer maintains active responsibility for the treatment, care, and services of the Patient.

Q. End-Stage Renal Disease . That stage of renal impairment that appears irreversible and permanent and requires a regular course of dialysis or kidney transplantation to maintain life.

R. End-Stage Renal Disease Service. The type of care or services furnished to an End-Stage Renal Disease Patient. Such types of care are: transplantation service; Dialysis service and Home Dialysis training.

S. Exploitation. 1) Causing or requiring a Patient to engage in an activity or labor that is improper, unlawful, or against the reasonable and rational wishes of a patient. Exploitation does not include requiring a patient to participate in an activity or labor that is a part of a written Individual Plan of Care or prescribed or authorized by the patient's attending physician; 2) an improper, unlawful, or unauthorized use of the funds, assets, property, power of attorney, guardianship, or conservatorship of a patient by an individual for the profit or advantage of that individual or another individual; or 3) causing a patient to purchase goods or services for the profit or advantage of the seller or another individual through undue influence, harassment, duress, force, coercion, or swindling by overreaching, cheating, or defrauding the patient through cunning arts or devices that delude the patient and cause him or her to lose money or other property.

T. Health Assessment. An evaluation of the health status of a staff member or volunteer by a Physician, other Authorized Healthcare Provider, or a registered nurse, A registered nurse may complete the Health Assessment pursuant to standing orders approved by a Physician as evidenced by the Physician's signature. The standing orders shall be reviewed annually by the physician, with a copy of the review maintained at the Facility.

U. Home Dialysis. Dialysis performed by a Patient and/or individuals who assist Patients at home. The Patient and individuals who assist patients are trained and supervised by licensed nurses to do dialysis treatments on their own.

V. Home Dialysis Training. A program that trains and provides support services to End-Stage Renal Disease Patients and individuals who assist them in performing Home Dialysis with little or no professional assistance.

W. Individual Plan of Care. A documented regimen of appropriate care and services or written action plan prepared by the Facility for each Patient, based on the Patient's needs and preferences, and which is to be implemented for the benefit of the Patient.

X. Interdisciplinary Team. A group designated by the Facility to provide or supervise care and services provided by the facility. The group may include the following persons: physician or other Authorized Healthcare Provider, licensed nurse, dietary, social services, and direct care staff members.

Y. Inspection. A visit by Department representatives for the purpose of determining compliance with current statutes and regulations.

Z. Investigation. A visit by Department representatives to a licensed Facility or unlicensed entity for the purpose of determining the validity of allegations received by the Department relating to statutory and regulatory compliance.

AA. Legend Drug.

1. A drug when, under federal law, is required, prior to being dispensed or delivered, to be labeled with any of the following statements:

- a. "Caution: Federal law prohibits dispensing without prescription";
- b. "Rx only";

2. A drug which is required by any applicable federal or state law to be dispensed pursuant only to a prescription drug order or is restricted to use by practitioners only;

3. Any drug products considered to be a public health threat, after notice and public hearing as designated by the S.C. Board of Pharmacy; or

4. Any prescribed compounded prescription drug within the meaning of the S.C. Pharmacy Practice Act.

BB. License. The authorization to operate a Facility as defined in this regulation and as evidenced by a current certificate issued by the Department to a Facility.

CC. Licensed Capacity. The number of dialysis stations that the Facility is authorized to operate to include chronic hemodialysis and home hemodialysis training stations.

DD. Licensed Nurse. A person to whom the South Carolina Board of Nursing has issued a license as a registered nurse or licensed practical nurse, or a person granted multi-state licensing privileges by the South Carolina Board of Nursing and who may practice nursing in any Facility or activity licensed by the Department subject to the provisions and conditions as indicated in the Nurse Licensure Compact Act.

EE. Licensee. The individual, corporation, organization, or public entity that has received a license to provide care and services at the Facility and with whom rests the ultimate responsibility for compliance with the current regulation.

FF. Medical Director. A physician currently licensed in South Carolina who is responsible for the medical direction of the End-Stage Renal Disease Services.

GG. Medication. A substance that has therapeutic effects including, but not limited to, Legend, Non-Legend, herbal products, over-the counter, nonprescription, vitamins, and nutritional supplements.

HH. Neglect. The failure or omission of a direct care staff member to provide the care, goods, or services necessary to maintain the health or safety of a Patient including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services. Failure to provide adequate supervision resulting in harm to patients, including altercations or acts of assault between patients, may constitute neglect. Neglect may be repeated conduct or a single incident that has produced or could result in physical or psychological harm or substantial risk of death. Noncompliance with regulatory standards alone does not constitute neglect.

II. Non-Legend Drug. A drug that may be sold without a prescription and that is labeled for use by the consumer in accordance with state and federal law.

JJ. Patient. A person who receives care, treatment, or services from a Facility licensed by the Department.

KK. Physical Examination. An examination of a Patient that meets the requirements set forth in Section 1100 of this regulation by an Authorized Healthcare Provider.

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LL. Quality Improvement Program. The process used by a Facility to examine its methods and practices of providing care and services, identify the ways to improve its performance, and take actions that result in higher quality of care and services for the Facility's Patients.

MM. Quarterly. A time period that requires an activity to be performed every three (3) months.

NN. Registered Health Information Administrator. An individual who holds a professional certification as a Registered Health Information Administrator from the American Health Information Management Association.

OO. Registered Health Information Technician. An individual who holds a professional certification as a Registered Health Information Technician from the American Health Information Management Association in the United States.

PP. Renal Dialysis Equipment Technician. An individual who cleans, sterilizes, sets up, monitors, adjusts, and tests dialysis machines and accessory equipment used in the treatment of Patients with End- Stage Renal Disease.

QQ. Renal Dialysis Facility (Facility). An outpatient Facility which offers staff-assisted Dialysis or Home Dialysis Training and support services to -End-Stage Renal Disease Patients. A Facility may be composed of one or more fixed buildings, mobile units, or a combination.

RR. Revocation of License. An action by the Department to cancel or annul a Facility License by recalling, withdrawing, or rescinding the Facility's authorization to operate.

SS. Social Worker. A person licensed as a social worker by the South Carolina Board of Social Work Examiners.

TT. Station. An individual Patient treatment area that provides sufficient space to accommodate the dialysis equipment and supplies needed for Dialysis. Includes Stations specifically for chronic Hemodialysis, Home Hemodialysis Training, and Peritoneal Dialysis.

UU. Suspension of License. An action by the Department requiring a Facility to cease operations for a period of time or to require a Facility to cease admitting Patients, until such time as the Department rescinds that restriction.

VV. Tuberculosis Risk Assessment. An initial and ongoing evaluation of the risk for transmission of Mycobacterium tuberculosis in a particular healthcare setting.

102. Licensure. (II)

A. No person, partnership, corporation, private or public organization, political subdivision or other governmental agency shall establish, operate, maintain, or represent itself (advertise or market) as a Renal Dialysis Facility in South Carolina without first obtaining a License from the Department. The Facility shall not admit Patients prior to the effective date of the License. When it has been determined by the Department that treatment, care, or services are being provided at a location, and the owner has not been issued a license from the Department to provide such treatment, care and services the owner shall cease operation immediately and ensure the safety, health, and well-being of the Patients. Current or previous violations of South Carolina Code or Department regulations may jeopardize the issuance of a License for the Facility or the licensing of any other Facility, or addition to an existing Facility that is owned and/or operated by the Licensee. The Facility shall provide only the treatment, care, and services it is licensed to provide pursuant to the definition in Section 101.QQ. (I)

B. A Renal Dialysis Facility License shall not be required for, nor shall such a License be issued to:

1. Facilities operated by the federal government.

2. Renal dialysis services provided in licensed hospitals (such services remain within the purview of R.61-16, Minimum Standards for Licensing Hospitals and Institutional General Infirmaries).

C. Compliance. An initial License shall not be issued to a proposed Facility until the Licensee applicant has demonstrated to the Department that the proposed Facility is in substantial compliance with this regulation. In the event a Licensee who already has a Facility or activity licensed by the Department makes application for another Facility or an increase in Licensed Capacity, the currently licensed Facility or activity shall be in substantial compliance with the applicable standards prior to the Department issuing a License to the proposed Facility or an amended License to the existing Facility. A copy of licensing standards shall be maintained at the Facility and accessible to all staff members and volunteers. Facilities shall comply with applicable local, state, and federal laws, codes, and regulations.

D. Licensed Dialysis Stations. No Facility that has been authorized to provide a set number of licensed stations, as identified on the face of the License, shall exceed the Licensed Capacity. No Facility shall establish new care or services or occupy additional Stations or renovated space without first obtaining authorization from the Department.

E. Issuance and Terms of License.

1. The License issued by the Department shall be posted in a conspicuous place in a public area within the facility.

2. The issuance of a license does not guarantee adequacy of individual care, services, personal safety, fire safety, or the well-being of any patient or occupant of a facility.

3. A license is not assignable or transferable and is subject to revocation at any time by the Department for the licensee's failure to comply with the laws and regulations of this state.

4. A license shall be effective for a specified facility, at a specific location, for a specified period following the date of issue as determined by the Department. A license shall remain in effect until the Department notifies the licensee of a change in that status.

5. Facilities owned by the same entity but which are not located on the same adjoining or contiguous property shall be separately licensed. Roads or local streets, except limited access, shall not be considered as dividing otherwise adjoining or contiguous property. For facilities owned by the same entity, separate licenses are not required for separate buildings on the same or adjoining grounds where a single level or type of care is provided.

6. Multiple types of facilities on the same premises shall be licensed separately even though owned by the same entity.

F. Facility Name. No proposed Facility shall be named, nor shall any existing facility have its name changed to, the same or similar name as any other facility licensed in South Carolina.

G. Application. Applicants for a License shall submit to the Department a complete and accurate application on a form prescribed and furnished by the Department prior to initial licensing and periodically thereafter at intervals determined by the Department. The application shall be signed by the owner(s) if an individual or partnership; by two (2) officers if a corporation; or by the head of the governmental department having jurisdiction if a governmental unit. Corporations or limited partnerships, limited liability companies or any other organized business entity shall be registered with the S.C. Secretary of State's Office if required to do so by state law. (II)

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H. The application for initial licensure shall include:

1. The application shall set forth the full name and address of the Facility for which the License is sought and of the owner in the event his or her address is different from that of the Facility, and the names of the persons in control of the Facility. The Department may require additional information, including affirmative evidence of the applicant's ability to comply with this regulation;

2. The applicant's oaths assuring that the contents of the application are accurate and true, and that the applicant will comply with this regulation;

3. Proof of ownership of real property in which the Facility is located, or lease agreement allowing the Licensee to occupy the real property in which the Facility is located;

4. Verification of Administrator's qualifications;

5. Name of director of nursing services; and

6. Number of renal dialysis Stations.

I. Licensing Fees. Each applicant shall pay an Annual License fee prior to issuance of a License. The Annual fee shall be two hundred dollars (\$200.00) for the first ten (10) Stations and twenty dollars (\$20.00) for each additional Station. Annual licensing fees shall also include any outstanding inspection fees. All fees are non-refundable, shall be made payable by check or credit card to the Department or online, and shall be submitted with the application. (II)

J. Licensing Late Fee. Failure to submit a renewal application and fee to the Department by the license expiration date shall result in a late fee of seventy-five dollars (\$75.00) or twenty-five percent (25%) of the licensing fee amount, whichever is greater, in addition to the licensing fee. Failure to submit the licensing fee and licensing late fee to the Department within thirty (30) days of the license expiration date shall render the Facility unlicensed. (II)

K. License Renewal. For a License to be renewed, applicants shall submit a complete and accurate application on a form prescribed and furnished by the Department, shall pay the License fee, and shall not have pending enforcement actions by the Department. If the License renewal is delayed due to enforcement actions, the renewal License shall be issued only when the matter has been resolved by the Department, or when the adjudicatory process is completed, whichever is applicable.

L. Amended License. A Facility shall request issuance of an amended license by application to the Department prior to any of the following circumstances:

1. Addition of Renal Dialysis Station or any part thereof; including:

a. Chronic Hemodialysis Stations;

b. Home Hemodialysis Training Stations; or

c. Peritoneal Stations;

2. Change of Facility location from one geographic site to another;

3. Change in Facility name or address (if notified by post office the address has changed)

M. Change of Licensee. A Facility shall request issuance of a new License by application to the Department prior to a change of the legal entity, for example, sole proprietorship to or from a corporation, or partnership to or from a corporation, even if the controlling interest does not change.

N. The licensee shall notify the Department, in a means as determined by the Department, of a change in controlling interest even if, in the case of a corporation or partnership, the legal entity retains its identity and name.

O. Variance. A variance is an alternative method that ensures the equivalent level of compliance with the standards in this regulation. The Facility may request a variance to this regulation in a format as determined by the Department. Variances shall be considered on a case by case basis by the Department. The Department may revoke issued variances as determined to be appropriate by the Department.

SECTION 200 – ENFORCEMENT OF REGULATIONS

201. General.

The Department shall utilize Inspections, Investigations, Consultations, and other pertinent documentation regarding a proposed or licensed Facility in order to enforce this regulation.

202. Inspections and Investigations.

A. A Facility shall undergo Inspection by the Department prior to initial licensing and is subject to subsequent Inspections as deemed appropriate by the Department. (I)

B. The Facility shall allow all individuals authorized by South Carolina law to enter the Facility for the purpose of Inspection and/or Investigation and granted access to all properties and areas, objects, requested records, and documentation at the time of the Inspection or Investigation. The Department shall have the authority to require the Facility to make photocopies of those documents required in the course of Inspections or Investigations. Photocopies shall be used only for purposes of enforcement of regulations and confidentiality shall be maintained except to verify the identity of individuals in enforcement action proceedings. The physical areas of Inspections and Investigations shall be determined by the Department based on the potential impact or effect upon Patients. (I)

C. When there is noncompliance with the licensing standards, the Facility shall submit an acceptable plan of correction in a format determined by the Department. The plan of correction shall be signed by the Administrator and returned by the date specified on the report of Inspection or Investigation. The plan of correction shall describe: (II)

1. The actions taken to correct each cited deficiency;
2. The actions taken to prevent recurrences (actual and similar); and
3. The actual or expected completion dates of those actions.

D. The Facility shall make available to the public copies of reports of Inspections or Investigations conducted by the Department, including the Facility response, upon written request with redactions of names of individuals in the report as provided by S.C. Code Sections 44-7-310 and 44-7-315.

E. The Facility shall pay a fee of three hundred fifty dollars (\$350.00) plus twelve dollars (\$12.00) per licensed Station for initial and routine Inspections. The fee for Station increase Inspections and follow-up inspections is two hundred dollars (\$200.00) plus twelve dollars (\$12.00) per licensed Station.

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F. The Licensee shall pay the following inspection fees during the construction phase of the project. The plan inspection fee is based on the total estimated cost of the project whether new construction, an addition, or a renovation. The fees are detailed in the table below.

Construction Inspection Fees	
Plan Inspection	
Total Project Cost	Fee
< \$10,001	\$750
\$10,001 - \$100,000	\$1,500
\$100,001 - \$500,000	\$2,000
> \$500,000	\$2,500 plus \$100 for each additional \$100,000 in project cost
Site Inspection	
50% Inspection	\$500
80% Inspection	\$500
100% Inspection	\$500

203. Consultations.

Consultations may be provided by the Department as requested by the Facility or as deemed appropriate by the Department.

SECTION 300 – ENFORCEMENT ACTIONS

301. General.

When the Department determines that a Facility is in violation of any statutory provision, rule, or regulation relating to the operation or maintenance of such Facility, the Department, upon proper notice to the Licensee, may deny, suspend, or revoke Licenses, or assess a monetary penalty, or both.

302. Violation Classifications.

Violation of standards in this regulation are classified as follows:

A. Class I violations are those that present an imminent danger to the health, safety, or well-being of the persons in the Facility or a substantial probability that death or serious physical harm could result therefrom. A physical condition or one or more practices, means, methods or operations in use in a Facility may constitute such a violation. The condition or practice constituting a Class I violation shall be abated or eliminated immediately unless a fixed period of time, as stipulated by the Department, is required for correction. Each day such violation exists after expiration of the time established by the Department shall be considered a subsequent violation.

B. Class II violations are those, other than Class I violations, that have a negative impact on the health, safety or well-being of persons in the Facility. The citation of a Class II violation shall specify the time within which the violation is required to be corrected. Each day such violation exists after expiration of this time shall be considered a subsequent violation.

C. Class III violations are those that are not classified as Class I or II in this regulation or those that are against the best practices. The citation of a Class III violation shall specify the time within which the violation is required to be corrected. Each day such violation exists after expiration of this time shall be considered a subsequent violation.

D. The notations “(I)” or “(II),” placed within sections of this regulation, indicate those standards are considered Class I or II violations if they are not met, respectively. Failure to meet standards not so annotated are considered Class III violations.

E. In determining an enforcement action the Department shall consider the following factors:

1. Specific conditions and their impacts or potential impacts on health, safety, or well-being of the Patients including, but not limited to: deficiencies in medication management; critical waste water problems; housekeeping, maintenance, or fire and life safety-related problems that pose a health threat to the Patients; power, water, gas, or other utility and/or service outages; Patients exposed to air temperature extremes that jeopardize their health; unsafe condition of the building or structure; indictment of an administrator for malfeasance or a felony, which by its nature indicates a threat to the Patients; direct evidence of abuse, neglect, or exploitation; no staff available at the Facility with Patients present; unsafe procedures and/or treatment being practiced by staff; (I)

2. Repeated failure of the Licensee or Facility to pay assessed charges for utilities and/or services resulting in repeated or ongoing threats to terminate the contracted utilities and/or services; (II)

3. Efforts by the Facility to correct cited violations;

4. Overall conditions of the Facility;

5. History of compliance; and

6. Any other pertinent conditions that may be applicable to current statutes and regulations.

F. When imposing a monetary penalty, the Department may invoke S.C. Code Section 44-7-320(C) to determine the dollar amount or may utilize the following schedule:

FREQUENCY OF VIOLATION	CLASS I	CLASS II	CLASS III
1 st	\$500-1,500	\$300-800	\$100-300
2 nd	1,000-3,000	500-1,500	300-800
3 rd	2,000-5,000	1,000-3,000	500-1,500
4 th	5,000	2,000-5,000	1,000-3,000
5 th	5,000	5,000	2,000-5,000
6 th	5,000	5,000	5,000

SECTION 400 – POLICIES AND PROCEDURES

A. The Facility shall maintain and adhere to written policies and procedures addressing the manner in which the requirements of this regulation shall be met. The Facility shall be in full compliance with the policies and procedures. (II)

B. The written policies and procedures shall include the following: (II)

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1. Staffing and training
 2. Reporting incidents, accidents, reportable diseases, closure and zero census
 3. Patient records
 4. Patient care and services
 5. Patient rights and assurances
 6. Medication management
 7. Admissions and discharge
 8. Fire prevention
 9. Maintenance including doors, windows, HVAC, fire alarm, electrical, mechanical, plumbing, and for all equipment
 10. Infection control and housekeeping
 11. Water supply
 12. Quality Improvement Program
- C. The Facility shall establish a time period for review, not to exceed two (2) years, of all policies and procedures, and such reviews shall be documented and signed by the Administrator. All policies and procedures shall be accessible to Facility staff, printed or electronically, at all times.

SECTION 500 – STAFF AND TRAINING

501. General.

A. The Facility shall maintain accurate and current information regarding all staff members of the Facility, to include at least address, phone number, date of hire, date of initial Patient contact, and personal, work, and training background.

B. The Facility shall assign all staff members duties and responsibilities in writing and in accordance with the individual's capability. The Facility shall maintain a personnel file for each staff member. The file shall contain a health assessment, laboratory test results, resumés of training and experience, and current job description that reflects the staff member's responsibilities and work assignments, orientation, and periodic evaluations. (II)

502. Administrator. (II)

A. The Facility shall employ a full-time Administrator who shall be responsible for the management and administration of the Facility. The Administrator shall hold at least a bachelor's degree or have a minimum of an associate degree in a health-related field with at least two (2) years of experience in End-Stage Renal Disease within the past five (5) years. The Director of Nursing may serve as the Administrator.

B. Designee. A staff member shall be designated in writing to act in the absence of the Administrator.

C. The Facility shall notify the Department in writing within seventy-two (72) hours of any change in Administrator status and shall provide the Department the name of the newly-appointed Administrator and the effective date of the appointment.

503. Director of Nursing.

The Facility shall have a licensed registered nurse to act as Director of Nursing. The Director of Nursing shall have the following:

A. At least twelve (12) months of experience in clinical nursing, and an additional six (6) months of experience in nursing care for patients with permanent kidney failure or undergoing kidney transplantation, including training in and experience with the Dialysis process; or

B. Eighteen (18) months of experience in nursing care of a patient on dialysis, or in nursing care of a patient with a kidney transplant, including training in and experience with the dialysis process.

C. If responsible for Home Dialysis Training, at least three (3) months of the total required End-Stage Renal Disease experience shall be in training patients in Home Dialysis.

504. Staffing. (I)

A. Each Facility shall have the following minimum staffing to provide services:

1. A registered nurse who shall serve as charge nurse (the Director of Nursing may act in this role);

2. At least one (1) registered nurse shall be on duty during hours of operation for every ten (10) Patients or fraction thereof. The charge nurse may serve in this capacity; and

3. If the Facility provides Home Dialysis training, such training shall be provided by a registered nurse who has had at least twelve (12) months experience in dialysis. At least three (3) months of the total required End-Stage Renal Disease experience shall be in training patients in Home Dialysis.

B. In addition to nursing staff, Direct Care Staff shall be in the building and immediately available to ensure a ratio of one (1) Direct Care Staff to each four (4) Patients or fraction thereof. (I)

C. The Facility shall maintain documentation to ensure the Facility meets Sections 504.A and 504.B.

505. Medical Staff.

A. If more than one (1) physician practices in a Facility, they shall be organized as a medical staff with appropriate bylaws approved by the governing body. The medical staff shall meet at least Quarterly and the Facility shall maintain minutes of such meetings.

B. The Facility shall have a licensed physician to serve as Medical Director of the End-Stage Renal Diseases services.

C. The Medical Director shall be responsible for the execution of Patient care policies and medical staff bylaws and rules and regulations. (II)

D. A licensed physician or nephrologist with demonstrated experience in the care of Patients with End-Stage Renal Disease shall be on-call to respond to Dialysis-related Patient issues during all times of clinical operations.

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E. The Facility shall maintain a contact list for all on-call personnel, to include name, telephone number, and dates on-call. The Facility shall update the contact list as changes in personal occur, but not less than annually.

506. Job Descriptions.

A. The Facility shall maintain written job descriptions that describe the duties of every position. Each job description shall include position, title, authority, specific responsibilities, and minimum qualifications.

B. Job descriptions shall be signed by each staff member when assigned to the position and when revised.

507. Orientation. (II)

A. The Facility shall develop and execute a written orientation program to familiarize all new staff members with the Facility, its policies, and the staff members' job responsibilities. Documentation of orientation shall include training source, duration, and shall be signed and dated by the trainer and trainee. All required orientation shall be completed prior to Patient contact.

B. For Direct Care Staff, the orientation program shall contain at least the following subject content:

1. Fluid and electrolyte balance;
2. Kidney disease and treatment;
3. Dietary management;
4. Principles of Dialysis;
5. Dialysis technology;
6. Venipuncture technique;
7. Care of Dialysis Patients; and
8. Prevention of Hepatitis and other infectious diseases.

508. Training. (I)

A. Documentation of all in-service training shall be signed and dated by both the individual providing the training and the individual receiving the training. The following training shall be provided to all Direct Care Staff prior to Patient contact and at a frequency determined by the Facility, but at least annually unless otherwise specified by certificate, e.g., cardiopulmonary resuscitation (CPR):

1. Basic first aid;
2. Confidentiality of Patient information;
3. Patient's rights and assurances;
4. End-Stage Renal Disease care;
5. Cardiopulmonary resuscitation for designated staff members to ensure that there is a certified staff member present whenever residents are in the Facility.

B. Each equipment technician shall have completed a training course. Documentation of the training course shall be maintained in the staff file. The training shall include the following:

1. Prevention of Hepatitis via Dialysis equipment;
2. The safety requirements of dialysate delivery systems;
3. Bacteriologic control;
4. Water quality standards; and
5. Repair and maintenance of Dialysis and other equipment.

C. Facilities may allow Licensed Practical Nurses to perform intravenous (IV) push medication therapy. Prior to any Licensed Practical Nurse performing IV push medication therapy the Facility shall secure and maintain in the individual staff file the following:

1. Documentation of completion of an intravenous (IV) therapy course to include didactic and skill competency verification as required by current state and federal regulations;
2. Documentation of competency of performing IV push medication therapy, and annually thereafter, to include:
 - a. Administration of set prescribed dose routine and chronic medications;
 - b. Lab value parameters;
 - c. Technical administration process monitoring;
 - d. Emergency plan according to Facility policy and procedures; and
 - e. All Medications to be administered, to include appropriate dosage, actions, side effects, and contraindications.

509. Health Assessment.

A. All Direct Care Staff shall have a documented Health Assessment within twelve (12) months prior to initial Patient contact. The Health Assessment shall include tuberculin skin testing as described in Section 1704.

B. For staff members working at multiple Facilities operated by the same Licensee, copies of the documented Health Assessment shall be accessible at each Facility.

SECTION 600 – REPORTING

601. Incidents.

A. The Facility shall document every incident, and include an incident review, investigation, and evaluation as well as corrective action taken, if any. The Facility shall retain all documented incidents reported pursuant to this section for six (6) years after the Patient involved is last discharged. For the first year following discharge, these records shall be kept on site and readily available at that Facility.

B. The Facility shall report following types of incidents to the responsible party or emergency contact for each affected individual at the earliest practicable hour, not exceeding twenty-four (24) hours of the incident. The

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Facility shall notify the Department immediately, not to exceed twenty-four (24) hours, via the Department's electronic reporting system or as otherwise determined by the Department. Incidents requiring reporting include:

1. Confirmed or suspected crimes against Patients;
2. Confirmed or suspected Abuse, Neglect, or Exploitation;
3. Use of wrong dialyzer on Patient;
4. Blood spills of more than one hundred (100) milliliters;
5. Adverse reactions to Hemolytic transfusion;
6. Adverse reactions to dialyzers;
7. Medication errors with the potential for adverse impact;
8. Hospitalization or death resulting from the incident;
9. Severe hematoma or laceration requiring medical attention or hospitalization;
10. Bone or joint fracture;
11. Severe injury;
12. Fire;
13. Natural disaster

C. The Facility shall submit a separate written investigation report within five (5) days of every incident required to be reported to the Department pursuant to Section 601.B via the Department's electronic reporting system or as otherwise determined by the Department. Reports submitted to the Department shall contain only: Facility name, License number, type of accident and/or incident, the date of accident and/or incident occurred, number of Patients directly injured or affected, Patient medical record identification number, Patient age and sex, number of Staff directly injured or affected, number of visitors directly injured or affected, witness(es) name(s), identified cause of accident/incident, internal investigation results if cause unknown, a brief description of the accident/incident including location where occurred, and treatment of injuries

D. The Facility shall notify the Patient's Physician and responsible party or emergency contact within twenty-four (24) hours of significant changes in a Patient's condition and shall document the significant changes and notification in the Patient's record. (I)

602. Reportable Diseases and Infections. (II)

A. Reportable Diseases. The Facility shall report cases of reportable diseases in accordance with Regulation 61-20, Communicable Diseases, and any occurrences, such as epidemic outbreaks or poisonings or other unusual occurrence, which threaten the welfare, safety or health of Patients or personnel shall be reported immediately to the local health director and to the Bureau of Health Facilities Licensing.

B. Reports of infections such as abscesses, septicemia, hepatitis, or other communicable diseases observed during admission or follow-up (or return) visit of the Patient shall be made and kept as a part of the Patient's medical records. Efforts shall be made to determine the origin of any such infection and if the dialysis procedure was found to be related to acquiring the infection, remedial action shall be taken to prevent recurrence.

603. Closure and Zero Census.

A. The Facility shall notify the Department and Patients, or Patients’ representatives when appropriate, in writing prior to permanent closure of the Facility and shall provide the effective closure date. The Facility shall return its License to the Department on the date of closure.

B. The Facility shall notify the Department in writing within fifteen (15) days prior to a temporary closure. or within forty-eight (48) hours if the temporary closure is due to an emergency. The notification shall include the reason for the temporary closure, records maintenance plan, anticipated reopening date, and documentation of Patient notification. Facilities that are temporarily closed longer than one (1) year shall reapply for licensure with the Department and be subject to all applicable licensing and construction requirements for new Facilities.

C. The Facility shall notify the Department in writing if there have been no Patients in the Facility for any reason for ninety (90) days or more no later than one hundred (100) days after the last Patient is discharged. Facilities that are zero census longer than one (1) year shall reapply for licensure with the Department and be subject to all applicable licensing and construction requirements for new Facilities.

D. Prior to the closing of a Facility for any reason, the Licensee shall arrange for preservation of records to ensure compliance with this regulation. The Facility shall notify the Department in writing within ten (10) days of closure of the provisions for records maintenance describing the arrangements and the location of the records.

SECTION 700 – PATIENT RECORDS

701. Content.

A. The Facility shall maintain an organized medical record for each Patient. All entries shall be permanently written, typed, or electronic media, authenticated by the author, and dated.

B. The medical record shall be current and contain: (II)

1. Face sheet;

a. identification data (name, date of birth, gender);

b. diagnosis;

c. primary care physician’s name and phone number;

d. Responsible person or other individual to be contacted in case of emergency and phone number;

e. Patient’s address and phone number; and

f. date of admission;

2. Orders from Physicians and other Authorized Healthcare Providers for at least one (1) year. Standing orders shall be updated on an Annual basis;

3. Documentation of Physician or other Authorized Healthcare Provider visits for at least one (1) year. Physician or other Authorized Healthcare Provider visits shall be made at least monthly, as evidenced by a monthly progress note placed in the medical record, and periodically while the patient is receiving in-facility dialysis. The Facility shall document each visit missed by the Patient;

4. Physician progress notes for Home Dialysis Patients shall be documented monthly;

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5. Lab and x-ray reports;
6. Annual history and physical;
7. Social worker initial assessments, updates, and quarterly progress notes;
8. Dietary initial assessments, updates, and monthly progress notes;
9. Miscellaneous consultations, hospitalizations;
10. Current Individual Plan of Care;
11. Nurses' progress notes each time of dialysis for one (1) month;
12. Nurse's initial admission assessment;
13. Signed consent forms.

702. Authentication. (II)

Facilities employing electronic signatures or computer-generated signature codes shall ensure authentication and confidentiality. If the Facility permits any portion of a Patient's record to be generated by electronic means, there shall be policies and procedures to prohibit the use or authentication by unauthorized users.

703. Individual Plan of Care.

A. The Interdisciplinary Team shall develop an Individual Plan of Care for each Patient to ensure appropriate modality of care. The Interdisciplinary Team shall develop the Individual Plan of Care either within the first thirty (30) calendar days of care or within the first thirteen (13) treatments. Individual Plans of Care shall be based on Patient's needs.

B. The Interdisciplinary Team shall review the Individual Plan of Care at least monthly for unstable Patients, and Annually for stable Patients and as changes in Patient needs occur. The Facility shall document participation of the Interdisciplinary Team, Patient and/or Patient's responsible party as appropriate, as evidenced by their signatures and date. The Individual Plan of Care shall include the following care areas:

1. Medical;
2. Psychological;
3. Social;
4. Dietary needs;
5. Stability of Patients;
6. Diagnosis;
7. Type of dialysis treatment;
8. Determination of stability of Patient (stable or unstable);
9. Indication whether candidate for transplantation or home dialysis;

10. Psychological needs, goals, and interventions; and

11. Dietary needs and interventions.

12. The course of action to be taken, the response and reaction to the care, and results of the treatment, and/or services provided.

704. Record Maintenance.

A. The Licensee shall provide accommodations, space, supplies, and equipment for the protection, storage, and maintenance of Patient records. Patient records shall be stored in an organized manner.

B. The Patient record is confidential and shall be made available only to individuals authorized by the Facility and/or the South Carolina Code of Laws. (II)

C. Copies of records generated by organizations or individuals contracted by the Facility for care or services shall be maintained by the Facility.

D. Upon Discharge of a Patient, the record shall be closed within thirty (30) calendar days and filed in an inactive or closed file maintained by the Licensee.

E. The Facility shall designate a staff member to serve as supervisor of Patient records. The Facility- designated staff member shall be a Registered Health Information Administrator or a Registered Health Information Technician. If the designated staff member is not a Registered Health Information Administrator or a Registered Health Information Technician the staff member shall receive consultation from a Registered Health Information Administrator or a Registered Health Information Technician. (II)

F. The Facility shall safeguard information in the medical record against loss, tampering, or use by unauthorized persons.

G. Records of current Patients shall be the property of the Facility. The records of current Patients shall be maintained at the Facility and shall not be removed without court order.

705. Record Retention.

A. When a Patient is transferred to an emergency Facility, a transfer summary to include, at a minimum, the diagnosis shall accompany the Patient to the receiving Facility at the time of transfer or forwarded immediately after the transfer. Documentation of the information forwarded shall be maintained in the Facility's Patient record. (I)

B. Records generated by organizations or individuals contracted by the Facility for care, treatment, procedures, surgery, and/or services shall be maintained by the Facility that has admitted the Patient. Appropriate information shall be provided to assure continuity of care.

C. The Facility shall determine the medium in which information is stored. The information shall be readily retrievable and accessible by Facility staff, as needed, and for regulatory compliance Inspections.

D. Records of Patients shall be maintained for at least six (6) years following the discharge of the Patient. For the first year following discharge, these records must be kept on site and readily available at that Facility. Other documents required by the regulation, e.g., fire drills, shall be retained at least twelve (12) months or until the next Department Inspection, whichever is longer.

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SECTION 800 – [RESERVED]

SECTION 900 – PATIENT CARE AND SERVICES

901. Dietary Services.

Each Facility shall employ or contract with a Dietitian(s) to provide for the dietary needs of each Patient. The Dietitian, in consultation with the physician or other Authorized Healthcare Provide, shall be responsible for assessing the nutritional and dietetic needs of each Patient, recommending therapeutic diets, counseling Patients and their families on prescribed diets, and monitoring adherence and response to diets. Each Patient shall be evaluated as to his or her nutritional needs by the attending physician or other Authorized Healthcare Provider and a Dietitian.

902. Laboratory Services. (II)

A. Laboratory services shall be provided under contract to meet the needs of the Patient. Hematocrits, clotting times, and blood glucoses may be done by the Facility's staff. Such staff shall be qualified by education and experience to perform such duties under the direction of a physician.

B. Controls. There shall be a Quarterly constant packing time performed on all centrifuges used for hematocrits. Records of performed constant packing time shall be maintained.

C. Administration of Blood. A Facility administering blood to Patients shall comply with the following:

1. Blood must be transported from the laboratory processing the blood to the Facility in a container that will ensure maintenance of a temperature of one to ten (1 to 10) degrees centigrade. Temperature must be recorded upon arrival.

2. If blood is not administered immediately upon arrival, it must be stored in a refrigerator at one to six (1 to 6) degrees centigrade. The temperature of the refrigerator must be monitored and recorded.

D. All expired laboratory supplies shall be disposed of in accordance with Facility policy and procedures.

903. Social Services.

Each Facility shall employ or contract with a social worker to meet the social needs of Patients. The Social Worker shall document and conduct psycho-social evaluations, participate in team review of Patient progress, and document recommended changes in treatment based on the Patient's current psycho-social needs. (II)

904. Home Dialysis.

Home Dialysis Services shall include the following: (II)

A. Hemodialysis:

1. Surveillance of the Patient's home adaptation, including provisions for visits to the home or the Facility;
2. Consultation for the Patient with a Social Worker and Dietitian;
3. A record keeping system which ensures continuity of care;
4. Installation and maintenance of equipment;

5. Testing and appropriate treatment of the water; and
6. Ordering of supplies on an ongoing basis.

B. Continuous Ambulatory Peritoneal Dialysis:

1. Consultation for the Patient with a licensed Social Worker and a licensed Dietitian;
2. A record keeping system which ensures continuity of care; and
3. Ordering of supplies on an ongoing basis.

C. Continuous Cycling Peritoneal Dialysis:

1. Surveillance of the Patient's home adaptation, including provisions for visits to the home or the Facility;
2. Consultation for the Patient with a licensed Social Worker and a licensed Dietitian;
3. A record keeping system which ensures continuity of care;
4. Installation and maintenance of equipment; and
5. Ordering of supplies on an ongoing basis.

905. Transfer Agreement.

A. The Facility shall have in effect a written transfer agreement, signed by the Administrator, with one or more hospitals, for the provision of inpatient care and other hospital services.

B. The Dialysis Facility shall transfer a Patient to a hospital whenever a transfer or referral is determined as medically necessary by the attending physician.

C. There shall be an exchange of information, within one (1) business day, of medical and other information necessary or useful in the care and treatment of Patients transferred to a hospital or any other inpatient medical facility, or to another End-Stage Renal Disease Facility.

SECTION 1000 – PATIENT'S RIGHTS AND ASSURANCES

A. The following rights shall be guaranteed to the Patient, and, at a minimum, the Facility shall provide the Patient and any guardians, next of kin, or sponsoring agencies a written and oral explanation of these rights:

1. Fully informed of these rights and responsibilities, and of all rules and regulations governing Patient conduct and responsibilities;
2. Fully informed of services available in the Facility and provided an explanation any out of pocket expenses to the patient within fifteen (15) calendar days of admission and any time there are changes to their insurance coverage;
3. Informed by a Physician of their medical condition as documented in the Patient's medical record unless the medical record documents a contraindication;
4. Afforded the opportunity to participate in the planning of their medical treatment and to refuse to participate in experimental research;

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5. Be transferred or discharged only for medical reasons, at the Patient's request, or for the welfare of the Patient, other Patients, or Facility Staff, or for nonpayment of fees and given notice to ensure orderly transfer or discharge; and

6. Treated with consideration, respect and full recognition of their individuality and personal needs, including the need for privacy in treatment.

B. The Facility shall maintain written documentation evidencing the Patient has had his or her rights explained.

SECTION 1100 – PATIENT PHYSICAL EXAMINATIONS

A. A Physical Examination shall be completed for Patients within thirty (30) calendar days prior to admission and at least Annually thereafter. A Physical Examination included in a discharge summary from a healthcare facility licensed by the Department, completed within thirty (30) calendar days, is acceptable as the admission Physical Examination. The Facility's physician shall attest to the Physical Examination's accuracy by countersigning it.

B. Physical examinations by physicians licensed in states other than South Carolina are permitted for new admissions under the condition that residents obtain an attending physician licensed in South Carolina and undergo a second (2nd) physical examination by that physician within thirty (30) calendar days of admission to the facility.

SECTION 1200 – MEDICATION MANAGEMENT

1201. General.

A. Medications, including Controlled Substances, medical supplies, and those items necessary for the rendering of first aid, shall be properly managed in accordance with federal, state, and local laws and regulations. Such management shall address the securing, storing, and administering of Medications, medical supplies, first aid supplies, and biologicals, their disposal when discounted or expired, and their disposition at discharge, death, or transfer of a Patient.

B. Applicable reference materials published within the previous three (3) years shall be available at the Facility in order to provide staff members or volunteers with adequate information concerning Medications. (II)

1202. Medication Orders.

A. Medications, to include oxygen, shall be administered in the Facility to Patients only upon orders of a physician or other Authorized Healthcare Provider.

B. All other orders shall be received only by Licensed Nurses or Authorized Healthcare Providers and shall be authenticated and dated by a physician or other Authorized Healthcare Provider pursuant to the Facility's policies and procedures, but no later than fourteen (14) calendar days after the order is given. Verbal orders received shall include the time of receipt of the order, description of the order, and identification of the physician or other Authorized Healthcare Provider and the individual receiving the order.

C. Medications and medical supplies ordered for a specific Patient shall not be provided to or administered to any other Patient.

1203. Medicine Storage.

A. Medication and drugs maintained in the Facility for daily administration shall be properly stored and safeguarded in enclosures of sufficient size and that are not accessible to unauthorized persons. Refrigerators used for storage of Medications shall maintain an appropriate temperature as determined by the requirements established on the label of Medications. A thermometer accurate to plus or minus three (3) degrees shall be maintained in these refrigerators. Only authorized personnel shall have access to storage enclosures. Controlled Substances and ethyl alcohol, if stocked, shall be stored under double locks and in accordance with applicable state and federal laws. Expired or discounted Medications shall not be stored with current Medications. (I)

B. Medicine Preparation Area. Medicines and drugs shall be prepared for administration in an area that contains a counter and a sink. This area shall be located in such a manner to prevent contaminations of medicines being prepared for administration. (II)

C. Stock Medications.

1. Unless the Facility has a permitted pharmacy, stocks of Legend Medications shall not be stored except those specifically prescribed for individual Patients.

2. Non-legend Medications may be retained and labeled as stock in the Facility for administration as ordered by a Physician or other Authorized Healthcare Provider.

3. Stocks of naloxone may be stored for emergency overdose crises, with or without specific prescription for individual Patients.

4. If stock non-Patient specific Controlled Substances are to be used, a Controlled Substances registration from the Department's Bureau of Drug Control and a Controlled Substances registration from the federal Drug Enforcement Administration shall be obtained. The registrations shall be displayed in a conspicuous location within the Facility. Records shall be kept of all stock supplies of Controlled Substances giving an accounting of all items received and/or administered. (I)

D. Poisonous Substances. All poisonous substances shall be plainly labeled and kept in a cabinet or closet separate from medicines and drugs to be prepared for administration. (I)

E. Review of Medications. A Physician, pharmacist, or Licensed Nurse shall document review at least monthly all Medications prescribed by the Facility's physician for each Patient, for potential adverse reactions, allergies, interactions, etc. (II)

SECTION 1300 – [RESERVED]

SECTION 1400—EMERGENCY PROCEDURES AND DISASTER PREPAREDNESS

1401. Disaster Preparedness. (II)

A. The Facility shall develop and maintain a written plan for actions to be taken in the event of a disaster or an emergency evacuation. The plan shall be implemented as necessary and at the time of need. The plan shall be evaluated, updated at least Annually, and available upon request by Patients, Patients' families, and the Department.

B. During any emergent event the Facility shall provide data, Facility and evacuation status, and other requested information as determined by the Department, and at a frequency as determined by the Department.

1402. Continuity of Essential Services. (II)

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There shall be a plan to be implemented to ensure the continuation of essential Patient services for such reasons as power outage, water shortage, or in the event of the absence from work of any portion of the work force resulting from inclement weather or other causes.

SECTION 1500 – FIRE PREVENTION

1501. Arrangements for Fire Department Response and Protection. (I)

A. Each Facility shall develop, in coordination with its supporting fire department and/or disaster preparedness agency, suitable written plans for actions to be taken in the event of fire, such as fire plan and evacuation plan.

B. Facilities located outside of a service area or range of a public fire department shall arrange for the nearest fire department to respond in case of fire by written agreement with that fire department. A copy of the agreement shall be kept on file in the Facility and a copy shall be forwarded to the Department. If the agreement is changed, a copy shall be forwarded to the Department.

1502. Tests and Inspections. (I)

Fire protection and suppression systems shall be maintained and tested in accordance with the provisions of the codes officially adopted by the South Carolina Building Codes Council and the South Carolina State Fire Marshal applicable to the Facility.

1503. Fire Response Training. (I)

All Facility staff shall complete Annual fire response training in accordance with specific duties and responsibilities outlined in their job description. Training shall be documented in a staff record and maintained in the Facility.

A. Fire response training shall address, at a minimum, the following:

1. Reporting a fire;
2. Use of the fire alarm system, if applicable;
3. Location and use of fire-fighting equipment;
4. Methods of fire containment; and
5. Specific responsibilities, tasks, or duties of each individual.

B. A plan for the evacuation of Patients, staff members, and visitors, to include evacuation routes and procedures, in case of fire or other emergencies, shall be established and posted in a conspicuous public area.

C. All Patients capable of self-evacuation shall be trained in the proper actions to take in the event of a fire, for example, actions to take if the primary escape route is blocked.

D. Patients shall be made familiar with the fire plan and evacuation plan upon admission and this plan will be reinforced during subsequent Fire Drills.

1504. Fire Drills.

A. An unannounced fire drill shall be conducted at least Quarterly for all shifts. Each staff member shall participate in a fire drill at least once each year. Records of drills shall be maintained at the Facility, indicating

the date, time, shift, description, and evaluation of the drill, and the names of staff members, volunteers, and Patients directly involved in responding to the drill. If fire drill requirements are mandated by statute or regulation, then the mandated statute or regulation requirements supersede the requirements of this regulation, and the Facility shall comply with the provisions of the statute or regulation.

B. Drills shall be designed and conducted in consideration of and reflecting the content of the fire response training described in Section 1503 above.

C. All Patients shall participate in fire drills. In instances when a Patient refuses to participate in a drill, efforts shall be made to encourage participation, for example, counseling, implementation incentives rewarding Patients for participation, specific staff-to-Patient assignments to promote Patient participation. Continued refusal may necessitate implementation of the discharge planning process to place the Patient in a setting more appropriate to his or her needs and abilities.

1505. Fire Extinguishers, Standpipes, and Automatic Sprinklers.

The Facility shall provide fire-fighting equipment such as fire extinguishers, standpipes, and automatic sprinklers as required by the provisions of the codes officially adopted by the South Carolina Building Codes Council and the South Carolina State Fire Marshal applicable to the Facility. The Facility shall ensure extinguishers are sized, located, installed, and maintained in accordance with National Fire Protection Association No. 10. The Facility shall install suitable fire extinguishers in all hazardous areas. The Facility shall comply with all state and local fire and safety provisions. (I)

SECTION 1600 – MAINTENANCE

1601. General Maintenance.

The Facility shall keep all equipment and building components including, but not limited to, doors, windows, lighting fixtures, and plumbing fixtures in good repair and operating condition. The Facility shall document preventive maintenance. The Facility shall comply with the provisions of the codes officially adopted by the South Carolina Building Codes Council and the South Carolina State Fire Marshal applicable to the Facility. (II)

1602. Equipment Maintenance.

A written preventive maintenance program for all fire alarm, electrical, mechanical, plumbing, fire protection systems, and for all equipment used in dialysis and related procedures including, but not limited to, all Patient monitoring equipment, isolated electrical systems, conductive flooring, Patient ground systems, and medical gas systems shall be developed and implemented. This equipment shall be checked and/or tested at such intervals to ensure proper operation and a state of good repair. After repairs and/or alterations are made to any equipment or system, the equipment or system shall be thoroughly tested for proper operation before returning it to service. Records shall be maintained on each piece of equipment to indicate its history of testing and maintenance. (II)

SECTION 1700 – INFECTION CONTROL

1701. Staff Practices.

Staff practices shall promote conditions that prevent the spread of infectious, contagious, or communicable diseases and provide for proper disposal of toxic and hazardous substances. These preventive measures and/or practices shall be in compliance with applicable guidelines of the Blood borne Pathogens Standard of the Occupational Safety and Health Act of 1970; the Centers for Disease Control and Prevention; R.61-105, Infectious Waste Management; and other applicable federal, state, and local laws and regulations.

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1702. Committee.

A. The Facility shall have an infection control committee composed of at least the Administrator, a Physician, and a registered nurse that shall be responsible for writing and enforcing policies and procedures for preventing and controlling hepatitis and other infections.

B. The policies and procedures for preventing and controlling hepatitis and other infections shall include, but not be limited to: (II)

1. appropriate procedures for prevention of hepatitis and other infectious diseases, to include the utilization of universal precautions for prevention of transmission of bloodborne pathogens currently recommended by the Centers for Disease Control;

2. appropriate procedures for surveillance and reporting of infections to include infection rates;

3. housekeeping;

4. handling and disposal of waste and contaminants;

5. sterilization and disinfection of equipment;

6. prevention of contamination by blood and other body fluids of units outside of the dialysis and Dialyzer reprocessing areas including toilet facilities, staff lounge, etc.;

7. protection of Patient clothing during the time when blood lines are opened or needles inserted or withdrawn; and

8. investigation of infections.

1703. Tuberculosis Risk Assessment and Screening. (I)

A. Tuberculosis Testing. The Facility may utilize either Tuberculin skin testing or Blood Assay for Mycobacterium tuberculosis (“BAMT”) for detecting Mycobacterium tuberculosis infection:

1. Tuberculin skin testing (“TST”). A small dose (0.1 mil) of purified protein derivative (“PPD”) tuberculin is injected just beneath the surface of the skin (by the intradermal Mantoux method), and the area is examined for induration (hard, dense, raised area at the site of the TST administration) forty-eight to seventy-two (48 to 72) hours after the injection (but positive reactions can still be measurable up to a week after administering the TST). The size of the indurated area is measured with a millimeter ruler and the reading is recorded in millimeters, including zero (0) mm to represent no induration. Redness and/or erythema is insignificant and is not measured or recorded. Authorized Healthcare Providers are permitted to perform tuberculin skin testing and symptom screening.

2. Blood Assay for Mycobacterium tuberculosis (“BAMT”). A general term to refer to in vitro diagnostic tests that assess for the presence of tuberculosis (“TB”) infection with Mycobacterium tuberculosis. This term includes, but is not limited to, IFN- γ release assays (“IGRA”).

B. The Facility shall conduct an Annual tuberculosis risk assessment in accordance with the Centers for Disease Control guidelines to guide the Facility’s infection control policies and procedures related to the appropriateness and frequency of tuberculosis screening and other tuberculosis related measures to be taken.

C. Baseline Status.

1. The Facility shall determine the baseline status of all staff according to the Centers for Disease Control and the Department's most current tuberculosis guidelines.

2. Tuberculosis Screening. All staff within three (3) months prior to Patient contact shall have a baseline two-step Tuberculin Skin Test ("TST") or a single Blood Assay for Mycobacterium tuberculosis ("BAMT"). If a newly employed staff or volunteer has had a documented negative TST or a BAMT result within the previous twelve (12) months, a single TST (or the single BAMT) can be administered and read to serve as the baseline prior to Patient contact.

D. Post Exposure. After known exposure to a person with potentially infectious tuberculosis disease without use of adequate personal protection, the tuberculosis status of all staff shall be determined in a manner prescribed in the Centers for Disease Control and Department's most current tuberculosis guidelines.

E. Annual Tuberculosis Training. All Direct Care staff shall receive Annual training regarding tuberculosis to include risk factors and signs and symptoms of tuberculosis disease. The Annual tuberculosis training shall be documented in a staff record and maintained at the Facility.

F. Serial Screening. The Facility shall follow the Centers for Disease Control and Department's most current tuberculosis guidelines related to serial screening.

1704. Staff Hepatitis Screening.

A. All Direct Care Staff shall have been vaccinated or have evidence of immunity for hepatitis B prior to Patient contact, unless contraindicated or offered and declined. The Facility shall maintain records of all Direct Care Staff hepatitis B vaccinations in each individual staff file. The HBsAg status of all Direct Care Staff shall be known to identify those individuals who are (1) HBsAg-positive and therefore potential sources of infection to others; (2) anti-HBs-positive and therefore, immune; and (3) HBV-seronegative and therefore susceptible to hepatitis B virus.

B. The Facility shall offer hepatitis B vaccinations to unvaccinated or partially vaccinated new direct care staff members (who do not already exhibit immunity) prior to patient contact. The decision to receive or decline a vaccination shall be documented in the individual staff file.

1. Each Direct Care Staff member who elects vaccination shall start the initial dose of the hepatitis B series within ten (10) days of Patient contact and complete the series within six (6) months. The Facility shall conduct and document routine post-vaccination testing according to the Centers for Disease Control guidelines for response to the vaccination.

2. The Facility shall consider the individuals declining vaccinations as hepatitis B virus susceptible, and follow the Centers for Disease Control guidelines in the event of a reported blood or bodily fluid exposure.

C. For staff members whose status has been determined to be HBsAg-positive, the Facility shall refer to current Centers for Disease Control guidelines and Facility policies and procedures.

1705. Patient Hepatitis Screening.

A. All Patients shall be screened within thirty (30) calendar days prior to admission to the Facility to determine the hepatitis B virus serological status (HBsAg, anti-HBc, and anti-HBs). The HBsAg status of all Patients shall be known to identify those individuals who are (1) HBsAg-positive and therefore potential sources of infection to others; (2) anti-HBs-positive and therefore immune; and (3) HBV-seronegative and therefore susceptible to hepatitis B virus. A status result from hepatitis B testing shall be maintained in the Patient's record.

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B. The Facility shall make available to Patients literature describing the risks and benefits of the hepatitis B vaccination. The Facility shall offer hepatitis B vaccinations to unvaccinated and/or susceptible Patients. The Facility shall maintain all Patient vaccination records in each Patient record.

1. Each Patient who elects vaccination shall start the initial dose of the hepatitis B vaccine series within ten (10) days of admission and complete the series within six (6) months according to Centers for Disease Control guidelines for pre-exposure vaccination. The Facility shall conduct and document routine post-vaccination testing according to the Centers for Disease Control guidelines for response to the vaccination.

2. The Facility shall consider the individuals declining vaccinations as hepatitis B virus seronegative, and follow the Centers for Disease Control guidelines for routine testing.

C. For Patients whose status has been determined to be HBsAg positive, the Facility shall refer to current Center for Disease Control guidelines and Facility policies and procedures.

D. The Facility shall conduct routine hepatitis B testing per current Centers for Disease Control guidelines.

1706. Isolation Room.

All Facilities accepting hepatitis B surface antigen positive Patients shall provide a separate isolation Dialysis room. (II)

1707. Housekeeping. (II)

A. The Facility and its grounds shall be clean, and free of vermin and offensive odors.

B. Interior housekeeping shall, at a minimum, include:

1. Cleaning each specific area of the Facility;

2. Cleaning and disinfection, as needed, of equipment used and/or maintained in each area appropriate to the area and the equipment's purpose or use;

3. For chemicals indicated as harmful on the product label, cleaning materials and supplies shall be in locked storage areas and inaccessible to Patients; and

4. During use of chemicals indicated as harmful on the product label, cleaning materials and supplies shall be in direct possession of the staff member and monitored at all times.

C. Exterior housekeeping shall, at a minimum, include:

1. Cleaning of all exterior areas, such as, porches and ramps, and removal of safety impediments such as snow and ice;

2. Keeping the Facility grounds free of weeds, rubbish, overgrown landscaping, and other potential breeding sources for vermin; and

3. Safe storage of chemicals indicated as harmful on the product label, equipment, and supplies inaccessible to Patients.

D. Paper towels or air hand dryers and soap dispensers with soap must be provided at all lavatories in the Facility. (II)

1708. Linen.

- A. All reusable linens, including those used as sterilizing wrappers, must be laundered before re-use.
- B. Clean linens shall be handled, stored, processed, and transported in such a manner as to prevent the spread of infection.
- C. The Facility shall have available at all times a quantity of linen essential for proper care and comfort of Patients.
- D. Used linens shall be kept in closed and covered containers while being stored or transported.

1709. Refuse and Waste Disposal. (II)

- A. All garbage and waste shall be collected, stored, and disposed of in a manner to prevent the transmission of disease. Containers shall be washed and sanitized before being returned to work areas. Disposable-type containers shall not be reused.
- B. Containers for garbage and refuse shall be covered and stored outside in durable, rust-resistant, non-absorbent, watertight, rodent-proof, easily cleanable containers placed on an approved platform to prevent overturning by animals, the entrance of flies or the creation of a nuisance. All solid waste shall be disposed of at frequencies in a manner so as not to create a rodent, insect, or other vermin problem.
- C. Containers for garbage shall be cleaned and free of debris.
- D. All sewage and liquid waste shall be disposed of in a manner not to create a public health hazard and by a sanitary method approved by the Department.
- E. A Sharps disposal system shall be utilized and appropriately covered. (II)

1710. Outside Areas.

All outside areas, grounds and/or adjacent buildings shall be kept free of rubbish, grass, and weeds that may serve as a fire hazard or as a haven for vermin. Outside stairs, walkways, ramps, and porches shall be maintained free from accumulations of water, ice, snow, and other impediments.

1711. Toxic and Hazardous Substances.

The Facility shall have policies and procedures for dealing with toxic and hazardous substances. Such policies and procedures shall conform to current Occupational Safety and Health Administration standards regarding formaldehyde, renalin, or any other sterilizing agents. (II)

- A. The Facility shall develop procedures to cover at a minimum:
 1. Formaldehyde vapor concentration;
 2. Fire prevention;
 3. Solution exposure;
 4. Leaks from machines;
 5. Large and small spills; and

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6. Solution contact with eyes, skin and/or clothing (appropriate eyewash stations shall be provided in all Facilities).

B. The Facility shall conduct and document routine monitoring of vapor concentration in accordance with current Occupational Safety and Health Administration guidelines.

SECTION 1800 - QUALITY IMPROVEMENT PROGRAM

A. There shall be a written, implemented quality improvement program that provides effective self-assessment and implementation of changes designed to improve the care and services provided by the Facility.

B. The quality improvement program, at a minimum, shall:

1. Establish desired outcomes and the criteria by which policy and procedure effectiveness is regularly, systematically, and objectively accomplished;

2. Identify, evaluate, and determine the causes of any deviation from the desired outcomes;

3. Identify the action taken to correct deviations and prevent future deviation, and the person(s) responsible for implementation of these actions;

4. Analyze the appropriateness of Individual Plans of Care and the necessity of care and services rendered;

5. Analyze all incidents and accidents, to include all medication errors and Patient deaths;

6. Analyze any infection, epidemic outbreaks, or other unusual occurrences which threaten the health, safety, or well-being of the Patients; and

7. Establish a systematic method of obtaining feedback from Patients and other interested persons, as expressed by the level of satisfaction with care and services received.

SECTION 1900 – DESIGN AND CONSTRUCTION

1901. General.

A Facility shall be planned, designed, and equipped to provide and promote the health, safety, and well-being of each Patient. Facility design shall be such that all Patients have access to required services.

1902. Codes and Standards.

A. Facility design and construction shall comply with provisions of the codes officially adopted by the South Carolina Building Codes Council and the South Carolina State Fire Marshal applicable to the Facility.

B. Unless specifically required otherwise by the Department, all Facilities shall comply with the adopted construction codes and construction provisions effective at the time its initial License was issued.

1903. Submission of Plans and Specifications.

A. Plans and specifications shall be submitted to the Department for review and approval for new construction, additions or alterations to existing buildings, replacement of major equipment, buildings being licensed for the first time, buildings changing license type, and for Facilities increasing occupant load or Licensed Capacity. Final plans and specifications shall be prepared by an architect and/or engineer registered in South Carolina and shall bear their seals and signatures. Architectural plans shall also bear the seal of a South Carolina registered

architectural corporation. Unless directed otherwise by the Department, plans shall be submitted at the schematic, design development, and final stages. All plans shall be drawn to scale with the title, stage of submission, and date shown thereon. Any construction changes from the approved documents shall be approved by the Department. Construction work shall not commence until a plan approval has been received from the Department. During construction, the owner shall employ a registered architect and/or engineer for observation and inspections. Periodic inspections shall be conducted by the Department throughout each phase of a project.

B. Plans and specifications shall be submitted to the Department for review and approval for projects involving Dialysis systems that are periodically replaced, reverse osmosis systems, or that have an effect on:

1. The function of a space;
2. The accessibility to or of an area;
3. The structural integrity of the Facility;
4. The active and/or passive fire safety systems;
5. Doors;
6. Walls;
7. Ceiling system assemblies;
8. Exit corridors;
9. Life safety systems; or
10. That increase the occupant load or Licensed Capacity of the Facility.

C. The Facility shall submit all subsequent addenda, change orders, field orders, and documents altering the Department’s review. Any substantial deviation from the accepted documents shall require written notification, review and re-approval from the Department.

D. Cosmetic changes utilizing paint, wall covering, floor covering, etc. that are required to have a flame-spread rating or to satisfy other safety criteria shall be documented with copies kept on file at the Facility and made available to the Department.

1904. Code and Standards Compliance and Inspections.

Construction work which violates codes or standards will be required to be brought into compliance. All projects shall obtain all required permits from the locality having jurisdiction. Construction performed without proper permitting shall not be inspected by the Department.

SECTION 2000 – FIRE PROTECTION, PREVENTION, AND LIFE SAFETY

A. Facilities shall have a partial, manual, automatic, supervised fire alarm system. The Facility shall arrange the system to transmit an alarm automatically to a third party. The alarm system shall notify by audible and visual alarm all areas and floors of the building. The alarm system shall shut down central recirculation systems and outside air units that serve the area(s) of alarm origination as a minimum.

B. All fire, smoke, heat, sprinkler flow, and manual fire alarming devices shall be connected to and activate the main fire alarm system when activated. (I)

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C. Facilities shall not have single and multi-station smoke alarms.

SECTION 2100 – GENERAL CONSTRUCTION

A. Gases, flammable and nonflammable, shall be handled and stored in compliance with provisions of the codes officially adopted by the South Carolina Building Codes Council and the South Carolina State Fire Marshal.

B. Safety precautions shall be taken against fire and other hazards when oxygen is dispensed, administered, or stored. “No Smoking” signs shall be posted conspicuously, and cylinders shall be properly secured in place. In “Smoke-Free” Facilities, “No Smoking” signs shall not be required provided all four (4) of the following conditions are met:

- 1. Smoking is prohibited;
- 2. The Facility nonsmoking policy is strictly enforced;
- 3. “Smoke-Free” signs are strategically placed at all major entrances; and
- 4. A facility shall have “No Smoking” signs where oxygen is stored. (I)

SECTION 2200 – [RESERVED]

SECTION 2300 – WATER SUPPLY

A. Water Supply. Water shall be obtained from a community water system and shall be distributed to conveniently located taps and fixtures throughout the Facility and shall be adequate in volume and pressure for all purposes. (II)

B. The Facility shall enter into an agreement with the water district or similar authority whereby the Facility is regularly notified of situations occurring outside the Facility that may adversely impact water quality including, but not limited to: (I)

- 1. changes in treatment methods and source;
- 2. municipal water treatment equipment failure;
- 3. damage to the distribution system; and
- 4. chemical spills.

C. Water used for dialysis purposes shall be analyzed for bacteriological quality at least monthly and chemical quality at least Quarterly and treated as necessary to maintain a continuous water supply that is biologically and chemically compatible with acceptable dialysis techniques. Water used to prepare a dialysate shall not contain concentrations of elements or organisms in excess of those specified below: (I)

ELEMENTS	LIMIT IN MILLIGRAMS PER LITER
Aluminum	.01
Arsenic	.005
Barium	.100
Cadmium	.001
Calcium	2.0

Chloramines	.001
Chlorine	.500
Chromium	.014
Copper	.100
Fluorides	.200
Lead	.005
Magnesium	4.0
Mercury	.0002
Nitrates (Nitrogen)	2.0
Potassium	8.0
Selenium	.090
Silver	.005
Sodium	70.0
Sulfates	100.0
Zinc	.100
Bacteria	200 colonies per milliliter

SECTION 2400 – ELECTRICAL

2401. General. (I)

A. The Facility shall equip all buildings containing Chronic Hemodialysis Stations with either:

1. An emergency generator with automatic transfer switch(s) that feeds the building and power requirements in Section 2401.B; or
2. An exterior building connection and automatic transfer switch(s) to receive a portable emergency generator that is under contract for delivery and connection. The portable emergency generator shall feed the building and power requirements in Section 2401.B.

B. Facilities subject to Section 2401.A shall meet the following building and power requirements:

1. All power and lighting in the reverse osmosis system, the Chronic Hemodialysis Stations, and the nurse station;
2. Nurse call system supporting the Chronic Hemodialysis Stations;
3. Emergency communication systems;
4. Heating, ventilating, and air conditioning systems for the reverse osmosis system and the Chronic Hemodialysis Stations;
5. Elevator banks serving the Chronic Hemodialysis Stations;
6. All exit lights with backup battery packs;
7. All exit access corridor lighting with backup battery packs;
8. All illumination of means of egress with backup battery packs;
9. All fire detection and alarm systems, if installed;
10. All sprinkler systems, if installed; and

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11. Emergency generator run time of at least forty-eight (48) hours.

2402. Lighting and Electrical Services.

A. All electrical and other equipment used in the Facility shall be maintained free of defects that could be a potential hazard to Patients or personnel. The Facility shall provide safe lighting for individual activities as required by applicable codes.

B. The Facility shall maintain all electrical installations and equipment in a safe, operable condition in accordance with the applicable codes.

C. The Facility shall maintain documentation of Annual electrical system inspection by a certified or licensed technician.

SECTION 2500 – HEATING, VENTILATION, AND AIR CONDITIONING (HVAC)

A. The Facility shall maintain documentation of annual Heating, Ventilation, and Air Conditioning system inspection by a certified or licensed technician. (II)

B. The Facility shall maintain a temperature of between seventy-two (72) and seventy-eight (78) degrees Fahrenheit in Patient areas. (II)

C. No Heating, Ventilation, and Air Conditioning supply or return grille shall be installed within three (3) feet of a smoke detector. (I)

D. Heating, Ventilation, and Air Conditioning grilles shall not be installed in floors. (II)

E. Intake air ducts shall be filtered and maintained to prevent the entrance of dust, dirt, and other contaminating materials. The system shall not discharge in such a manner that would be an irritant to the Patients, staff, or volunteers. (II)

F. Each bathroom and/or restroom shall have either operable windows or have approved mechanical ventilation. (II)

SECTION 2600 – PHYSICAL PLANT

2601. General.

A. The dialysis unit(s) shall be separate from other activities and shall be located in an area free of traffic by non-unit staff or Patients. (II)

B. The nursing station shall be located in an area that provides adequate visual surveillance of Patients on dialysis machines. (I)

C. Treatment areas shall be designed and equipped to provide proper and safe treatment as well as privacy and comfort for Patients. Sufficient space shall be provided to accommodate emergency equipment and staff to move freely to reach Patients in emergencies. (I)

D. At least two (2) acceptable exits shall be provided for each Facility. (II)

E. If the Facility is located on the ground floor there must be one (1) exit to the outside for ambulance and/or handicapped use. (II)

F. If the dialysis units are located above the ground floor, the Facility must have an elevator sized to accommodate a stretcher. (II)

G. Dialysis units shall be at least three (3) feet apart with cubicle curtains or other means to provide complete privacy for each Patient as needed. (II)

H. All rooms shall open onto a corridor leading to an exit and all corridors used by Patients shall be at least four (4) feet wide. (II)

I. A waiting room shall be provided with sufficient seating for Patients and visitors.

J. Storage rooms shall be provided for supplies and equipment. Storage room floor space shall total at least ten (10) square feet per station.

K. A clean work area that contains a work counter, handwashing sink, and storage facilities for the storage of clean and sterile supplies shall be provided. (II)

L. A soiled work area that contains a work counter, handwashing sink, storage cabinets, and waste receptacle shall be provided. (II)

M. Patient toilet facilities shall be provided.

N. A separate staff toilet and personal storage space shall be provided within the unit.

O. Separate storage space shall be provided for oxygen cylinders if a piped system is not provided. (II)

P. A janitor's closet shall be provided adjacent to and for the exclusive use of the dialysis Facility.

2602. Ground Fault Protection.

All electrical and other equipment used in the Facility shall be maintained free of defects that could be a potential hazard to Patients or personnel. There shall be sufficient safe lighting for individual activities, including suitable lighting for corridors and baths. Lighting in work areas shall never be less than fifty (50) foot-candles. (II)

SECTION 2700 – SEVERABILITY

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

Fiscal Impact Statement:

Implementation of this regulation will not require additional resources. There is no anticipated additional cost by the Department or state government due to any requirements of this regulation.

Statement of Need and Reasonableness:

The following presents an analysis of the factors listed in 1976 Code Sections 1-23-115(C)(1)-(3) and (9)-(11):

DESCRIPTION OF REGULATION: 61-97, Standards for Licensing Renal Dialysis Facilities.

Purpose: The Department amends R.61-97 to update provisions in accordance with current practices and standards. The Department further revises for clarity and readability, grammar, references, codification, and overall improvement to the text of the regulation.

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Legal Authority: 1976 Code Sections 44-7-260 et seq.

Plan for Implementation: The DHEC Regulation Development Update (accessible at <http://www.scdhec.gov/Agency/RegulationsAndUpdates/RegulationDevelopmentUpdate/>) will provide a summary of and link to a copy of the amendment. Additionally, printed copies are available for a fee from the Department's Freedom of Information Office. Upon taking legal effect, Department personnel will take appropriate steps to inform the regulated community of the amended regulation and any associated information.

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

The amendments are necessary to update provisions in accordance with current practices and standards. The amendments include updated language for facilities applying for licensure and incorporate provisions delineating new requirements in training staff members, as well as new nursing and medical staff requirements. The amendments revise and incorporate requirements regarding maintenance of policies and procedures, Department inspections and investigations, maintenance of accurate and current contact and training information for staff members, and other miscellaneous requirements for licensure.

DETERMINATION OF COSTS AND BENEFITS:

Implementation of these amendments will not require additional resources. There is no anticipated additional cost to the Department or state government due to any inherent requirements of these amendments. There are no anticipated additional costs to the regulated community.

UNCERTAINTIES OF ESTIMATES:

None.

EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH:

The amendments to R.61-97 seek to support the Department's goals relating to the protection of public health through implementing updated requirements for renal dialysis facilities. There are no anticipated effects on the environment.

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

There is no anticipated detrimental effect on the environment. If the revision is not implemented, the regulation will be maintained in its current form without realizing the benefits of the amendments herein.

Statement of Rationale:

Here below is the Statement of Rationale pursuant to S.C. Code Section 1-23-110(h):

The Department of Health and Environmental Control amends R.61-97 to update provisions in accordance with current practices and standards. The amendments include updated language for facilities applying for licensure and incorporate provisions delineating new requirements in training staff members, as well as new nursing and medical staff requirements. The amendments revise and incorporate requirements regarding maintenance of policies and procedures, Department inspections and investigations, maintenance of accurate and current contact and training information for staff members, and other miscellaneous requirements for licensure.

Document No. 4897

**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 30**

Statutory Authority: 1976 Code Sections 48-39-10 et seq.

30-1. Statement of Policy.

30-14. Administrative Procedures.

Synopsis:

The Department of Health and Environmental Control (“Department”) is amending R.30-1.D(43) and R.30-14.E., F., and G. to incorporate state statutory changes. The Beachfront Management Reform Act, Act 173 of 2018 (“Act”), establishes the position of the jurisdictional baselines and setback lines for the 2018 establishment cycle. The purpose of the jurisdictional lines is to delineate the extent of the Department’s direct permitting authority for activities within the defined beaches and beach/dune system critical areas. Section 8 of the Act requires the Department to promulgate regulations in order to implement provisions of the Act, which includes regulations the Department will use to establish the jurisdictional lines and locate a primary oceanfront sand dune.

The Department convened a Beachfront Jurisdictional Line Stakeholder Workgroup in 2018 to provide input into this process. The amendments are based on final recommendations of the Workgroup and associated public engagement and input. The amendments provide clarity and standards to be utilized in the establishment of the state’s beachfront jurisdictional lines. The amendments also modify specific procedures related to appeals and movement of the jurisdictional lines to comply with Act 173 and Coastal Zone Critical Areas, Act 197 of 2016.

The Department had a Notice of Drafting published in the April 26, 2019, *South Carolina State Register*.

Instructions:

Amend Coastal Regulations 30-1, Statement of Policy, and 30-14, Administrative Procedures, pursuant to each individual instruction provided with the text below.

Text:

30-1. Statement of Policy.

30-14. Administrative Procedures.

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

Revise 30-1.D(43), definition of “Primary Oceanfront Sand Dunes” to read:

(43) Primary Oceanfront Sand Dunes - those dunes that constitute the front row of dunes adjacent to the Atlantic Ocean. For the purposes of establishing the jurisdictional baseline, the dune must have a minimum height of thirty-six (36) inches, as measured vertically from the seaward toe to the crest of the dune. The dune must also form a nearly continuous dune ridge for 500 shore parallel feet and may exhibit minimal breaks such as those resulting from pedestrian or emergency vehicle access points. This dune typically exhibits the presence of stable, native vegetation, and is not scarped, eroded, or overtopped by the highest predicted astronomical tides. However, this dune may be inundated by storm surge which normally accompanies major coastal storm events.

Revise R.30-14.E to read:

E. Procedures for Adopting Baselines and Setback Lines.

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(1) The Department must establish baselines and setback lines for all geographic areas where baselines and setback lines were established on or before January 31, 2012. The baselines and setback lines must be established anew during establishment cycles that are not less than every seven (7) years, but not more than every ten (10) years following a previous establishment cycle and must be based upon the best available data. Until the Department establishes new baselines and setback lines for a geographic area, the existing baselines and setback lines for the geographic area must be used.

(2) In each new establishment cycle of the baselines and setback lines, the Department must:

(a) stagger the establishment of the baselines and setback lines by geographic area and provide a tentative schedule of establishment for each geographic area on the Department's website at least one hundred twenty (120) days prior to beginning a new establishment cycle;

(b) publish proposed locations of baselines and setback lines for a geographic area on the Department's website for public input at least one hundred twenty (120) days prior to establishing the baselines and setback lines for the geographic area;

(c) on the date of the publication of the proposed locations of baselines and setback lines for a geographic area:

(i) provide notice of the publication in a newspaper of general statewide circulation and a newspaper of local circulation in the geographic area; and

(ii) make readily available to the public, including on the Department's website, the information and raw data that the Department used to determine the locations of the proposed baselines and setback lines and explanations for these determinations;

(d) hold at least one (1) public hearing in the county or municipality of a geographic area at least ninety (90) days prior to establishing the baselines and setback lines for the geographic area; and

(e) accept and review data up to thirty (30) days prior to establishing baselines and setback lines for a geographic area to determine if a proposed baseline or setback line for the geographic area should be revised.

(3) Upon the publication of the tentative schedule established under R.30-14.E(2)(a), a municipality, county, agency, or organization undertaking a beach renourishment project may submit a request to the Department, within the one hundred twenty (120)-day notice period, to revise the establishment date for the baseline and setback line in its geographical area. The Department may revise the establishment schedule if submitted information demonstrates the following:

(a) the municipality, county, agency, or organization has an issued Department permit in effect for a beach renourishment project, or an issued Department coastal zone consistency certification associated with a federal beach renourishment project;

(b) the request does not extend the establishment date outside of the establishment cycle timeframe set forth by R.30-14.E(1);

(c) the municipality, county, agency, or organization has encumbered funds to complete the beach renourishment project; and

(d) the municipality, county, agency, or organization will start construction of the beach renourishment project within one (1) year of the initiation of the new establishment cycle.

(4) If the construction of the qualifying beach renourishment project under R.30-14.E(3)(d) has not started within one (1) year of the initiation of the new establishment cycle, the Department must establish the baselines and setback lines using the best available scientific and historical data within the required timeframes under R.30-14.E(1).

Delete the text of R.30-14.F and reserve section to read:

F. [Reserved]

Delete the text of R.30-14.G and reserve section to read:

G. [Reserved]

Fiscal Impact Statement:

The Department estimates no additional cost incurred by the state or its political subdivisions as a result of the promulgation, approval, and implementation of this amendment. The Department will use existing staff and resources to implement these amendments.

Statement of Need and Reasonableness:

The following presents an analysis of the factors listed in 1976 Code Sections 1-23-115(C)(1)-(3) and (9)-(11):

DESCRIPTION OF REGULATION: 30-1, Statement of Policy, and 30-14, Administrative Procedures.

Purpose: The Department is amending R.30-1.D.(43) and R.30-14.E., F., and G. to incorporate state statutory changes. The Beachfront Management Reform Act, Act 173 of 2018 (“Act”), requires the Department to establish, based on best available data, the position of baselines and setback lines during establishment cycles not less than every seven (7) years and not more than every ten (10) years following a previous establishment cycle. The purpose of these jurisdictional lines is to delineate the extent of the Department’s direct permitting authority for activities within the defined beaches and beach/dune system critical areas. Section 8 of the Act requires the Department to promulgate regulations for implementation, including provisions to locate a primary oceanfront sand dune. The amendments provide clarity and standards to be utilized in the establishment of the state’s beachfront jurisdictional lines. The amendments also modify specific procedures related to appeals and movement of the jurisdictional lines to comply with Act 173 and Coastal Zone Critical Areas, Act 197 of 2016.

Legal Authority: 1976 Code Sections 48-39-10 et seq.

Plan for Implementation: The DHEC Regulation Development Update (accessible at <http://www.scdhec.gov/Agency/RegulationsAndUpdates/RegulationDevelopmentUpdate/>) provides a summary of and link to these proposed amendments. Additionally, printed copies are available for a fee from the Department’s Freedom of Information Office. Upon taking legal effect, Department personnel will take appropriate steps to inform the regulated community of the amendments and any associated information.

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

The Department is amending R.30-1.D.(43) and R.30-14.E., F., and G. to incorporate state statutory changes. The Department convened a Beachfront Jurisdictional Line Stakeholder Workgroup in 2018 to provide input into this process. The amendments are based on final recommendations of the Workgroup and associated public engagement and input. The amendments modify specific procedures related to appeals and movement of the jurisdictional lines to comply with Act 173 and Coastal Zone Critical Areas, Act 197 of 2016.

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The amendments are reasonable and necessary to manage the long-term health and sustainability of the state's beaches and beach/dune systems while providing sufficient public input into Department decisions. The amendments also clarify existing regulations to better enable Department staff to more effectively implement the stated policies of the Act.

DETERMINATION OF COSTS AND BENEFITS:

The Department does not anticipate additional cost to the state resulting from administration of these proposed amendments. Benefits to the state include improved management of coastal resources through increased clarity of the regulations. The Department does not anticipate additional cost to the regulated community as a result of these amendments.

UNCERTAINTIES OF ESTIMATES:

None.

EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH:

Implementation of these amendments seeks to benefit the environment by providing more clarity to the Department's Coastal Division statutory directives to manage the state's beaches and beach/dune critical areas for its citizens. These amendments refine the Department's processes for establishing the state's direct regulatory jurisdiction along the beach and within the beach/dune system. The amendments also provide more clarity to those seeking to utilize these resources.

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

There is no anticipated detrimental effect on the environment and/or public health if these amendments are not implemented beyond not benefiting from the amendments' implementation. Implementation of these amendments seeks to benefit the environment by providing more clarity to the Department's Coastal Division statutory directives to manage the state's beaches and beach/dune critical areas for its citizens.

Statement of Rationale:

The Department is amending R.30-1.D.(43) and R.30-14.E., F., and G. to incorporate state statutory changes. The Beachfront Management Reform Act, Act 173 of 2018 ("Act"), requires the Department to establish, based on best available data, the position of baselines and setback lines during establishment cycles not less than every seven (7) years and not more than every ten (10) years following a previous establishment cycle. Section 8 of the Act requires the Department to promulgate regulations for implementation, including provisions to locate a primary oceanfront sand dune. The amendments provide clarity and standards to be utilized in the establishment of the state's beachfront jurisdictional lines. The amendments also modify specific procedures related to appeals and movement of the jurisdictional lines to comply with Act 173 and Coastal Zone Critical Areas, Act 197 of 2016.

Document No. 4887
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61

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

61-68. Water Classifications and Standards.

Synopsis:

R.61-68 establishes appropriate goals and water uses to be achieved, maintained, and protected, general rules and water quality criteria to protect classified and existing water uses, and an antidegradation policy to protect and maintain the levels of water quality necessary to support and maintain those existing and classified uses. Section 303(c)(2)(B) of the federal Clean Water Act (“CWA”) requires South Carolina’s water quality standards be reviewed and revised, where necessary, at least once every three years. Referred to as the triennial review, this required process consists of reviewing and adopting, where appropriate, the Environmental Protection Agency’s updated numeric and narrative criteria according to Section 304(a) and Section 307(a) of the CWA. The Department of Health and Environmental Control (“Department”) amends R.61-68 to adopt these criteria the Department deemed necessary to comply with federal regulatory recommendations and revisions. The Department adopts a revised standard for aquatic life ambient water quality criteria for cadmium, a revised recreational water quality criteria for enterococci, a standard for aquatic life ambient water quality criteria for carbaryl, and a standard for human health recreational ambient water quality criteria for microcystins and cylindrospermopsin to reflect the most current final published criteria in accordance with Sections 304(a) and 307(a) of the CWA. The Department also makes stylistic changes for overall improvement of the text of the regulation.

The Department had a Notice of Drafting published in the February 22, 2019, *South Carolina State Register*.

Instructions:

Amend R.61-68 pursuant to each individual instruction provided with the text of the amendments below.

Text:

61-68. Water Classifications and Standards.

(Statutory Authority: 1976 Code Sections 48-1-10 et seq.)

Amend 61-68.E.14.c(10) to read:

(10) In order to protect recreational uses in Class SB saltwaters of the State, NPDES permit effluent limitations shall be specified as indicated below:

i. Monthly Average (enterococci)	35 MPN per 100 mL
ii. Daily Maximum (enterococci)	104 MPN per 100 mL (see c(12) below)
iii. Class SA recreational daily maximum and/or shellfish protection	Class SA daily maximum (see c(9)ii. above) recreational use requirements for enterococci and/or Class SFH requirements (see c(11)i. and c(11)ii. below) for fecal coliform may be specified (in addition to the limits above) for the protection of upstream and/or downstream waters (regardless of their individual classification).
iv. Municipal separate storm sewer systems	For municipal separate storm sewer systems (as described in R.61-9.122.26.a.) compliance with the bacterial

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	standards shall be determined in accordance with c(13) below.
v. Protection of upstream and/or downstream waters	Permit limitations may include (in addition to the requirements listed in c(10)i. and c(10)ii. above) one or more bacterial limitations for fecal coliform, E. coli and /or enterococci to protect both uses in the specific receiving water body and also to protect any upstream or downstream uses that may be required. If more than one bacterial limit is required, the conditions associated with each section above or below shall apply independently regardless of the water classification at the point of discharge.
vi. Class ORW or ONRW protection	For Class ORW or ONRW waters, the bacterial requirements shall be those applicable to the classification of the waterbody immediately prior to reclassification to either ORW or ONRW, including consideration of natural conditions. See G.5 and G.7 for prohibitions.

Add 61-68.E.14.d(7) to read:

(7) The assessment of total microcystins for purposes of issuing a swimming advisory for freshwater recreational use will be based on the single sample maximum of 8 µg/L. Once issued, the swimming advisory will remain in effect until resample results indicate the toxin concentration falls below 8 µg/L.

Add 61-68.E.14.d(8) to read:

(8) The assessment of total microcystins for purposes of Section 303(d) listing determinations for recreational uses shall be based on no more than three (3) swimming advisories in a three (3)-year assessment period.

Add 61-68.E.14.d(9) to read:

(9) The assessment of cylindrospermopsin for purposes of issuing a swimming advisory for freshwater recreational use will be based on the single sample maximum of 15 µg/L. Once issued, the swimming advisory will remain in effect until resample results indicate the toxin concentration falls below 15 µg/L.

Add 61-68.E.14.d(10) to read:

(10) The assessment of cylindrospermopsin for purposes of Section 303(d) listing determinations for recreational uses shall be based on no more than three (3) swimming advisories in a three (3)-year assessment period.

Amend 61-68.G.9. and 10. to read:

9. The standards below protect the uses of Natural and Put, Grow, and Take trout waters.

Quality Standards for Trout Waters	
ITEMS	STANDARDS
a. Garbage, cinders, ashes, oils, sludge, or other refuse	None allowed.
b. Treated wastes, toxic wastes, deleterious substances, colored, or	None alone or in combination with other substances or wastes in sufficient amounts to be injurious to reproducing trout populations in natural waters or stocked populations in put, grow, and take waters, or in any manner adversely

other wastes except those given in a. above.	affecting the taste, color, odor, or sanitary condition thereof or impairing the waters for any other best usage as determined for the specific waters which are assigned to this class.
c. Toxic pollutants listed in the appendix.	As prescribed in Section E of this regulation.
d. Stormwater, and other nonpoint source runoff, including that from agricultural uses, or permitted discharge from aquatic farms, concentrated aquatic animal production facilities, and uncontaminated groundwater from mining.	Allowed if water quality necessary for existing and classified uses shall be maintained and protected consistent with Antidegradation Rules.
e. Dissolved oxygen.	Not less than 6 mg/L.
f. E. coli	Not to exceed a geometric mean of 126/100 mL based on at least four samples collected from a given sampling site over a 30 day period, nor shall a single sample maximum exceed 349/100 mL.
g. pH.	Between 6.0 and 8.0.
h. Temperature.	Not to vary from levels existing under natural conditions, unless determined that some other temperature shall protect the classified uses.
i. Turbidity.	Not to exceed 10 Nephelometric Turbidity Units (NTUs) or 10% above natural conditions, provided uses are maintained.
j. Total microcystins	Not to exceed 8 µg/L. For freshwater primary contact recreational use notifications and advisories samples shall not exceed 8 µg/L.
k. Cylindrospermopsin	Not to exceed 15 µg/L. For freshwater primary contact recreational use notifications and advisories samples shall not exceed 15 µg/L.

10. Freshwaters are freshwaters suitable for primary and secondary contact recreation and as a source for drinking water supply after conventional treatment in accordance with the requirements of the Department. Suitable for fishing and the survival and propagation of a balanced indigenous aquatic community of fauna and flora. Suitable also for industrial and agricultural uses.

Quality Standards for Freshwaters	
ITEMS	STANDARDS
a. Garbage, cinders, ashes, oils, sludge, or other refuse	None allowed.
b. Treated wastes, toxic wastes, deleterious substances, colored, or other wastes except those given in a. above.	None alone or in combination with other substances or wastes in sufficient amounts to make the waters unsafe or unsuitable for primary contact recreation or to impair the waters for any other best usage as determined for the specific waters which are assigned to this class.

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c. Toxic pollutants listed in the appendix.	As prescribed in Section E of this regulation.
d. Stormwater, and other nonpoint source runoff, including that from agricultural uses, or permitted discharge from aquatic farms, concentrated aquatic animal production facilities, and uncontaminated groundwater from mining.	Allowed if water quality necessary for existing and classified uses shall be maintained and protected consistent with Antidegradation Rules.
e. Dissolved oxygen.	Daily average not less than 5.0 mg/L with a low of 4.0 mg/L.
f. E. coli	Not to exceed a geometric mean of 126/100 mL based on at least four samples collected from a given sampling site over a 30 day period, nor shall a single sample maximum exceed 349/100 mL.
g. pH.	Between 6.0 and 8.5.
h. Temperature.	As prescribed in E.12. of this regulation.
i. Turbidity. Except for Lakes. Lakes only.	Not to exceed 50 NTUs provided existing uses are maintained. Not to exceed 25 NTUs provided existing uses are maintained.
j. Total microcystins	Not to exceed 8 µg/L. For freshwater primary contact recreational use notifications and advisories samples shall not exceed 8 µg/L.
k. Cylindrospermopsin	Not to exceed 15 µg/L. For freshwater primary contact recreational use notifications and advisories samples shall not exceed 15 µg/L.

Amend 61-68.G.13. to read:

13. Class SB are tidal saltwaters suitable for primary and secondary contact recreation, crabbing, and fishing, except harvesting of clams, mussels, or oysters for market purposes or human consumption. Also suitable for the survival and propagation of a balanced indigenous aquatic community of marine fauna and flora.

Quality Standards for Class SB Waters	
ITEMS	STANDARDS
a. Garbage, cinders, ashes, oils, sludge, or other refuse	None allowed.
b. Treated wastes, toxic wastes, deleterious substances, colored, or other wastes except those given in a. above.	None alone or in combination with other substances or wastes in sufficient amounts to make the waters unsafe or unsuitable for primary contact recreation or to impair the waters for any other best usage as determined for the specific waters which are assigned to this class.
c. Toxic pollutants listed in the appendix.	As prescribed in Section E of this regulation.

d. Stormwater, and other nonpoint source runoff, including that from agricultural uses, or permitted discharge from aquatic farms, and concentrated aquatic animal production facilities.	Allowed if water quality necessary for existing and classified uses shall be maintained and protected consistent with Antidegradation Rules.
e. Dissolved oxygen.	Not less than 4.0 mg/L.
f. Enterococci.	Not to exceed a geometric mean of 35/100 ml based on at least four samples collected from a given sampling site over a 30 day period; nor shall a single sample maximum exceed 104/100 mL. Additionally, for beach monitoring and notification activities for CWA Section 406 only, samples shall not exceed a single sample maximum of 104/100 mL.
g. pH.	Shall not vary more than one-half of a pH unit above or below that of effluent-free waters in the same geological area having a similar total salinity, alkalinity and temperature, but not lower than 6.5 or above 8.5
h. Temperature.	As prescribed in E.12. of this regulation.
i. Turbidity.	Not to exceed 25 NTUs provided existing uses are maintained.

j. The Department shall protect existing shellfish harvesting uses found in Class SB waters consistent with the antidegradation rule, Section D.1.a. of this regulation and shall establish permit limits in accordance with Section E.14.c(8), (9), (10), and (11) and Section G.11.f. of this regulation.

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Amend R.61-68 Appendix: Water Quality Numeric Criteria for the Protection of Aquatic Life and Human Health “Priority Toxic Pollutants” table and footnotes to read:

APPENDIX: WATER QUALITY NUMERIC CRITERIA FOR THE PROTECTION OF AQUATIC LIFE AND HUMAN HEALTH

This appendix contains three charts (priority pollutants, nonpriority pollutants, and organoleptic effects) of numeric criteria for the protection of human health and aquatic life. The appendix also contains three attachments which address hardness conversions and application of ammonia criteria. Footnotes specific to each chart follow the chart. General footnotes pertaining to all are at the end of the charts prior to the attachments. The numeric criteria developed and published by EPA are hereby incorporated into this regulation. Please refer to the text of the regulation for other general information and specifications in applying these numeric criteria.

PRIORITY TOXIC POLLUTANTS

Priority Pollutant	CAS Number	Freshwater Aquatic Life		Saltwater Aquatic Life		Human Health			FR Cite/ Source	
		CMC (µg/L)	CCC (µg/L)	CMC (µg/L)	CCC (µg/L)	For Consumption of:				
						Water & Organism (µg/L)	Organism Only (µg/L)	MCL (µg/L)		
1	Antimony	7440360				5.6 B, ee	640 B, ee	6 ee	65FR66443 SDWA	
2	Arsenic	7440382	340 A, D, K	150 A, D, K	69 A, D, Y	36 A, D, Y	10 C	10 C	10 C	65FR31682 57FR60848 SDWA
3	Beryllium	7440417						4 ee	65FR31682 SDWA	
4	Cadmium	7440439	0.49 D, E, Y	0.25 D, E, Y	33 D, Y	7.9 D, Y	J, ee	J, ee	5 ee	81FR19176 SDWA
5a	Chromium III	16065831	580 D, E, K	28 D, E, K			J, ee	J, ee	100 ee Total	EPA820/B-96-001 65FR31682 SDWA
5b	Chromium VI	18540299	16 D, K	11 D, K	1,100 D, Y	50 D, Y	J, ee	J, ee	100 ee Total	65FR31682 SDWA
6	Copper	7440508	3.8 D, E, K, Z, II	2.9 D, E, K, Z, II	5.8 D, Z, Y, cc	3.7 D, Z, Y, cc	1,300 T, ee			65FR31682
7	Lead	7439921	14 D, E, Y	0.54 D, E, Y	220 D, Y	8.5 D, Y				65FR31682

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Priority Pollutant	CAS Number	Freshwater Aquatic Life		Saltwater Aquatic Life		Human Health			FR Cite/ Source	
		CMC (µg/L)	CCC (µg/L)	CMC (µg/L)	CCC (µg/L)	For Consumption of:				
						Water & Organism (µg/L)	Organism Only (µg/L)	MCL (µg/L)		
8	Mercury	7439976	1.6 D, K, dd	0.91 D, K, dd	2.1 D, bb, dd	1.1 D, bb, dd	0.050 B, ee	0.051 B, ee	2 ee	65FR31682 SDWA
9	Nickel	7440020	150 D, E, K	16 D, E, K	75 D, Y	8.3 D, Y	610 B, ee	4, 600 B, ee		65FR31682
10	Selenium	7782492	L, Q, S	5.0 S	290 D, aa	71 D, aa	170 Z, ee	4,200 ee	50 ee	65FR31682 65FR66443 SDWA
11	Silver	7440224	0.37 D, E, G		2.3 D, G					65FR31682
12	Thallium	7440280					0.24	0.47	2 ee	68FR75510 SDWA
13	Zinc	7440666	37 D, E, K	37 D, E, K	95 D, Y	86 D, Y	7,400 T, ee	26,000 T, ee		65FR31682 65FR66443
14	Cyanide	57125	22 K, P	5.2 K, P	1 P, Y	1 P, Y	140 ee, jj	140 ee, jj	200 ee	EPA820/B-96-001 57FR60848 68FR75510 SDWA
15	Asbestos	1332214							7 million fibers/L l, ee	57FR60848
16	2, 3, 7, 8-TCDD (Dioxin)	1746016						0.046 ppq O, C	30ppq O, C	State Standard SDWA
17	Acrolein	107028	3	3			6 ee, nn	9 ee, nn		74FR27535 74FR46587
18	Acrylonitrile	107131					0.051 B, C	0.25 B, C		65FR66443
19	Benzene	71432					2.2 B, C	51 B, C	5 C	IRIS 01/19/00 65FR66443 SDWA

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Priority Pollutant	CAS Number	Freshwater Aquatic Life		Saltwater Aquatic Life		Human Health			FR Cite/ Source
		CMC (µg/L)	CCC (µg/L)	CMC (µg/L)	CCC (µg/L)	For Consumption of:			
						Water & Organism (µg/L)	Organism Only (µg/L)	MCL (µg/L)	
20	Bromate	15541454						10 C	SDWA
21	Bromoform	75252				4.3 B, C	140 B, C	80 Total THMs C	65FR66443 SDWA
22	Bromoacetic acid	79083						60 Total HAA5 C,mm	SDWA
23	Carbon Tetrachloride	56235				0.23 B, C	1.6 B, C	5 C	65FR66443 SDWA
24	Chlorite	67481						100	SDWA
25	Chlorobenzene	108907				130T, ee	1,600 T, ee	100 T, ee	68FR75510 SDWA
26	Chlorodibromomethane	124481				0.40 B, C	13 B, C	80 Total THMs C	65FR66443 SDWA
27	Chloroform	67663				5.7 B, C, hh	470 B, C, hh	80 Total THMs C	62FR42160 SDWA
28	Dibromoacetic acid	631641						60 Total HAA5 C, mm	SDWA
29	Dichloroacetic acid	79436						60 Total HAA5 C,mm	SDWA
30	Dichlorobromomethane	75274				0.55 B, C	17 B, C	80 Total THMs C	65FR66443 SDWA
31	1, 2-Dichloroethane	107062				0.38 B, C	37 B, C	5 C	65FR66443 SDWA
32	1, 1-Dichloroethylene	75354				330 ee	7,100 ee	7 C	68FR75510 SDWA

Priority Pollutant		CAS Number	Freshwater Aquatic Life		Saltwater Aquatic Life		Human Health			FR Cite/ Source
			CMC (µg/L)	CCC (µg/L)	CMC (µg/L)	CCC (µg/L)	For Consumption of:			
						Water & Organism (µg/L)	Organism Only (µg/L)	MCL (µg/L)		
33	1, 2-Dichloropropane	78875				0.50 B, C	15 B, C	5 C	65FR66443 SDWA	
34	1, 3-Dichloropropene	542756				0.34 ee	21 ee		68FR75510	
35	Ethylbenzene	100414				530 ee	2,100 ee	700 ee	68FR75510 SDWA	
36	Methyl Bromide	74839				47 B, ee	1,500 B, ee		65FR66443	
37	Methylene Chloride	75092				4.6 B, C	590 B, C	5 C	65FR66443 SDWA	
38	Monochloroacetic acid	79118						60 Total HAA5 C,mm	SDWA	
39	1, 1, 2, 2-Tetrachloroethane	79345				0.17 B, C	4.0 B, C		65FR66443	
40	Tetrachloroethylene	127184				0.69 C	3.3 C	5 C	65FR66443 SDWA	
41	Toluene	108883				1,300 ee	15,000 ee	1000 ee	68FR75510 SDWA	
42	1,2-Trans- Dichloroethylene	156605				140 ee	10,000 ee	100 ee	68FR75510 SDWA	
43	Trichloroacetic acid	79039						60 Total HAA5 C,mm	SDWA	
44	1, 1, 1-Trichloroethane	71556				J, ee	J, ee	200 ee	65FR31682 SDWA	

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Priority Pollutant	CAS Number	Freshwater Aquatic Life		Saltwater Aquatic Life		Human Health			FR Cite/ Source	
		CMC (µg/L)	CCC (µg/L)	CMC (µg/L)	CCC (µg/L)	For Consumption of:				
						Water & Organism (µg/L)	Organism Only (µg/L)	MCL (µg/L)		
45	1, 1, 2-Trichloroethane	79005				0.59 B, C	16 B, C	5 C	65FR66443 SDWA	
46	Trichloroethylene	79016				2.5 C	30 C	5 C	65FR66443 SDWA	
47	Vinyl Chloride	75014				0.025 kk	2.4 kk	2 C	68FR75510 SDWA	
48	2-Chlorophenol	95578				81 B, T, ee	150 B, T, ee		65FR66443	
49	2, 4-Dichlorophenol	120832				77 B, T, ee	290 B, T, ee		65FR66443	
50	2, 4-Dimethylphenol	105679				380 B, T, ee	850 B, T, ee		65FR66443	
51	2-Methyl- Di 4, 6-nitrophenol	534521				13 ee	280 ee		65FR66443	
52	2, 4-Dinitrophenol	51285				69 B, ee	5,300 B, ee		65FR66443	
53	Pentachlorophenol	87865	19 F, K	15 F, K	13 Y	7.9 Y	0.27 B, C	3.0 B, C, H	1 C	65FR31682 65FR66443 SDWA
54	Phenol	108952				10,000 T, ee, nn	860,000 T, ee, nn		74FR27535 74FR46587	
55	2, 4, 6-Trichlorophenol	88062				1.4 B, C, T	2.4 B, C		65FR66443	
56	Acenaphthene	83329				670 B, T, ee	990 B, T, ee		65FR66443	
57	Anthracene	120127				8,300 B, ee	40,000 B, ee		65FR66443	

Priority Pollutant	CAS Number	Freshwater Aquatic Life		Saltwater Aquatic Life		Human Health			FR Cite/ Source	
		CMC (µg/L)	CCC (µg/L)	CMC (µg/L)	CCC (µg/L)	For Consumption of:				
						Water & Organism (µg/L)	Organism Only (µg/L)	MCL (µg/L)		
58	Benzidine	92875				0.00086 B, C	0.00020 B, C		65FR66443	
59	Benzo (a) Anthracene	56553				0.0038 B, C	0.018 B, C		65FR66443	
60	Benzo (a) Pyrene	50328				0.0038 B, C	0.018 B, C	0.2 C	65FR66443 SDWA	
61	Benzo (b) Fluoranthene	205992				0.0038 B, C	0.018 B, C		65FR66443	
62	Benzo (k) Fluoranthene	207089				0.0038 B, C	0.018 B, C		65FR66443	
63	Bis-2-Chloroethyl Ether	111444				0.030 B, C	0.53 B, C		65FR66443	
64	Bis-2-Chloroisopropyl Ether	108601				1,400 B, ee	65,000 B, ee		65FR66443	
65	Bi-s2-Ethylhexyl Phthalate (DEHP)	117817	v	v	v	v	1.2 B, C	2.2 B, C	6 C	65FR66443 SDWA
66	Butylbenzene Phthalate	85687	ii	ii	ii	ii	1,500 B, ee	1,900 B, ee	65FR66443	
67	2-Chloronaphthalene	91587					1,000 B, ee	1,600 B, ee	65FR66443	
68	Chrysene	218019					0.0038 B, C	0.018 B, C	65FR66443	
69	Dibenzo(a,h)Anthracene	53703					0.0038 B, C	0.018 B, C	65FR66443	

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Priority Pollutant	CAS Number	Freshwater Aquatic Life		Saltwater Aquatic Life		Human Health			FR Cite/ Source
		CMC (µg/L)	CCC (µg/L)	CMC (µg/L)	CCC (µg/L)	For Consumption of:			
						Water & Organism (µg/L)	Organism Only (µg/L)	MCL (µg/L)	
70	1, 2-Dichlorobenzene	95501				420 ee	1,300 ee	600 ee	68FR75510 SDWA
71	1, 3-Dichlorobenzene	541731				320 ee	960 ee		65FR66443
72	1, 4-Dichlorobenzene	106467				63 ee	190 ee	75 ee	68FR75510 SDWA
73	3, 3'-Dichlorobenzidine	91941				0.021 B, C	0.028 B, C		65FR66443
74	Diethyl Phthalate	84662	ii	ii	ii	17,000 B, ee	44,000 B, ee		65FR66443
75	Dimethyl Phthalate	131113	ii	ii	ii	270,000 B, ee	1,100,000 B, ee		64FR66443
76	Di-n-butyl Phthalate	84742	ii	ii	ii	2,000 B, ee	4,500 B, ee		65FR66443
77	2, 4-Dinitrotoluene	121142				0.11 C	3.4 C		65FR66443
78	1, 2-Diphenylhydrazine	122667				0.036 B, C	0.20 B, C		65FR66443
79	Fluoranthene	206440				130 B, ee	140 B, ee		65FR66443
80	Fluorene	86737				1,100 B, ee	5,300 B, ee		65FR66443
81	Hexachlorobenzene	118741				0.00028 B, C	0.00029 B, C	1 C	65FR66443 SDWA

Priority Pollutant	CAS Number	Freshwater Aquatic Life		Saltwater Aquatic Life		Human Health			FR Cite/ Source
		CMC (µg/L)	CCC (µg/L)	CMC (µg/L)	CCC (µg/L)	For Consumption of:			
						Water & Organism (µg/L)	Organism Only (µg/L)	MCL (µg/L)	
82	Hexachlorobutadiene	87683				0.44 B, C	18 B, C		65FR66443
83	Hexachlorocyclopentadiene	77474				40 T, ee	1100 T, ee	50 ee	68FR75510 SDWA
84	Hexachloroethane	67721				1.4 B, C	3.3 B, C		65FR66443
85	Indeno 1,2,3(cd) Pyrene	193395				0.0038 B, C	0.018 B, C		65FR66443
86	Isophorone	78591				35 B, C	960 B, C		65FR66443
87	Nitrobenzene	98953				17 B, ee	690 B, H, T, ee		65FR66443
88	N-Nitrosodimethylamine	62759				0.00069 B, C	3.0 B, C		65FR66443
89	N-Nitrosodi-n-Propylamine	621647				0.0050 B, C	0.51 B, C		65FR66443
90	N-Nitrosodiphenylamine	86306				3.3 B, C	6.0 B, C		65FR66443
91	Pyrene	129000				830 B, ee	4,000 B, ee		65FR66443
92	1, 2, 4-Trichlorobenzene	120821				35 ee	70 ee	70 ee	68FR75510 SDWA
93	Aldrin	309002	3.0 G, X		1.3 G, X	0.000049 B, C	0.000050 B, C		65FR31682 65FR66443

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Priority Pollutant	CAS Number	Freshwater Aquatic Life		Saltwater Aquatic Life		Human Health			FR Cite/ Source	
		CMC (µg/L)	CCC (µg/L)	CMC (µg/L)	CCC (µg/L)	For Consumption of:				
						Water & Organism (µg/L)	Organism Only (µg/L)	MCL (µg/L)		
94	alpha-BHC	319846				0.0026 B, C	0.0049 B, C		65FR66443	
95	beta-BHC	319857				0.0091 B, C	0.017 B, C		65FR66443	
96	gamma-BHC (Lindane)	58899	0.95 K		0.16 G	0.98 ee	1.8 ee	0.2 C	65FR31682 68FR75510 SDWA	
97	Chlordane	57749	2.4 G	0.0043 G, X	0.09 G	0.004 G, X	0.00080 B, C	0.00081 B, C	2 C	65FR31682 65FR66443 SDWA
98	4, 4'-DDT	50293	1.1 G, gg	0.001 G, X, gg	0.13 G, gg	0.001 G, X, gg	0.00022 B, C	0.00022 B, C		65FR31682 65FR66443
99	4, 4'-DDE	72559				0.00022 B, C	0.00022 B, C		65FR66443	
100	4, 4'-DDD	72548				0.00031 B, C	0.00031 B, C		65FR66443	
101	Dieldrin	60571	0.24 K	0.056 K, N	0.71 G	0.0019 G, X	0.000052 B, C	0.000054 B, C		65FR31682 65FR66443
102	alpha-Endosulfan	959988	0.22 G, W	0.056 G, W	0.034 G, W	0.0087 G, W	62 B, ee	89 B, ee		65FR31682 65FR66443
103	beta-Endosulfan	33213659	0.22 G, W	0.056 G, W	0.034 G, W	0.0087 G, W	62 B, ee	89 B, ee		65FR31682 65FR66443
104	Endosulfan Sulfate	1031078				62 B, ee	89 B, ee		65FR31682 65FR66443	
105	Endrin	72208	0.086 K	0.036 K, N	0.037 G	0.0023 G, X	0.059 ee	0.060 ee	2 ee	68FR75510 SDWA

Priority Pollutant	CAS Number	Freshwater Aquatic Life		Saltwater Aquatic Life		Human Health			FR Cite/ Source	
		CMC (µg/L)	CCC (µg/L)	CMC (µg/L)	CCC (µg/L)	For Consumption of:				
						Water & Organism (µg/L)	Organism Only (µg/L)	MCL (µg/L)		
106	Endrin Aldehyde	7421934				0.29 B, ee	0.30 B, H, ee		65FR66443	
107	Heptachlor	76448	0.52 G	0.0038 G, X	0.053 G	0.0036 G, X	0.000079 B, C	0.000079 B, C	0.4 C	65FR31682 65FR66443 SDWA
108	Heptachlor Epoxide	1024573	0.52 G, U	0.0038 G, U, X	0.053 G, U	0.0036 G, U, X	0.000039 B, C	0.000039B, C	0.2 C	65FR31682 65FR66443 SDWA
109	Polychlorinated Biphenyls PCBs	--		0.014 M, X		0.03 M, X	0.000064 B, C, M	0.000064 B, C, M	0.5 C	65FR31682 65FR66443 SDWA
110	Toxaphene	8001352	0.73	0.0002 X	0.21	0.0002 X	0.00028 B, C	0.00028 B, C	3 C	65FR31682 65FR66443 SDWA

Footnotes:

- A This water quality criterion was derived from data for arsenic (III), but is applied here to total arsenic, which might imply that arsenic (III) and arsenic (V) are equally toxic to aquatic life and that their toxicities are additive. In the arsenic criteria document (EPA 440/5-84-033, January 1985), Species Mean Acute Values are given for both arsenic (III) and arsenic (V) for five species and the ratios of the SMAVs for each species range from 0.6 to 1.7. Chronic values are available for both arsenic (III) and arsenic (V) for one species; for the fathead minnow, the chronic value for arsenic (V) is 0.29 times the chronic value for arsenic (III). No data are known to be available concerning whether the toxicities of the forms of arsenic to aquatic organisms are additive.
- B This criterion has been revised to reflect The Environmental Protection Agency’s q1* or RfD, as contained in the Integrated Risk Information System (IRIS) as of May 17, 2002. The fish tissue bioconcentration factor (BCF) from the 1980 Ambient Water Quality Criteria document was retained in each case.
- C This criterion is based on carcinogenicity of 10-6 risk. As prescribed in Section E of this regulation, application of this criterion for permit effluent limitations requires the use annual average flow or comparable tidal condition as determined by the Department.
- D Freshwater and saltwater criteria for metals are expressed in terms of total recoverable metals. As allowed in Section E of this regulation, these criteria may be expressed as dissolved metal for the purposes of deriving permit effluent limitations. The dissolved metal water quality criteria value may be calculated by using these 304(a) aquatic life criteria expressed in terms of total recoverable metal, and multiplying it by a conversion factor (CF). The term “Conversion Factor” (CF) represents the conversion factor for converting a metal criterion expressed as the total recoverable fraction in the water column to a criterion expressed as the dissolved fraction in the water column. (Conversion Factors for saltwater CCCs are not currently available. Conversion factors derived for saltwater CMCs have been used for both saltwater CMCs and CCCs). See “Office of Water Policy and Technical Guidance on Interpretation and Implementation of Aquatic

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- Life Metals Criteria”, October 1, 1993, by Martha G. Prothro, Acting Assistant Administrator for Water, available from the Water Resource center, USEPA, 401 M St., SW, mail code RC4100, Washington, DC 20460; and 40CFR§131.36(b)(1). Conversion Factors can be found in Attachment 1 – Conversion Factors for Dissolved Metals.
- E The freshwater criterion for this metal is expressed as a function of hardness (mg/L) in the water column. The value given here corresponds to a hardness of 25 mg/L as expressed as CaCO₃. Criteria values for other hardness may be calculated from the following: CMC (dissolved) = $\exp\{m_A [\ln(\text{hardness})] + b_A\}$ (CF), or CCC (dissolved) = $\exp\{m_C [\ln(\text{hardness})] + b_C\}$ (CF) and the parameters specified in Attachment 2 – Parameters for Calculating Freshwater Dissolved Metals Criteria That Are Hardness- Dependent. As noted in footnote D above, the values in this appendix are expressed as total recoverable, the criterion may be calculated from the following: CMC (total) = $\exp\{m_A [\ln(\text{hardness})] + b_A\}$, or CCC (total) = $\exp\{m_C [\ln(\text{hardness})] + b_C\}$.
- F Freshwater aquatic life values for pentachlorophenol are expressed as a function of pH, and are calculated as follows: CMC = $\exp(1.005(\text{pH}) - 4.869)$; CCC = $\exp(1.005(\text{pH}) - 5.134)$. Values displayed in table correspond to a pH of 7.8.
- G This criterion is based on 304(a) aquatic life criterion issued in 1980, and was issued in one of the following documents: Aldrin/Dieldrin (EPA 440/5-80-019), Chlordane (EPA 440/5-80-027), DDT (EPA 440/5-80-038), Endosulfan (EPA 440/5-80-046), Endrin (EPA 440/5-80-047), Heptachlor (440/5-80-052), Hexachlorocyclohexane (EPA 440/5-80-054), Silver (EPA 440/5-80-071). The Minimum Data Requirements and derivation procedures were different in the 1980 Guidelines than in the 1985 Guidelines. For example, a “CMC” derived using the 1980 Guidelines was derived to be used as an instantaneous maximum. If assessment is to be done using an averaging period, the values given should be divided by 2 to obtain a value that is more comparable to a CMC derived using the 1985 Guidelines.
- H No criterion for protection of human health from consumption of aquatic organisms excluding water was presented in the 1980 criteria document or in the 1986 Quality Criteria for Water. Nevertheless, sufficient information was presented in the 1980 document to allow the calculation of a criterion, even though the results of such a calculation were not shown in the document.
- I This criterion for asbestos is the Maximum Contaminant Level (MCL) developed under the Safe Drinking Water Act (SDWA) and the National Primary Drinking Water Regulation (NPDWR).
- J EPA has not calculated a 304(a) human health criterion for this contaminant. The criterion is the Maximum Contaminant Level developed under the Safe Drinking Water Act (SDWA) and the National Primary Drinking Water Regulation (NPDWR).
- K This criterion is based on a 304(a) aquatic life criterion that was issued in the *1995 Updates: Water Quality Criteria Documents for the Protection of Aquatic Life in Ambient Water*, (EPA-820-B-96-001, September 1996). This value was derived using the GLI Guidelines (60FR15393-15399, March 23, 1995; 40CFR132 Appendix A); the difference between the 1985 Guidelines and the GLI Guidelines are explained on page iv of the 1995 Updates. None of the decisions concerning the derivation of this criterion were affected by any considerations that are specific to the Great Lakes.
- L The CMC = $1/[(f_1/\text{CMC}_1) + (f_2/\text{CMC}_2)]$ where f₁ and f₂ are the fractions of total selenium that are treated as selenite and 520elenite, respectively, and CMC₁ and CMC₂ are 185.9 µg/l and 12.82 µg/l, respectively.
- M This criterion applies to total PCBs, (e.g., the sum of all congener or all isomer or homolog or Aroclor analyses.)
- N The derivation of the CCC for this pollutant did not consider exposure through the diet, which is probably important for aquatic life occupying upper trophic levels.
- O This state criterion is also based on a total fish consumption rate of 0.0175 kg/day.
- P This water quality criterion is expressed as µg free cyanide (as CN)/L.
- Q This value was announced (61FR58444-58449, November 14, 1996) as a proposed GLI 303 I aquatic life criterion
- S This water quality criterion for selenium is expressed in terms of total recoverable metal in the water column. It is scientifically acceptable to use the conversion factor (0.996 – CMC or 0.922 – CCC) that was used in the GLI to convert this to a value that is expressed in terms of dissolved metal.
- T The organoleptic effect criterion is more stringent than the value for priority toxic pollutants.
- U This value was derived from data for heptachlor and the criteria document provides insufficient data to estimate the relative toxicities of heptachlor and heptachlor epoxide.
- V There is a full set of aquatic life toxicity data that show that DEHP is not toxic to aquatic organisms at or below its solubility limit.
- W This value was derived from data for endosulfan and is most appropriately applied to the sum of alpha-endosulfan and beta-endosulfan.
- X This criterion is based on a 304(a) aquatic life criterion issued in 1980 or 1986, and was issued in one of the following documents: Aldrin/Dieldrin (EPA440/5-80-019), Chlordane (EPA 440/5-80-027), DDT (EPA 440/5-80-038), Endrin (EPA 440/5-80-047), Heptachlor (EPA 440/5-80-052), Polychlorinated Biphenyls (EPA 440/5- 80-068), Toxaphene (EPA 440/5-86-006). This CCC is based on the Final Residue value procedure in the 1985 Guidelines. Since the publication of the Great Lakes Aquatic Life Criteria Guidelines in 1995 (60FR15393-15399, March 23, 1995), the EPA no longer uses the Final Residue value procedure for deriving CCCs for new or revised 304(a) aquatic life criteria.
- Y This water quality criterion is based on a 304(a) aquatic life criterion that was derived using the 1985 Guidelines (*Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses*, PB85-227049, January 1985) and was issued in one of the following criteria documents: Arsenic (EPA 440/5-84-033), Cadmium (EPA-820-R-16-002), Chromium (EPA 440/5-84-029), Copper (EPA 440/5-84-031), Cyanide (EPA 440/5-84-028), Lead (EPA 440/5-84-027), Nickel (EPA 440/5-86-004), Pentachlorophenol (EPA 440/5-86-009), Toxaphene, (EPA 440/5-86-006), Zinc (EPA 440/5-87- 003).
- Z When the concentration of dissolved organic carbon is elevated, copper is substantially less toxic and use of Water-Effect Ratios might be appropriate.
- aa The selenium criteria document (EPA 440/5-87-006, September 1987) provides that if selenium is as toxic to saltwater fishes in the field as it is to freshwater fishes in the field, the status of the fish community should be monitored whenever the concentration of selenium exceeds 5.0 7g/L in salt water because the saltwater CCC does not take into account uptake via the food chain.

- bb This water quality criterion was derived on page 43 of the mercury criteria document (EPA 440/5-84-026, January 1985). The saltwater CCC of 0.025 µg/L given on page 23 of the criteria document is based on the Final Residue value procedure in the 1985 Guidelines. Since the publication of the Great Lakes Aquatic Life criteria Guidelines in 1995 (60FR15393-15399, March 23, 1995), the EPA no longer uses the Final Residue value procedure for deriving CCCs for new or revised 304(a) aquatic life criteria.
- cc This water quality criterion was derived in *Ambient Water Quality Criteria Saltwater Copper Addendum* (Draft, April 14, 1995) and was promulgated in the Interim Final National Toxics Rule (60FR22228-222237, May 4, 1995).
- dd This water quality criterion was derived from data for inorganic mercury (II), but is applied here to total mercury. If a substantial portion of the mercury in the water column is methylmercury, this criterion will probably be under protective. In addition, even though inorganic mercury is converted to methylmercury and methylmercury bioaccumulates to a great extent, this criterion does not account for uptake via the food chain because sufficient data were not available when the criterion was derived.
- ee This criterion is a noncarcinogen. As prescribed in Section E of this regulation, application of this criterion for determining permit effluent limitations requires the use of 7Q10 or comparable tidal condition as determined by the Department.
- gg This criterion applies to DDT and its metabolites (i.e., the total concentration of DDT and its metabolites should not exceed this value).
- hh Although a new RfD is available in IRIS, the surface water criteria will not be revised until the National Primary Drinking Water Regulations: Stage 2 Disinfectants and Disinfection Byproducts Rule (Stage 2 DBPR) is completed, since public comment on the relative source contribution (RSC) for chloroform is anticipated.
- ii Although EPA has not published a completed criteria document for phthalate, it is EPA's understanding that sufficient data exist to allow calculation of aquatic life criteria.
- jj This recommended water quality criterion is expressed as total cyanide, even though the IRIS RfD the EPA used to derive the criterion is based on free cyanide. The multiple forms of cyanide that are present in ambient water have significant differences in toxicity due to their abilities to liberate the CN-moiety. Some complex cyanides require even more extreme conditions than refluxing with sulfuric acid to liberate the CN-moiety. Thus, these complex cyanides are expected to have little or no 'bioavailability' to humans. If a substantial fraction of the cyanide present in a water body is present in a complexed form (e.g., $\text{Fe}_4[\text{Fe}(\text{CN})_6]_3$), this criterion may be overly conservative.
- kk This recommended water quality criterion was derived using the cancer slope factor of 1.4 (Linear multi-stage model (LMS) exposure from birth).
- ll Freshwater copper criteria may be calculated utilizing the procedures identified in EPA-822-R-07-001.
- mm HAA5 means five haloacetic acids (monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, bromoacetic acid and dibromoacetic acid).
- nn This criterion has been revised to reflect the EPA's cancer slope factor (CSF) or reference dose (RfD), as contained in the Integrated Risk Information System (IRIS) as of (Final FR Notice June 10, 2009). The fish tissue bioconcentration factor (BCF) from the 1980 Ambient Water Quality Criteria document was retained in each case.

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Amend R.61-68 APPENDIX, Water Quality Numeric Criteria for the Protection of Aquatic Life and Human Health, “Non Priority Pollutants” table and footnotes to read:

NON PRIORITY POLLUTANTS

Non Priority Pollutant	CAS Number	Freshwater Aquatic Life		Saltwater Aquatic Life		Human Health			FR Cite/Source	
		CMC (µg/L)	CCC (µg/L)	CMC (µg/L)	CCC (µg/L)	For Consumption of:		MCL (µg/L)		
						Water & Organism (µg/L)	Organism Only (µg/L)			
1	Alachlor							2 M	SDWA	
2	Ammonia	7664417	CRITERIA ARE pH AND TEMPERATURE DEPENDENT – SEE DOCUMENT FOR DETAILS c							EPA822-R99-014 EPA440/5-88-004
3	Aesthetic Qualities		NARRATIVE STATEMENT AND NUMERIC CRITERIA – SEE TEXT							Gold Book
4	Atrazine							3 M	SDWA	
5	Bacteria		FOR PRIMARY CONTACT RECREATION AND SHELLFISH USES – SEE TEXT							Gold Book
6	Barium	7440393					1,000 A, L	2,000 L	Gold Book	
7	Carbofuran	1563662						40 L	SDWA	
8	Chlorine	7782505	19	11	13	7.5		G	Gold Book SDWA	
9	Chlorophenoxy Herbicide 2, 4, 5, -TP	93721					10 A, L	50 L	Gold Book SDWA	
10	Chlorophenoxy Herbicide 2, 4-D	94757					100 A, L	70 L	Gold Book SDWA	
11	Chlorophyll <i>a</i>		NARRATIVE STATEMENT AND NUMERIC CRITERIA – SEE TEXT							State Standard

Non Priority Pollutant	CAS Number	Freshwater Aquatic Life		Saltwater Aquatic Life		Human Health			FR Cite/Source
		CMC (µg/L)	CCC (µg/L)	CMC (µg/L)	CCC (µg/L)	For Consumption of:		MCL (µg/L)	
						Water & Organism (µg/L)	Organism Only (µg/L)		
12	Chloropyrifos	2921882	0.083 F	0.041 F	0.011 F	0.0056 F			Gold Book
13	Color		NARRATIVE STATEMENT – SEE TEXT						State Standard
14	Dalapon	75990						200 L	SDWA
15	Demeton	8065483		0.1 E		0.1 E			Gold Book
16	1,2-Dibromo-3-chloropropane (DBCP)	96128						0.2 M	SDWA
17	Di(2-ethylhexyl) adipate	103231						400 L	SDWA
18	Dinoseb	88857						7 L	SDWA
19	Dinitrophenols	25550587					69 L	5,300 L	65FR66443
20	Nonylphenol	1044051	28	6.6	7.0	1.7			71FR9337
21	Diquat	85007						20 L	SDWA
22	Endothall	145733						100 L	SDWA
23	Ether, Bis Chloromethyl	542881					0.00010 D, M	0.00029 D, M	65FR66443
24	Cis-1, 2-dichloroethylene	156592						70 L	SDWA

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Non Priority Pollutant	CAS Number	Freshwater Aquatic Life		Saltwater Aquatic Life		Human Health			FR Cite/Source	
		CMC (µg/L)	CCC (µg/L)	CMC (µg/L)	CCC (µg/L)	For Consumption of:		MCL (µg/L)		
						Water & Organism (µg/L)	Organism Only (µg/L)			
25	Ethylene dibromide							0.05 M	SDWA	
26	Fluoride	7681494						4000 L	SDWA	
27	Glyphosate	1071836						700 L	SDWA	
28	Guthion	86500	0.01 E		0.01 E				Gold Book	
29	Hexachlorocyclo-hexane-Technical	608731				0.0123 L	0.0414 L		Gold Book	
30	Malathion	121755	0.1 E		0.1 E				Gold Book	
31	Methoxychlor	72435	0.03 E		0.03 E	100 A, L		40 L	Gold Book SDWA	
32	Mirex	2385855	0.001 E		0.001 E				Gold Book	
33	Nitrates	14797558				10,000 L		10,000 L	SDWA Gold Book	
34	Nitrites	14797650						1,000 L	SDWA	
35	Nitrogen, Total		NARRATIVE STATEMENT AND NUMERIC CRITERIA - SEE TEXT							State Standard
36	Nitrosamines					0.0008 L	1.24 L		Gold Book	
37	Nitrosodibutylamine, N	924163				0.0063 A, M	0.22 A, M		65FR66443	

Non Priority Pollutant	CAS Number	Freshwater Aquatic Life		Saltwater Aquatic Life		Human Health			FR Cite/Source	
		CMC (µg/L)	CCC (µg/L)	CMC (µg/L)	CCC (µg/L)	For Consumption of:		MCL (µg/L)		
						Water & Organism (µg/L)	Organism Only (µg/L)			
38	Nitrosodiethylamine, N	55185					0.0008 A, M	1.24 A, M		Gold Book
39	Nitrosopyrrolidine, N	930552					0.016 M	34 M		65FR66443
40	Oil and Grease		NARRATIVE STATEMENT – SEE TEXT							Gold Book
41	Oxamyl	23135220							200 L	SDWA
42	Oxygen, Dissolved	7782447	WARMWATER, COLDWATER, AND EXCEPTIONS FOR NATURAL CONDITIONS - SEE TEXT K							Gold Book State Standard
43	Diazinon	333415	0.17	0.17	0.82	0.82				71FR9336
44	Parathion	56382	0.065 H	0.013 H						Gold Book
45	Pentachlorobenzene	608935					1.4 E	1.5 E		65FR66443
46	PH		SEE TEXT I							Gold Book State Standard
47	Phosphorus, Total		NARRATIVE STATEMENT AND NUMERIC CRITERIA - SEE TEXT							State Standard
48	Picloram	1918021							500 L	SDWA
49	Salinity		NARRATIVE STATEMENT - SEE TEXT							Gold Book

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Non Priority Pollutant	CAS Number	Freshwater Aquatic Life		Saltwater Aquatic Life		Human Health			FR Cite/Source	
		CMC (µg/L)	CCC (µg/L)	CMC (µg/L)	CCC (µg/L)	For Consumption of:		MCL (µg/L)		
						Water & Organism (µg/L)	Organism Only (µg/L)			
50	Simazine	122349						4 L	SDWA	
51	Solids,Suspended,and Turbidity		NARRATIVE STATEMENT AND NUMERIC CRITERIA - SEE TEXT							Gold Book State Standard
52	Styrene	100425						100 L	SDWA	
53	Sulfide-Hydrogen Sulfide	7783064		2.0 E		2.0 E			Gold Book	
54	Tainting Substances		NARRATIVE STATEMENT - SEE TEXT							Gold Book
55	Temperature		SPECIES DEPENDENT CRITERIA - SEE TEXT J							Red Book
56	1, 2, 4, 5-Tetrachlorobenzene	95943					0.97 D	1.1 D		65FR66443
57	Tributyltin (TBT)	688733	0.46	0.063	0.37	0.010				EPA 822-F-00-008
58	2, 4, 5-Trichlorophenol	95954					1,800 B, D	3,600 B, D		65FR66443
59	Xylenes, Total								10, 000 L	SDWA
60	Uranium								30	SDWA
61	Beta particles and photon emitters								4 Millirems/ yr	SDWA

Non Priority Pollutant	CAS Number	Freshwater Aquatic Life		Saltwater Aquatic Life		Human Health			FR Cite/Source
		CMC (µg/L)	CCC (µg/L)	CMC (µg/L)	CCC (µg/L)	For Consumption of:		MCL (µg/L)	
						Water & Organism (µg/L)	Organism Only (µg/L)		
62	Gross alpha particle activity							15 picocuries per liter (pCi/l)	SDWA
63	Radium 226 and Radium 228 (combined)							5 pCi/l	SDWA
64	Carbaryl	63252	2.1	2.1	1.6				77FR30280

Footnotes:

- A This human health criterion is the same as originally published in the Red Book which predates the 1980 methodology and did not utilize the fish ingestion BCF approach. This same criterion value is now published in the Gold Book.
- B The organoleptic effect criterion is more stringent than the value presented in the non priority pollutants table.
- C According to the procedures described in the *Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses*, except possibly where a very sensitive species is important at a site, freshwater aquatic life should be protected if both conditions specified in Attachment 3 - Calculation of Freshwater Ammonia Criterion are satisfied.
- D This criterion has been revised to reflect The Environmental Protection Agency’s q1* or RfD, as contained in the Integrated Risk Information System (IRIS) as of April 8, 1998. The fish tissue bioconcentration factor (BCF) used to derive the original criterion was retained in each case.
- E The derivation of this value is presented in the Red Book (EPA 440/9-76-023, July, 1976).
- F This value is based on a 304(a) aquatic life criterion that was derived using the 1985 Guidelines (*Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses*, PB85-227049, January 1985) and was issued in the following criteria document: Chloropyrifos (EPA 440/5-86-005).
- G A more stringent Maximum Residual Disinfection Level (MRDL) has been issued by EPA under the Safe Drinking Water Act. Refer to S.C. Regulation 61-58, *State Primary Drinking Water Regulations*.
- H This value is based on a 304(a) aquatic life criterion that was issued in the *1995 Updates: Water Quality Criteria Documents for the Protection of Aquatic Life in Ambient Water* (EPA-820-B-96-001). This value was derived using the GLI Guidelines (60FR15393-15399, March 23, 1995; 40CFR132 Appendix A); the differences between the 1985 Guidelines and the GLI Guidelines are explained on page iv of the 1995 Updates. No decision concerning this criterion was affected by any considerations that are specific to the Great Lakes.
- I South Carolina has established some site-specific standards for pH. These site-specific standards are listed in S.C. Regulation 61-69, *Classified Waters*.
- J U.S. EPA, 1976, Quality Criteria for Water 1976.
- K South Carolina has established numeric criteria in Section G for waters of the State based on the protection of warmwater and coldwater species. For the exception to be used for waters of the State that do not meet the numeric criteria established for the waterbody due to natural conditions, South Carolina has specified the allowable deficit in Section D.4. and used the following document as a source. U.S. EPA, 1986, Ambient Water Quality Criteria for Dissolved Oxygen, EPA 440/5-86-003, National Technical Information Service, Springfield, VA. South Carolina has established some site-specific standards for DO. These site-specific standards are listed in S.C. Regulation 61-69, *Classified Waters*.

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- L This criterion is a noncarcinogen. As prescribed in Section E of this regulation, application of this criterion for determining permit effluent limitations requires the use of 7Q10 or comparable tidal condition as determined by the Department
- M This criterion is based on an added carcinogenicity risk. As prescribed in Section E of this regulation, application of this criterion for permit effluent limitations requires the use annual average flow or comparable tidal condition as determined by the Department.

Amend R.61-68 APPENDIX, Water Quality Numeric Criteria for the Protection of Aquatic Life and Human Health, “Attachment 2 – Parameters for Calculating Freshwater Dissolved Metals Criteria That Are Hardness-Dependent Criteria” to read:

Attachment 2 - Parameters for Calculating Freshwater Dissolved Metals Criteria That Are Hardness-Dependent

Chemical	m _A	b _A	m _C	b _C	Freshwater Conversion Factors (CF)	
					Acute	Chronic
Cadmium	0.9789 A	-3.866 A	0.7977 A	-3.909 A	1.136672-[ln (hardness)(0.041838)]	1.101672-[ln (hardness)(0.041838)]
Chromium III	0.8190	3.7256	0.8190	0.6848	0.316	0.860
Copper	0.9422	-1.700	0.8545	-1.702	0.960	0.960
Lead	1.273	-1.460	1.273	-4.705	1.46203-[ln (hardness)(0.145712)]	1.46203-[ln (hardness)(0.145712)]
Nickel	0.8460	2.255	0.8460	0.0584	0.998	0.997
Silver	1.72	-6.52	--	--	0.85	--
Zinc	0.8473	0.884	0.8473	0.884	0.978	0.986

Hardness-dependent metals criteria may be calculated from the following:

CMC (total) = exp{m_A [ln(hardness)]+ b_A}, or CCC (total) = exp{m_C [ln(hardness)]+ b_C}

CMC (dissolved) = exp{m_A [ln(hardness)]+ b_A} (CF), or CCC (dissolved) = exp{m_C [ln (hardness)]+ b_C} (CF).

Footnotes:

A This parameter was issued by the EPA in Aquatic Life Ambient Water Quality Criteria Cadmium - 2016 (EPA-820-R-16-002).

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Amend 61-68 APPENDIX, Water Quality Numeric Criteria for the Protection of Aquatic Life and Human Health, to add “Attachment 4 – Calculation of the Sample Specific Freshwater Acute and Chronic Criterion for Metals”

Attachment 4 - Calculation of the Sample Specific Freshwater Acute and Chronic Criterion for Metals

As provided in R.61-68.E.14.d(3), in order to “appropriately evaluate the ambient water quality for the bioavailability of the dissolved portion of hardness dependent metals, the Department may utilize a federally-approved methodology to predict the dissolved fraction or partitioning coefficient in determining compliance with the water quality standards.” Per R.61-68.E.14.a(3), the Criterion Maximum Concentration (CMC) and the Criterion Continuous Concentration (CCC) are based on a hardness of 25 mg/L if the ambient stream hardness is equal to or less than 25 mg/L. Concentrations of hardness less than 400 mg/L may be based on the stream hardness if it is greater than 25 mg/L and less than 400 mg/L, and 400 mg/L if the ambient stream hardness is greater than 400 mg/L. In absence of actual stream hardness it is assumed to be 25 mg/l.

1. Conversion Factor for Dissolved Metals

Refer to R.61-68, *Water Classifications and Standards*, Attachment 2 - Parameters for Calculating Freshwater Dissolved Metals Criteria that are Hardness-Dependent to determine the appropriate parameters and conversion factor. Both CMC and CCC may be expressed as total recoverable or dissolved using the appropriate equations found in Attachment 2.

2. Partitioning Coefficient (Translator)

The partitioning coefficient (K_P) is a translator for the fraction of the total recoverable metal that is bound to adsorbents in the water column, i.e. TSS. The calculation of partitioning coefficients is determined using the following equation.

$$K_P = K_{PO} \times (TSS_b)^\alpha$$

where K_P has units of L/kg
 TSS_b = In-stream Total Suspended Solids concentration in mg/L

Parameters for default partition coefficient estimation equations (K_{PO} and α) are provided from Table 3 of *The Metals Translator: Guidance For Calculating A Total Recoverable Permit Limit From A Dissolved Criterion*, EPA 823-B-96-007.

Metal	Lakes		Streams	
	K_{PO}	α	K_{PO}	α
Cadmium	3.52E+06	-0.9246	4.00E+06	-1.1307
Chromium III	2.17E+06	-0.2662	3.36E+06	-0.9304
Copper	2.85E+06	-0.9000	1.04E+06	-0.7436
Lead	2.0E+06	-0.5337	2.80E+06	-0.8
Nickel	2.21E+06	-0.7578	4.90E+05	-0.5719
Zinc	3.34E+06	-0.6788	1.25E+06	-0.7038

3. Final Sample Specific Total Recoverable CMC or CCC (µg/L) Adjusted for In-Situ Hardness and TSS

The instream total recoverable concentration is determined using Equation 6.4 of *The Metals Translator: Guidance For Calculating A Total Recoverable Permit Limit From A Dissolved Criterion*, EPA 823-B-96-007.

$$\text{CMC (total recoverable adjusted)} = \text{CMC (dissolved)} \times \{1 + (K_P \times \text{TSS}_b \times 10^{-6})\}$$

where $\text{CMC (dissolved)} = \exp\{m_A [\ln (\text{hardness})] + b_A\}$ (CF)

$$K_P = K_{PO} \times (\text{TSS}_b)^\alpha$$

TSS_b = In-stream Total Suspended Solids concentration in mg/L

10^{-6} = Units conversion factor to express CCC (total recoverable adjusted) in $\mu\text{g/L}$

$$\text{CCC (total recoverable adjusted)} = \text{CCC (dissolved)} \times \{1 + (K_P \times \text{TSS}_b \times 10^{-6})\}$$

where $\text{CCC (dissolved)} = \exp\{m_C [\ln (\text{hardness})] + b_C\}$ (CF)

$$K_P = K_{PO} \times (\text{TSS}_b)^\alpha$$

TSS_b = In-stream Total Suspended Solids concentration in mg/L

10^{-6} = Units conversion factor to express CCC (total recoverable adjusted) in $\mu\text{g/L}$.

Note: The background TSS is assumed to be the measured instream data (mg/L) or 1 mg/L in the absence of actual instream data (based on the 5th percentile of ambient TSS data on South Carolina waterbodies from 1993-2000).

If the ambient stream metals result exceeds CMC (total recoverable adjusted) or CCC (total recoverable adjusted) based on the measured TSS and hardness collected with the metal sample it constitutes a standard exceedance. Lacking actual instream TSS and hardness data, a metals result exceeding CMC (total recoverable adjusted) or CCC (total recoverable adjusted) based on the default hardness of 25 mg/L and the default TSS value of 1 mg/L constitutes a potential standard exceedance.

Fiscal Impact Statement:

No costs to the State or significant cost to its political subdivisions as a whole should be incurred by these amendments.

Statement of Need and Reasonableness:

The following presents an analysis of the factors listed in 1976 Code Sections 1-23-115(C)(1)-(3) and (9)-(11):

DESCRIPTION OF REGULATION: 61-68, Water Classifications and Standards.

Purpose: Amendments of R.61-68, as the triennial review, will clarify, strengthen, and improve the overall quality of the existing regulation and make appropriate revisions of the State’s water quality standards in accordance with 33 U.S.C. Section 303(c)(2)(B) of the federal CWA.

Legal Authority: 1976 Code Sections 48-1-10 et seq.

Plan for Implementation: The DHEC Regulation Development Update (accessible at <http://www.scdhec.gov/Agency/RegulationsAndUpdates/RegulationDevelopmentUpdate/>) provides a summary of and link to this amendment. Additionally, printed copies are available for a fee from the Department’s Freedom of Information Office. Upon taking legal effect, Department personnel will take appropriate steps to inform the regulated community of the amendment and any associated information.

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

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Section 303(c)(2)(B) of the federal CWA requires South Carolina's water quality standards be reviewed and revised, where necessary, at least once every three years. Referred to as the triennial review, this required process consists of reviewing and adopting, where appropriate, the Environmental Protection Agency's updated numeric and narrative criteria according to Section 304(a) and Section 307(a) of the CWA. The Department amends R.61-68 to adopt these criteria as the Department deemed necessary to comply with federal regulatory recommendations and revisions.

DETERMINATION OF COSTS AND BENEFITS:

Existing Department staff and resources will be utilized to implement these amendments to the regulation. No anticipated additional cost will be incurred by the State if the revisions are implemented, and no additional State funding is being requested.

Overall cost impact to the State's political subdivisions and regulated community is not likely to be significant. Existing standards would have incurred similar cost. Furthermore, standards required under the amendments will be substantially consistent with the current guidelines and review guidelines utilized by the Department.

UNCERTAINTIES OF ESTIMATES:

The uncertainties associated with the estimation of benefits and burdens are minimal to moderate, due to possible differences in the extent to which Municipal Separate Storm Sewer Systems ("MS4s") currently meet the lower standard.

EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH:

Implementation of these amendments will not compromise the protection of the environment or the health and safety of the citizens of the State. The amendments to R.61-68 seek to promote and protect aquatic life and human health by the regulation of pollutants into waters of the State.

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

Failure by the Department to incorporate appropriately protective water quality standards in R.61-68 that are the basis for issuance of National Pollutant Discharge Elimination System ("NPDES") permits, stormwater permits, wasteload and load allocations, groundwater remediation plans, and multiple other program areas will lead to contamination of the waters of the State with detrimental effects on the health of flora and fauna in the State, as well as the citizens of South Carolina.

Statement of Rationale:

Here below is the Statement of Rationale pursuant to S.C. Code Section 1-23-110(A)(3)(h):

R.61-68 establishes appropriate goals and water uses to be achieved, maintained, and protected; general rules and water quality criteria to protect classified and existing water uses; and an antidegradation policy to protect and maintain the levels of water quality necessary to support and maintain those existing and classified uses. Section 303(c)(2)(B) of the federal CWA requires South Carolina's water quality standards be reviewed and revised, where necessary, at least once every three years. Referred to as the triennial review, this required process consists of reviewing and adopting, where appropriate, the Environmental Protection Agency's updated numeric and narrative criteria according to Section 304(a) and Section 307(a) of the CWA. The Department amends R.61-68 to adopt these criteria the Department deemed necessary to comply with federal regulatory recommendations and revisions. The Department adopts a revised standard for aquatic life ambient water quality criteria for cadmium, a revised recreational water quality criteria for enterococci, a standard for aquatic life ambient water quality criteria for carbaryl, and a standard for human health recreational ambient water quality

criteria for microcystins and cylindrospermopsin to reflect the most current final published criteria in accordance with Sections 304(a) and 307(a) of the CWA.

Document No. 4913
COMMISSION ON HIGHER EDUCATION
CHAPTER 62
 Statutory Authority: 1976 Code Section 59-112-100

62-600 through 62-612. Determination of Rates of Tuition and Fees.

Synopsis:

R.62-600 through 62-612 of Chapter 62 is being amended and replaced in its entirety. Revisions to the existing regulation for the SC Residency Regulation are being considered to clarify the policies and procedures for administering the program. In the proposed amendment, the regulation is being updated to reflect recently passed Act 10 of 2019, relating to the allowance of veterans and covered individuals using specific education benefits to be charged at a tuition rate equivalent to the institution’s in-state rate. The revisions seek to promote consistency among the State institutions and their residency classification processes.

A Notice of Drafting for the proposed regulation was published in the *South Carolina State Register* on March 22, 2019.

Instructions:

Replace R.62-600 through 62-612 of Chapter 62 in its entirety.

Text:

ARTICLE V
 DETERMINATION OF RATES OF TUITION AND FEES

Table of Contents:

- 62-600. Rates of Tuition and Fees.
- 62-601. Code of Laws Governing Residence.
- 62-602. Definitions.
- 62-603. Establishing Residency, Citizens and Permanent Residents.
- 62-604. Non-Resident Aliens, Non-Citizens, and Non-Permanent Residents.
- 62-605. Establishing the Requisite Intent to Become a South Carolina Domiciliary.
- 62-606. Maintaining Residence.
- 62-607. Effect of Change of Residency.
- 62-608. Effect of Marriage.
- 62-609. Exceptions.
- 62-610. Application for Change of Resident Status.
- 62-611. Incorrect classification.
- 62-612. Inquiries and Appeals.

62-600. Rates of Tuition and Fees.

A. Resident classification is an essential part of tuition and fee determination, admission regulations, scholarship eligibility, and other relevant policies of the state. It is important that institutions have fair and equitable regulations that can be administered consistently and are sensitive to the interests of both students and the state. The Commission on Higher Education hereby establishes regulations for the Statute Governing

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Residency for Tuition and Fee Purposes to be applied consistently by all South Carolina institutions of higher education. These regulations do not address residency matters relating to in county categories used within the State's technical colleges.

B. Institutions of higher education are required by the Statute to determine the residence classification of applicants. The initial determination of one's resident status is made at the time of admission. The determination made at that time, and any determination made thereafter, prevails for each subsequent semester until information becomes available that would impact the existing residency status and the determination is successfully challenged. The burden of proof rests with the students to show evidence as deemed necessary to establish and maintain their residency status.

62-601. Code of Laws Governing Residence.

Rules regarding the establishment of legal residence for tuition and fee purposes for institutions of higher education are governed by Title 59, Chapter 112 of the 1976 South Carolina Code of Laws, as amended.

62-602. Definitions.

A. "Academic Session" is defined as a term or semester of enrollment. (62-607.B)

B. "Continue to be Enrolled" is defined as continuous enrollment without an interruption that would require the student to pursue a formal process of readmission to that institution. Formal petitions or applications for change of degree level shall be considered readmissions. (62-607.A)

C. "Dependent Person" is defined as one whose predominant source of income or support is from payments from a parent, spouse, or guardian, who claims the dependent person on his/her federal income tax return. In the case of those individuals who are supported by family members who do not earn enough reportable income for taxation purposes, a dependent person can be defined as one who qualifies as a dependent or exemption on the federal income tax return of the parent, spouse, or guardian. A dependent person is also one for whom payments are made, under court order, for child support and the cost of the dependent person's college education. A dependent person's residency is presumed to be that of the person upon whom they are dependent. (62-602.G) (62-602.N) (62-603.B) (62-605.C) (62-607.A)

D. "Domicile" is defined as the true, fixed, principal residence and place of habitation. It shall indicate the place where a person intends to remain, or to where one expects to return upon leaving without establishing a new domicile in another state. For purposes of this section, one may have only one legal domicile. One is presumed to abandon automatically an old domicile upon establishing a new one. Housing provided on an academic session basis for student at institutions shall be presumed not to be a place of principal residence, as residency in such housing is by its nature temporary. (62-602.E) (62-602.K) (62-602.M) (62-602.N) (62-603.A) (62-603.B) (62-605.B) (62-605.C) (62-607.A) (62-607.B) (62-608.A) (62-608.C) (62-608.D) (62-609.A.3) (62-609.A.4)

E. "Full time employment" is defined as employment that consists of at least thirty seven and one half hours a week on a single job in a full time status, with gross earnings of at least minimum wage. However, a person who works less than thirty seven and one half hours a week but receives or is entitled to receive full time employee benefits shall be considered to be employed full time if such status is verified by the employer. A person who meets the eligibility requirements of the Americans with Disabilities Act must present acceptable evidence that they satisfy their prescribed employment specifications in order to qualify as having full time employment. (62-605.C.1) (62-609.A.2) (62-609.A.3)

F. "Guardian" is defined as one legally responsible for the care and management of the person or property of a minor child based upon the five tests for dependency prescribed by the Internal Revenue Service; provided, however, that where circumstances indicate that such guardianship or custodianship was created primarily for the purpose of conferring South Carolina domicile for tuition and fee purposes on such child or dependent person, it shall not be given such effect. (62-602.C) (62-602.E) (62-602.I) (62-602.M) (62-603.B) (62-605.C)

G. "Immediately Prior" is defined as the period of time between the offer of admission and the first day of class of the term for which the offer was made, not to exceed one calendar year. (62-607.A)

H. "Independent Person" is defined as one in his/her majority (eighteen years of age or older) or an emancipated minor, whose predominant source of income is his/her own earnings or income from employment, investments, or payments from trusts, grants, scholarships, commercial, educational or student loans in the name of the independent person and provided by an insured and federally regulated financial entity, or payments made

in accordance with court order and for the purposes of determining residency for tuition and fees. An independent person:

(1) must provide more than half of his or her support, which shall include the institutional cost of attendance as defined by Title IV, during the twelve months immediately prior to the date that classes begin for the semester for which resident status is requested ;

(2) cannot claim the domicile of another individual as their own for the purposes of establishing intent to become a South Carolina resident;

(3) must have established his/her own domicile and provide documentation of establishing his/her own domicile for twelve months to include documentation of renting a domicile if applicable, prior to receiving in-state tuition and fees; and

(4) cannot be claimed as a dependent or exemption on the federal tax return of his or her parent, spouse, or guardian for the year in which resident status is requested. (62-602.N) (62-603.A) (62-605.C) (62-607.B) (62-608.B)

I. "Minor" is defined as a person who has not attained the age of eighteen years. An "emancipated minor" shall mean a minor whose parents have entirely surrendered the right to the care, custody and earnings of such minor and are no longer under any legal obligation to support or maintain such minor. (62-602.G)

J. "Non-resident Alien" is defined as a person who is not a citizen or permanent resident of the United States. By virtue of their non-resident status "non-resident aliens" generally do not have the capacity to establish domicile in South Carolina. (62-602.M) (62-604.A)

K. "Parent" is defined as the father, mother, stepfather, stepmother, foster parent or parent of a legally adopted child. (62-602.C) (62-602.E) (62-602.I) (62-602.J) (62-602.M) (62-603.B) (62-603.C) (62-605.C)

L. "Reside" is defined as continuous and permanent physical presence within the State, provided that absences for short periods of time shall not affect the establishment of residence. Excluded are absences associated with requirements to complete a degree, absences for military training service, and like absences, provided South Carolina domicile is maintained. (62-603.A) (62-606.B) (62-609.A) (62-609.A.3) (62-609.A.4) (62-609.B)

M. "Resident" for tuition and fee purposes is defined as an independent person who has abandoned all prior domiciles and has been domiciled in South Carolina continuously for at least twelve months immediately preceding the first day of class of the term for which resident classification is sought and for whom there is an absence of domiciliary evidence in other states or countries, notwithstanding other provisions of the Statute. (62-600.A) (62-600.B) (62-602.I) (62-602.K) (62-602.M) (62-603.A) (62-603.B) (62-603.C) (62-604.A) (62-605.A) (62-605.C) (62-605.C.7) (62-606.A) (62-606.A.5) (62-606.B) (62-607.A) (62-608.B) (62-609.A.3) (62-610.A) (62-610.B) (62-611.A) (62-611.B)

N. "Spouse" is defined as the husband or wife of a married person in accordance with Title 20, Chapter 1 of the 1976 South Carolina Code of Laws, as amended. (62-602.C) (62-602.E) (62-602.I) (62-602.M) (62-603.B) (62-605.C)

O. "Temporary Absence" is defined as a break in enrollment during a fall or spring semester (or its equivalent) during which a student is not registered for class. (62-606.A)

P. "Terminal Leave" is defined as a transition period following active employment and immediately preceding retirement (with a pension or annuity), during which the individual may use accumulated leave. (62-609.A.4)

Q. "United States Armed Forces" is defined as the United States Air Force, Army, Marine Corps, Navy, and Coast Guard. (62-606.B) (62-609.A(1))

R. "Trust" is defined as a legal entity created by a grantor for the benefit of designated beneficiaries under the laws of the state and the valid trust instrument. However, that where circumstances indicate that such trust was created primarily for the purpose of conferring South Carolina domicile for tuition and fee purposes on such child or independent person, it shall not be given such effect.

62-603. Establishing Residency, Citizens and Permanent Residents.

A. Independent persons who have physically resided and been domiciled in South Carolina for twelve continuous months immediately preceding the date the classes begin for the semester for which resident status is claimed may qualify to pay in state tuition and fees. The twelve month residency period starts when the independent person establishes the intent to become a South Carolina resident per Section 62-605 entitled

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“Establishing the Requisite Intent to Become a South Carolina Domiciliary.” The twelve month residency period cannot start until the absence of indicia in other states is proven. Absences from the State during the twelve month period may affect the establishment of permanent residence for tuition and fee purposes.

B. The resident status of a dependent person is based on the resident status of the person who provides more than half of the dependent person’s support and claims or, only in the case of those individuals who are supported by family members who do not earn enough reportable income for taxation purposes, qualifies to claim the dependent person as a dependent for federal income tax purposes. Thus, the residence and domicile of a dependent person shall be presumed to be that of their parent, spouse, or guardian.

C. In the case of divorced or separated parents, the resident status of the dependent person may be based on the resident status of the parent who claims the dependent person as a dependent for tax purposes; or based on the resident status of the parent who has legal custody or legal joint custody of the dependent person; or based on the resident status of the person who makes payments under a court order for child support and at least the cost of his/her college tuition and fees.

62-604. Non-Resident Aliens, Non-Citizens, and Non-Permanent Residents.

A. Except as otherwise specified in this section or as provided in Section 62-609 (1) & (2), independent non-citizens and non-permanent residents of the United States will be assessed tuition and fees at the non-resident, out of state rate. Independent non-resident aliens, including refugees, asylees, and parolees may be entitled to resident, in state classification once they have been awarded permanent resident status by the United States Citizenship and Immigration Services (USCIS) and meet all the statutory residency requirements provided that all other domiciliary requirements are met. Time spent living in South Carolina immediately prior to the awarding of permanent resident status does not count toward the twelve month residency period. Certain non resident aliens present in the United States in specified visa classifications are eligible to receive in state residency status for tuition and fee purposes as prescribed by the Commission on Higher Education. They are not, however, eligible to receive state sponsored tuition assistance/scholarships.

B. Title 8 of the Code of Federal Regulations (CFR) serves as the primary resource for defining visa categories.

62-605. Establishing the Requisite Intent to Become a South Carolina Domiciliary.

A. Resident status may not be acquired by an applicant or student while residing in South Carolina for the primary purpose of enrollment in an institution or for access to state supported programs designed to serve South Carolina residents. An applicant or student from another state who comes to South Carolina usually does so for the purpose of attending school. Therefore, an applicant or student who enrolls as a non-resident in an institution is presumed to remain a non-resident throughout his or her attendance and does not qualify under any of the residency provisions.

B. If a person asserts that his/her domicile has been established in this State, the individual has the burden of proof. Such persons must provide to the designated residency official of the institution to which they are applying any and all evidence the person believes satisfies the burden of proof. The residency official will consider any and all evidence provided concerning such claim of domicile, but will not necessarily regard any single item of evidence as conclusive evidence that domicile has been established.

C. For independent persons or the parent, spouse, or guardian of dependent persons, indicia showing intent to become a South Carolina resident may include, although any single indicator may not be conclusive, the following indicia:

- (1) Statement of full time employment;
- (2) Designating South Carolina as state of legal residence on military record;
- (3) Possession of a valid South Carolina driver’s license, or if a non-driver, a South Carolina identification card. Failure to obtain this within 90 days of the establishment of the intent to become a South Carolina resident will delay the beginning date of residency eligibility until a valid South Carolina driver’s license is obtained;
- (4) Possession of a valid South Carolina vehicle registration card for every vehicle the independent person is in sole or partial ownership. Failure to obtain this within 45 days of the establishment of the intent to become a South Carolina resident will delay the beginning date of residency eligibility until the applicant obtains a valid South Carolina vehicle registrations card(s);
- (5) Maintenance of an established and current domicile in South Carolina;

- (6) Paying South Carolina income taxes as a resident during the past tax year, including income earned outside of South Carolina from the date South Carolina domicile was claimed;
- (7) Ownership of principal residence in South Carolina;
- (8) Licensing for professional practice (if applicable) in South Carolina.

D. The individual seeking residency must ensure that no item from the list above or any other item, reflects residency or intent to be a resident in another state or country. Having any one item from the list above or any other item(s) reflecting residency in another state or country will delay the beginning date of residency. The absence of indicia in other states or countries is required before the student is eligible to pay in state rates.

62-606. Maintaining Residence.

A. A person's temporary absence from the State does not necessarily constitute loss of South Carolina residence unless the person has acted inconsistently with the claim of continued South Carolina residence during the person's absence from the State. The burden is on the person to show retention of South Carolina residence during the person's absence from the State. Steps a person should take to retain South Carolina resident status for tuition and fee purposes include:

- (1) Continuing to use a South Carolina permanent address on all records;
- (2) Maintaining South Carolina driver's license;
- (3) Maintaining South Carolina vehicle registration;
- (4) Satisfying South Carolina resident income tax obligation. Individuals claiming permanent residence

in South Carolina are liable for payment of income taxes on their total income from the date that they established South Carolina residence. This includes income earned in another state or country.

B. Active duty members of the United States Armed Forces and their dependents who are permanently assigned to a state outside of South Carolina on active duty are eligible to pay in state tuition and fees as long as they continuously claim South Carolina as their state of legal residence during their military service. Documentation will be required in all cases to support this claim, including an official Leave and Earnings Statement (LES) demonstrating South Carolina as the member's state of legal residence. South Carolina residents who change their state of legal residence while in the military lose their South Carolina resident status for tuition and fee purposes.

62-607. Effect of Change of Residency.

A. Notwithstanding other provisions of this section, any dependent person of a legal resident of this state who has been domiciled with his/her family in South Carolina for a period of not less than three years immediately prior to his/her enrollment may enroll at the in state rate and may continue to be enrolled at such rate even if the parent, spouse or guardian upon whom he is dependent moves his domicile from this State. The student must continue to be enrolled and registered for classes (excluding summers) in order to maintain eligibility to pay in state rates in subsequent semesters. Transfers within or between South Carolina colleges and universities of a student seeking a certificate, diploma, associate, baccalaureate, or graduate level degree does not constitute a break in enrollment.

B. If domicile of an independent person in South Carolina is lost after enrollment, and information becomes available that would impact the existing residency status, eligibility for in state rates shall end on the last day of the academic session during which domicile is lost. Application of this provision shall be at the discretion of the institution involved. However, a student must continue to be enrolled and registered for classes (excluding summers) in order to maintain eligibility to pay in state rates in subsequent semesters.

62-608. Effect of Marriage.

A. In ascertaining domicile of a married person, irrespective of gender, such a review shall be determined just as for an unmarried person by reference to all relevant evidence of domiciliary intent.

B. If a non-resident marries a South Carolina resident, the non-resident does not automatically acquire South Carolina resident status. The non-resident may acquire South Carolina resident status if the South Carolina resident is an independent person and the non-resident is a dependent of the South Carolina resident.

C. Marriage to a person domiciled outside South Carolina shall not be solely the reason for precluding a person from establishing or maintaining domicile in South Carolina and subsequently becoming eligible or continuing to be eligible for residency.

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D. No person shall be deemed solely by reason of marriage to a person domiciled in South Carolina to have established or maintained domicile in South Carolina and consequently to be eligible for or to retain eligibility for South Carolina residency.

62-609. Exceptions.

A. Persons in the following categories qualify to pay in state tuition and fees without having to establish a permanent home in the state for twelve months. Persons who qualify under any of these categories must meet the conditions of the specific category on or before the first day of class of the term for which payment of in state tuition and fees is requested. The following categories apply only to in state tuition and do not apply to State supported scholarships and grants. Individuals who qualify for in state tuition and fees under the following exceptions do not automatically qualify for LIFE, SC HOPE or Palmetto Fellows Scholarships.

(1) "Military Personnel and their Dependents": Members of the United States Armed Forces who are permanently assigned in South Carolina on active duty and their dependents are eligible to pay in state tuition and fees. When such personnel are transferred from the State, their dependents may continue to pay in state tuition and fees as long as they are continuously enrolled or transfer to an eligible institution during the term or semester, excluding summer terms, immediately following their enrollment at the previous institution. In the event of a transfer, the receiving institution shall verify the decision made by the student's previous institution in order to certify the student's eligibility for in-state tuition rates. It is the responsibility of the transferring student to ensure that all documents required to verify both the previous and present residency decisions are provided to the institution. Members of the United States Armed Forces who are permanently assigned in South Carolina on active duty (and their dependents) may also be eligible to pay in state tuition and fees as long as they are continuously enrolled after their discharge from the military, provided they have demonstrated an intent to establish a permanent home in South Carolina and they have resided in South Carolina for a period of at least twelve months immediately preceding their discharge. Military personnel who are not stationed in South Carolina and/or former military personnel who intend to establish South Carolina residency must fulfill the twelve month "physical presence" requirement for them or their dependents to qualify to pay in state tuition and fees.

(2) "Faculty and Administrative Employees with Full Time Employment and their Dependents": Full time faculty and administrative employees of South Carolina state supported colleges and universities and their dependents are eligible to pay in state tuition and fees.

(3) "Residents with Full Time Employment and their Dependents:" Persons who reside, are domiciled, and are full time employed with an employer that is physically located in the State and who continue to work full time until they meet the twelve month requirement and their dependents are eligible to pay in state tuition and fees, provided that they have taken steps to establish a permanent home in the State. Steps an independent person must take to establish residency in South Carolina are listed in Section 62-605 entitled ("Establishing the Requisite Intent to Become a South Carolina Domiciliary").

(4) "Retired Persons and their Dependents:" Retired persons who are receiving a pension or annuity who reside in South Carolina and have been domiciled in South Carolina as prescribed in the Statute for less than a year may be eligible for in state rates if they maintain residence and domicile in this State. Persons on terminal leave who have established residency in South Carolina may be eligible for in state rates even if domiciled in the State for less than one year if they present documentary evidence from their employer showing they are on terminal leave. The evidence should show beginning and ending dates for the terminal leave period and that the person will receive a pension or annuity when he/she retires.

(5) "Covered Individuals Receiving Specific Education Benefits:" Covered individuals living in South Carolina, who are enrolled in a public institution of higher education and receiving educational assistance under Chapter 30 and Chapter 33, Title 38 of the United States Code, are entitled to pay in-state tuition and fees without regard to the length of time the covered individual has resided in this State. For purposes of this subsection, a covered individual is defined as:

(a) a veteran who served ninety days or longer on active duty in the Uniformed Service of the United States, their respective Reserve forces, or the National Guard and who enrolls within three years of discharge;

(b) a person who is entitled to and receiving assistance under Section 3319, Title 38 of the United States Code by virtue of the person's relationship to the veteran described in subitem (a) who enrolls within three years of the veteran's discharge;

(c) a person using transferred benefits under Section 3319, Title 38 of the United States Code while the transferor is on active duty in the Uniformed Service of the United States, their respective Reserve forces, or the National Guard;

(d) a person who is entitled to and receiving assistance under Section 3311(b)(9), Title 38 of the United States Code; or

(e) a person who is entitled to and is receiving assistance under Section 3102(a), Title 38 of the United States Code.

At the conclusion of the applicable three-year period described in this section, a covered individual shall remain eligible for in-state rates as long as he remains continuously enrolled in an in-state institution or transfers to another in-state institution during the term or semester, excluding summer terms, immediately following his enrollment at the previous in-state institution. In the event of a transfer, the in-state institution receiving the covered individual shall verify the covered individual's eligibility for in-state rates with the covered individual's prior in-state institution. It is the responsibility of the transferring covered individual to ensure all documents required to verify both the previous and present residency decisions are provided to the in-state institution

B. South Carolina residents who wish to participate in the Regional Contract Program sponsored by the Southern Regional Education Board (SREB) must have continuously resided in the State for other than educational purposes for at least two years immediately preceding their submission of the residency status application and must meet all other residency requirements during this two year period. Individuals who qualify for in-state tuition and fees are not automatically classified as South Carolina residents. A determination of one's resident status made at the time of one's initial application to be certified as a South Carolina resident for purposes of participation in the Regional Contract Program does not prevail for each subsequent academic year. A South Carolina resident student who has been certified as a State resident for the purpose of participating in the Southern Regional Education Board Contract Program must be recertified prior to the beginning of each fall semester for each academic year for which benefits are requested.

C. South Carolina residents who wish to participate in the Academic Common Market program sponsored by the Southern Regional Education Board must be a resident for at least one year, or satisfy the conditions of an exception as provided in R.62-609A(1), R.62-609A(3) or R.62-609A(4), immediately preceding application for consideration and must meet all other residency requirements during this one year period.

62-610. Application for Change of Resident Status.

A. Persons applying for a change of resident classification must complete a residency application/petition and provide supporting documentation prior to a reclassification deadline as established by the institution.

B. The burden of proof rests with those persons applying for a change of resident classification who must show required evidence to document the change in resident status.

62-611. Incorrect classification.

A. Persons incorrectly classified as residents are subject to reclassification and to payment of all non-resident tuition and fees not paid. If incorrect classification results from false or concealed facts, such persons may be charged tuition and fees past due and unpaid at the out of state rate. The violator may also be subject to administrative, civil, and financial penalties. Until these charges are paid, such persons will not be allowed to receive transcripts or graduate from a South Carolina institution.

B. Residents whose resident status changes are responsible for notifying the Residency Official of the institution attended of such changes.

62-612. Inquiries and Appeals.

A. Inquiries regarding residency requirements and determinations should be directed to the institutional residency official.

B. Each institution will develop an appeals process to accommodate persons wishing to appeal residency determinations made by the institution's residency official. Each institutions appeal process should be directed by that institutions primary residency officer, in conjunction with those individuals who practice the application of State residency regulations on a daily basis. The professional judgment of the residency officer and administrators will constitute the institutional appeal process. Neither the primary residency official nor appellate official(s) may waive the provisions of the Statute or regulation governing residency for tuition and fee purposes.

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Fiscal Impact Statement:

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

Statement of Rationale:

R.62-600 through 62-612 of Chapter 62 is being amended. Revisions to the existing regulation for the SC Residency Regulation are being considered to clarify the policies and procedures for administering the program. In the proposed amendment, the regulation is being updated to reflect recently passed Act 10 of 2019, relating to the allowance of veterans and covered individuals using specific education benefits to be charged at a tuition rate equivalent to the institution's in-state rate. The revisions seek to promote consistency among the State institutions and their residency classification processes.

Document No. 4935
COMMISSION ON HIGHER EDUCATION
CHAPTER 62
Statutory Authority: 1976 Code Section 59-58-40

62-6. Licensing Criteria.

Synopsis:

R.62-6 of Chapter 62 is being amended. The revision to the existing regulation governing Licensing Criteria is being considered to authorize the Commission to approve teach-out plans in rare instances such as sudden institutional closures, to enable students within the final 25% of their programs to re-enroll at another South Carolina non-public institution and complete their courses of study.

A Notice of Drafting for the proposed regulation was published in the *South Carolina State Register* on October 25, 2019.

Instructions:

Replace R.62-6 of Chapter 62 with the following text.

Text:

62-6. Licensing Criteria.

The Commission may license the institution after due investigation has revealed that the institution and its programs have met the following criteria:

A. The course, program, curriculum, and instruction are of quality, content, and length as may reasonably and adequately achieve the stated objective for which the course, program, curriculum or instruction is offered and in response to documented need. For specific program length and instructor qualifications, see Regulations 62-9 through 62-13.

i. An accrediting body recognized by the U. S. Department of Education or the Council for Higher Education Accreditation must accredit out-of-state degree-granting institutions.

ii. Within a period of time that the institution may reasonably expect to meet the requirements, an in-state degree-granting institution must gain candidate or applicant status as appropriate for accreditation and subsequently accreditation from an accrediting body approved by the Commission, typically one recognized by the U.S. Department of Education or the Council for Higher Education Accreditation. The period of time to gain candidate status (up to four years) and accreditation (up to a total of eight years) will be determined by the Commission in consultation with the institution. To determine the appropriate accrediting agency and length of

time within which an institution must gain candidate/applicant status and accreditation, the Commission must take into consideration the objectives and length of the programs and requirements of the accrediting body.

iii. An accrediting body approved by the Commission must accredit an in-state nondegree-granting institution before the institution seeks licensure to offer programs leading to degrees.

B. There is in the institution adequate space, equipment, instructional material, and appropriately qualified instructional personnel to provide training and education of good quality. The student-teacher ratio shall be reasonable at all times in keeping with generally accepted teaching modes for the subject matter. Skill training requires more attention, and thereby requires smaller classes. The institution must employ at least one full-time faculty for each major, curricular area, or concentration. This requirement may be met by faculty at the main campus and/or at locations within South Carolina. A full-time faculty member is one whose major employment is with the institution, whose primary assignment is in teaching and/or research, and whose employment is based on a contract for full-time employment. Institutions must ensure that each faculty member employed is proficient in oral and written communication in the language in which assigned courses will be taught. The institution must keep on file for each full-time and part-time faculty member documentation of academic preparation, such as official transcripts and, if appropriate for demonstrating competency, official documentation of professional and work experience, technical and performance competency, records of publications, certifications, and other qualifications. Institutions are encouraged to recruit and select faculty whose highest degree is earned from a broad representation of institutions.

C. The institution owns or makes available sufficient learning resources or, through formal agreements with institutional or other (where adequate) libraries to which students have access, ensures the provision of and access to adequate learning resources and services required to support the courses, programs and degrees offered. Formal agreements are defined and understood as written agreements in which each of the parties states clearly the resources and services it is willing and able to provide. Formal agreements shall be regularly reviewed and reaffirmed by participating parties.

D. A procedure exists for maintaining written records of the previous education and training of the applicant student clearly showing that appropriate credit is given by the institution, shortening the education and training period where warranted, and notifying the student. The policy must include the requirement for official transcripts of credit earned from institutions previously attended and qualitative and quantitative criteria for acceptability of transfer work. Institutions must award credit in accord with commonly accepted good practice in higher education. Institutions that award credit for experiential learning must do so under recognized guidelines that aid in evaluation for credit such as those prescribed by the American Council on Education. At least twenty-five percent of the program must be earned through instruction by the institution awarding the degree, except in the case of an approved teach-out plan or agreement in the instance of an institutional closure. Articulation agreements between associate and baccalaureate degree-granting institutions should be evaluated periodically to ensure an equitable and efficient transfer of students. "Inverted," "two plus two" and similar programs must include an adequate amount of advanced coursework in the subject field. Not more than sixty-four credit hours (approximately one-half) of a baccalaureate program may be transferred from a two-year (Level I accredited) institution. Out-of-state institutions offering programs at branch sites must grant transfer credit into the same programs at its principal location.

E. The institution has developed satisfactory course and program outline(s) including syllabi for each course specifying goals and requirements, course content, methods of evaluation, and bibliography; a schedule of tuition, fees, other charges and refund policy; attendance policy; grading policy including a policy for incomplete grades; rules of operation and conduct; and a policy for handling student complaints in compliance with Regulation 62-27.

F. The institution must award the student an appropriate certificate, diploma or degree showing satisfactory completion of the course, program, or degree.

G. Adequate records as prescribed by the Commission are kept to show attendance and progress or grades, and satisfactory standards relating to attendance, progress, and conduct are enforced.

H. The institution complies with all local, county, and state regulations, such as fire, building, and sanitation codes. The Commission may require evidence of such compliance.

I. The institution is financially sound and can fulfill its commitments for education or training.

J. The institution's owners and directors are appropriately experienced and educated and are of good reputation and character. Site directors should be credentialed at the same level as the highest degree conferred

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at the site. Chief Academic Officers (those who choose faculty) must be credentialed at the same level as required for faculty. Exceptions must be documented and approved by the Commission. All administrative officers must possess credentials, experience and/or demonstrated competence appropriate to their areas of responsibility. The effectiveness of all administrators must be evaluated periodically. A person is considered to be of good reputation if:

(1) The person has no felony convictions related to the operation of a school, and the person has been rehabilitated from any other felony convictions;

(2) The person has no convictions involving crimes of moral turpitude;

(3) Within the last ten years, the person has never been successfully sued for fraud or deceptive trade practice;

(4) The person is not a plaintiff or defendant in litigation that carries a significant risk to the ability of the institution to continue operation;

(5) The person does not own a school currently violating legal requirements; has never owned a school with habitual violations; or has never owned a school that closed with violations including, but not limited to, unpaid refunds; or

(6) The person has not knowingly falsified or withheld information from representatives of the Commission.

K. The institution has, maintains, and publishes in its catalog, bulletin, or brochure and in its enrollment contract the proper refund policy that complies with Regulation 62-18.

L. The institution does not use erroneous or misleading advertising by actual statement, omission, or intimation.

M. The institution does not use a name that is misleading, the same as or similar to that of an existing institution.

N. The institution publishes and enforces admission requirements consistent with the purposes of the institution. To be admitted to degree programs, applicants must show official high school transcripts or GED scores. Official transcripts and GED scores must be a part of the admitted student's file.

O. The institution does not owe a penalty under Chapter 58 of Title 59, South Carolina Code of Laws, 1976.

P. The institution provides to each student before enrollment a catalog, bulletin or brochure meeting the requirements of Regulation 62-16.

Q. Any student living quarters owned, maintained, or approved by the institution are appropriate, safe and adequate.

R. All new programs and all major program revisions have been reviewed and approved by the Commission before the proposed date of implementation.

S. The institution shall comply with such additional criteria as may be required by the Commission.

Fiscal Impact Statement:

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

Statement of Rationale:

R.62-6 is being amended. The revision to the existing regulation governing Licensing Criteria is being considered to authorize the Commission to approve teach-out plans in rare instances such as sudden institutional closures, to enable students within the final 25% of their programs to re-enroll at another South Carolina non-public institution and complete their courses of study.

Document No. 4936
COMMISSION ON HIGHER EDUCATION
 CHAPTER 62
 Statutory Authority: 1976 Code Section 59-114-75

62-250 through 62-262. South Carolina National Guard College Assistance Program.

Synopsis:

The South Carolina Commission on Higher Education promulgates Regulation 62-250 through 62-262 that governs requirements for the operation and administration of the South Carolina National Guard College Assistance Program under SC Code of Laws, Section 59-114-10 et seq. The program is administered by the Commission in coordination with the South Carolina National Guard and provides financial assistance for eligible enlisted guard members enrolled in undergraduate programs. The Commission on Higher Education proposes to amend the regulation (R 62-253) that addresses student eligibility for the South Carolina National Guard College Assistance Program.

A Notice of Drafting for the proposed regulation was published in the *South Carolina State Register* on October 25, 2019.

Instructions:

Replace R.62-250 through 62-262 as shown below.

Text:

ARTICLE IIB
 SOUTH CAROLINA NATIONAL GUARD COLLEGE ASSISTANCE PROGRAM

Table of Contents:

- 62-250. Purpose of the South Carolina National Guard College Assistance Program
- 62-251. Program Definitions
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- 62-253. College Assistance Program Terms of Eligibility (Student Eligibility)
- 62-254. Participant Application Process and Continued Eligibility
- 62-255. Enrollment in Internships, Cooperative Work Programs, Travel Study Programs and National and International Student Exchange Programs
- 62-256. Military Mobilization
- 62-257. Exception to Policy
- 62-258. Institutional Policies and Procedures for Awarding
- 62-259. Benefits Disbursement and Reimbursements
- 62-260. Program Administration and Audits
- 62-261. Suspension or Termination of Institutional Participation
- 62-262. Funding

62-250. Purpose of the South Carolina National Guard College Assistance Program

Pursuant to Act 40 of 2007, the Commission on Higher Education shall develop a college assistance program for providing incentives for enlisting or remaining for a specified time in both the South Carolina Army and Air National Guard. The Commission on Higher Education, along with the South Carolina National Guard, shall promulgate regulation and establish procedures to administer the South Carolina National Guard College Assistance Program. These South Carolina National Guard College Assistance Program benefits will cover the cost of attendance as defined by Title IV regulation, up to a maximum amount each award year. The maximum

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amount will be made annually and detailed in established procedures to be administered by the Commission on Higher Education.

62-251. Program Definitions

A. The “Academic Year” shall be defined as the beginning twelve month period as defined by the institution for the awarding of financial aid to a student and which includes regular terms (fall, spring, or trimester) or other terms (summer and other) in any combination.

B. “College assistance program” means the South Carolina National Guard college assistance program.

C. “Commission” means the South Carolina Commission on Higher Education.

D. “Eligible institution” means:

(1) a public institution of higher learning as defined in Section 59-103-5 and an independent institution of higher learning as defined in Section 59-113-50; and

(2) a public or independent bachelor’s level institution chartered before 1962 whose major campus and headquarters are located within South Carolina; or an independent bachelor’s level institution which was incorporated in its original charter in 1962, was granted a license to operate in 1997 by the Commission on Higher Education, has continued to maintain a campus in South Carolina, and is accredited by the Southern Association of Colleges and Secondary Schools. Institutions whose sole purpose is religious or theological training or the granting of professional degrees do not meet the definition of “public or independent institution” for purposes of this chapter.

E. “National Guard” means South Carolina Army or Air National Guard.

F. “Cost of Attendance” is defined as “tuition and fees” charged for registering for credit hours of instruction, costs of textbooks, and other fees and costs associated with attendance at an eligible institution in accordance with Title IV Regulations.

G. “Degree-seeking student” is defined as any student enrolled in an eligible institution which leads to the first one-year certificate, first two-year program or associate’s degree, or first bachelor’s, or a program of study that is structured so as not to require a bachelor’s degree for acceptance into the program (and leads to a graduate degree).

H. “Eligible program of study” is defined as a program of study leading to:

(1) at least a one-year educational program that leads to the first certificate or other recognized educational credential (e.g., diploma) as defined by the U.S. Department of Education for participation in federally funded financial aid programs and prepares students for gainful employment in recognized occupations;

(2) the first associate’s degree;

(3) at least a two-year program that is acceptable for full credit towards the first bachelor’s degree; or

(4) the first bachelor’s degree.

I. “Full-time student” shall mean a student who has matriculated into an eligible program of study and who enrolls full-time, usually 12 credit hours for fall and spring terms.

J. “Less-than full-time student” shall mean a student who has matriculated into an eligible program of study and who enrolls part-time, e.g., usually fewer than 12 credit hours, for the fall and spring terms.

K. “Military mobilization” is defined as a situation in which the U.S. Department of Defense orders members of the United States Armed Forces to active duty away from their normal duty assignment during a time of war or national emergency, or as determined by the South Carolina Military Department.

L. “Remedial/developmental coursework” shall mean sub-collegiate level preparatory courses in English, mathematics, reading and any courses classified as remedial by the institution where the course is taken.

M. “Transfer student” shall be defined as a student who has changed enrollment from one institution to an eligible institution.

N. “Home institution” shall mean the institution where the student is currently enrolled as a degree seeking student and may be eligible for financial aid at the same institution.

O. “Satisfactory academic progress” shall be defined as the academic progress as required by the institution in which the student is enrolled as a degree-seeking student for Title IV financial aid eligibility.

P. “Attempted hours” include all enrolled semester hours or related quarter hours, whether passed or not, and does not include those hours dropped or withdrawn in accordance with institutional drop-add policies.

Q. “Qualified Member” shall be defined as a member who has completed Advanced Individual Training (AIT)/Initial Active Duty Training (IADT).

- R. "Good Standing" shall be defined as a member who is a satisfactory participant in the SC National Guard.
- S. "Four Years" shall be defined as four calendar years from the term the benefit covered.

62-252. Program Benefits and Maximum Assistance

A. Qualified members of the National Guard may receive college assistance program benefits up to an amount equal to one hundred percent of college cost of attendance, provided, however, these college assistance program benefits in combination with all other grants and scholarships shall not exceed the cost of attendance at the particular eligible institution in any given award year; and the cumulative total of all college assistance program benefits received may not exceed eighteen thousand dollars.

(1) These college assistance program benefits cover the cost of attendance; however, the benefit maximum per award year may be reduced if, in combination with other financial aid, the cumulative total of all aid received would exceed the cost of attendance.

(2) The annual maximum grant will be determined prior to the beginning of each academic year based on the amount of available program funds.

(3) Disbursements of this grant will typically be paid in two (fall semester, spring semester, or its equivalent) equal disbursements. Any remaining funds can be used in any succeeding terms prior to annual expiration date.

B. A member shall not qualify for college assistance program benefits for more than one hundred thirty attempted hours from the time of initial eligibility into the college assistance program.

(1) The award will be prorated so that a student's funded hours shall not exceed 130 attempted hours from the time of initial eligibility.

(2) A student will not be penalized toward the maximum one-hundred-thirty attempted hours for which the student enrolled but withdraws in accordance to institutional drop-add policies.

C. Students may not receive college assistance benefits upon completion of an eligible program to pursue an eligible program of study in the same or preceding level.

D. Students who have been awarded a bachelor's or graduate degree are not eligible for the College Assistance Program benefit.

E. Students may not receive college assistance benefits at more than one institution during the same term. Where students are enrolled in more than one institution during a semester, the benefit will be received at the student's home institution.

F. College assistance benefits must not be awarded for graduate degree courses.

G. Less than full-time students may receive college assistance program benefits.

(1) Awards for less than full-time students cannot exceed the cost of attendance.

(2) College assistance program benefits will be prorated for less than full-time enrolled students. The prorated method (based on semester calculation) will be $\frac{3}{4}$ time; $\frac{1}{2}$ time; less than $\frac{1}{2}$ time to include $\frac{1}{4}$ and less than $\frac{1}{4}$ time of the recipient's full time award value.

H. College assistance program benefits may not be applied to the cost of continuing education or graduate coursework.

I. A Guard member who qualifies under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 must meet all eligibility requirements as defined in "Program Benefits and Maximum Assistance" Sections except for the full-time enrollment requirement, if approved by the Disability Services Provider at the home institution. A Guard member must comply with all institutional policies and procedures in accordance with ADA and Section 504 of the Rehabilitation Act of 1973. It is the responsibility of the Guard member to provide written documentation concerning services from the institutional Disability Services Provider. The institutional Disability Services Provider must provide written documentation to the Office of Financial Aid prior to each academic year verifying that the student is approved to be enrolled in less than full-time status. The institution is responsible for retaining appropriate documentation according to the "Institutional Policies and Procedures for Awarding" Section.

J. Remedial/developmental or non-degree attempted hours shall be used toward the National Guard member's 130 attempted hours.

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62-253. College Assistance Program Terms of Eligibility (Student Eligibility)

A. Members of the National Guard enrolled or planning to enroll in an eligible institution may apply to the National Guard for a college assistance program benefit.

B. College assistance program benefits may be applied by giving priority to service members in areas of critical need. The National Guard will determine areas of critical need.

C. To qualify, an applicant must:

(1) be in good standing with the active National Guard at the beginning of each academic year and remain a member in good standing with the active National Guard throughout the entire academic year for which benefits are payable;

(2) have valid tuition and fee expenses from an eligible institution;

(3) maintain satisfactory academic progress as defined by the institution;

(4) be a U.S. citizen or a legal permanent resident who meets the definition of an eligible non-citizen under State Residency Statutes;

(5) be admitted, enrolled and classified as a degree-seeking full-time or part-time student at an eligible institution in South Carolina; and

(6) satisfy additional eligibility requirements as may be promulgated by the Commission.

D. Individuals joining the National Guard become eligible for college assistance program benefits upon completion of Basic Combat Training (BCT)/Basic Military Training (BMT) and Advanced Individual Training (AIT)/ Initial Active Duty Training (IADT) for sequential regular terms (fall, spring, or trimester) or other terms (summer and other).

E. Enlisted personnel must continue their service in the National Guard during all terms of courses covered by the benefit received. Officers shall continue their service with the National Guard for at least four years after completion of the most recent award or degree completion. Enlisted personnel will not be eligible for benefits after the discharge date.

F. National Guard members receiving a full Reserve Officer's Training Corps (ROTC) scholarship are not eligible for college assistance program benefits. A full ROTC scholarship is defined as an award that covers tuition and fees, room and board and fees associated with cost of attendance (Please refer to section 62-251(F)).

62-254. Participant Application Process and Continued Eligibility

A. New applications must be completed and submitted each year prior to the beginning of the fall term of the academic year by the deadline determined by the National Guard.

(1) The application is to be submitted to the National Guard and must include information identifying the student's home institution and intent to enroll at the institution in the upcoming year.

(2) Guard members who intend to enroll only for the spring and/or summer semester must also complete a new application prior to the fall term of each academic year by the established deadline determined by the National Guard.

(3) The National Guard shall determine eligibility for the college assistance program.

(4) Once eligibility has been determined by the National Guard, all documents must be initiated and submitted by the student to the institution.

B. Currently enrolled members must have applied prior to the beginning of the fall term of each academic year by the National Guard established deadline and should contact their college's financial aid office to initiate benefit award for the current academic year. The financial aid office will coordinate with the Commission to verify student eligibility and coordinate payment to the college or university on behalf of the student member.

C. For continued eligibility, students must apply prior to the beginning of the fall term of each academic year by the established deadline as determined by the National Guard, continue to meet all eligibility requirements as stated in the Section 62-253, College Assistance Program Terms of Eligibility (Student Eligibility).

D. Transfer students who are eligible prior to the beginning of the academic year for the college assistance program and who transfer mid-year to another eligible institution may be eligible to receive the assistance for the spring term if they continue to meet eligibility requirements.

62-255. Enrollment in Internships, Cooperative Work Programs, Travel Study Programs and National and International Student Exchange Programs

A. Students enrolled in internships, cooperative work programs, travel study programs, or National or International Student Exchange Programs that are approved by the home institution and that the home institution accepts as full-time transfer credit are eligible to receive the college assistance program benefit during the period in which the student is enrolled in such programs. Students will be required to meet the continued eligibility requirements.

62-256. Military Mobilization

A. Service members who are enrolled in college and during which affected by military mobilizations will not be penalized for the term they are required to withdraw after the full refund period based on institutional policies and procedures. Institutions are strongly encouraged to provide a full refund of required tuition, fees and other institutional charges or to provide a credit in a comparable amount against future charges for students who are forced to withdraw as a result of military mobilization. The service member must re-enroll in an eligible institution within twelve months upon demobilization and provide official documentation to verify military deployment to the institutional Financial Aid Office upon re-enrollment. Reinstatement will be based upon the service member's eligibility at the time he/she was mobilized. If the student re-enrolls after the twelve month period, the service member must submit an exception to policy (Please refer to Section 62-257).

B. Service members who are enrolled in college and are mobilized for an entire academic year may renew the scholarship for the next academic year, if they met the eligibility requirements at the end of the prior academic year. Service members who did not use the college assistance program benefits/terms of eligibility during this period due to military mobilization shall be allowed to receive the college assistance benefits during the succeeding term.

C. The home institution will be responsible for receiving verification of military mobilization status, from the National Guard, attempted semester hours, credit hours earned, and eligibility for benefit renewal for the next academic year in accordance with Section 62-253.

D. Service members of the United States Armed Forces will not be penalized for any credit hours earned while on military mobilization. The credit hours earned will be used toward the maximum credit hour requirement for the college assistance program.

62-257. Exception to Policy

A. Students may submit an exception to policy requesting a review of an adverse determination as to the awarding or continuation of the college assistance program benefit to the Office of the Adjutant General or the appointed Air or Army National Guard CAP Representative.

B. The Adjutant General, or the appointed Air or Army National Guard CAP Representative, shall devise procedures addressing student exception to policy requests to provide students an opportunity to submit documentation for a second review and determination of award.

62-258. Institutional Policies and Procedures for Awarding

A. Each institution is responsible for reviewing all students based on the "Eligibility Requirements/Satisfactory Academic Progress" to determine eligibility for college assistance program benefits.

B. College assistance program awards are to be used only for payment toward the cost-of-attendance as established by Title IV Regulations. The college assistance program in combination with all other gift aid, including Federal, State, private and institutional funds, shall not exceed the cost-of-attendance as defined in Title IV regulations for any academic year.

C. Institutions will notify students of any adjustments in the college assistance program benefit funds that may result from an over award, change in eligibility, or change in financial status or other matters.

D. The institution must retain annual paper or electronic documentation for each award to include at a minimum:

- (1) Award notification
- (2) Institutional disbursement to student
- (3) Refunds and repayments (if appropriate)
- (4) Enrollment and curriculum requirements

(5) Verification of required number of annual credit hours based on that (s)he is within the eligible 130 attempted hours from the time of initial eligibility of the program.

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(6) Military mobilization orders (if appropriate)

E. The National Guard shall be responsible for providing a list of all eligible Guard members to the Commission on Higher Education, which in turn shall provide this list to all the eligible institutions. Only Guard Members who are on the list shall be awarded the college assistance program benefits.

F. Eligible participant lists will be accessed through the Commission portal (via log-on/password); eligibility will reflect assurance that the student is eligible for the annual maximum in accordance with Section 62-253 unless otherwise noted.

G. The college assistance program awards are to be used to meet unmet need or to replace any loans or work-study up to the student's cost-of-attendance.

H. The home institution will be responsible for obtaining official certification of the student's grade point average, attempted semester hours, credit hours earned, and satisfactory academic progress for the purposes of determining student eligibility for the college assistance program benefit and renewal in succeeding academic years.

62-259. Benefits Disbursement and Reimbursements

A. The Commission shall disburse benefits awarded pursuant to this chapter to the eligible institutions to be placed in an account established for each eligible student.

(1) In the event that a student who has received a benefit withdraws, is suspended, ineligible under Section 62-253 C. (1), or otherwise becomes ineligible, the institution must reimburse the college assistance program for the amount of the benefit for the applicable term pursuant to the refund policies of the institution.

(2) The institution is responsible for collecting any amount due to the institution from the student.

(3) In the event a student withdraws or drops below eligibility requirements after the institution's refund period and therefore must pay tuition and fees for full-time or less-than full time enrollment, the benefits may be retained pursuant to the refund policies of the institution.

B. The institution is responsible for awarding college assistance program funds according to the "Institutional Policies and Procedures for Awarding" section, R.62-258, and procedures that may be prescribed the Commission.

C. Eligible institutions shall award amounts which, when combined with other financial aid, cannot exceed the student's cost-of-attendance or defined program award maximums.

D. After the last day to register for each term of the eligible academic year, the institution will verify enrollment of each recipient and award amount based upon enrollment status.

E. The institution must submit a request for funds and/or return of funds by the established deadline each term. In addition, a listing of all eligible recipients by identification numbers with award amounts for the term must be sent to the Commission. At this time any funds must be returned to the Commission on Higher Education immediately.

F. The Commission will disburse awards to the eligible institutions to be placed in each eligible student's account.

G. At the time of disbursement, the student must be enrolled at the institution indicated as the home institution (on the National Guard application form) as a degree-seeking student at the home institution.

62-260. Program Administration and Audits

A. The Commission on Higher Education, in conjunction with the National Guard, shall be responsible for the oversight of functions (e.g., guidelines, policies, rules, regulations) relative to this program with participating institutions.

(1) The Commission shall be responsible for the allocation of funds, promulgation of guidelines and regulations governing the college assistance program, and any audits or other oversight as may be deemed necessary to monitor the expenditures of scholarship funds.

(2) The National Guard shall be responsible for Officers continuing their service with the National Guard for at least four years after completion of the most recent benefit awarded or degree completion.

(3) The National Guard shall be responsible for any and all student appeals.

(4) The National Guard shall be responsible for providing a list of all eligible Guard members to the Commission on Higher Education, which in turn shall provide this list to all the eligible institutions. Only Guard Members who are on the list shall be awarded the college assistance program benefits.

B Institutions must abide by program policies, rules or regulations. Institutions also agree to maintain and provide all pertinent information, records, reports or any information as may be required or requested by the Commission or the General Assembly to ensure proper administration of the program.

C. The Chief Executive Officer at each participating institution shall identify to the Commission a college assistance program institutional representative who is responsible for the operation of the program on the campus and will serve as the contact person. The institutional representative will act as the student’s fiscal agent to receive and deliver funds for use under the program.

62-261. Suspension or Termination of Institutional Participation

A. The Commission may review institutional administrative practices to determine institutional compliance with pertinent statutes, guidelines, rules or regulations. If such a review determines that an institution has failed to comply with program statutes, guidelines, rules or regulations, the Commission may suspend, terminate, or place certain conditions upon the institution’s continued participation in the program and require reimbursement to the college assistance program for any funds lost or improperly awarded.

B. Upon receipt of evidence that an institution has failed to comply, the Commission shall notify the institution in writing of the nature of such allegations and conduct an audit.

C. If an audit indicates that a violation or violations may have occurred or are occurring at any eligible institution, the Commission shall secure immediate reimbursement from the institution in the event that any funds were expended out of compliance with the provisions of the Act, any relevant statutes, guidelines, rules, and regulations.

62-262. Funding

A. Benefits provided through the college assistance program are subject to the availability of funds appropriated by the General Assembly.

B. Funds appropriated for the college assistance program may be carried forward and expended for the same purpose. If a midyear budget reduction is imposed by the General Assembly or the State Budget and Control Board, the appropriations for the college assistance program are exempt.

C. Up to five percent of the amount appropriated to the college assistance program may be used to defray administrative costs incurred by the Commission associated with the implementation of this chapter.

Fiscal Impact Statement:

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

Statement of Rationale:

The revisions to the regulation will further clarify administrative procedures.

Document No. 4929
DEPARTMENT OF INSURANCE
 CHAPTER 69

Statutory Authority: 1976 Code Sections 1-23-110, 38-3-110, and 38-13-1030

69-80. Corporate Governance Annual Disclosure Regulation.

Synopsis:

The Corporate Governance Annual Disclosure Regulation was passed in 2019 along with corresponding new legislation. Accordingly, some of the citations in the regulation referencing the new legislation need to be renumbered to accurately correspond to the correct provision in the new legislation.

The Notice of Drafting was published in the *State Register* on August 23, 2019.

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Instructions:

Replace regulation as shown below. All other items and sections remain unchanged.

Text:

69-80. Corporate Governance Annual Disclosure Regulation.

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Section I. Authority

These regulations are promulgated pursuant to the authority granted by Section 38-13-1030 of the Insurance Law.

Section II. Purpose.

The purpose of these regulations is to set forth the procedures for filing and the required contents of the Corporate Governance Annual Disclosure (CGAD), deemed necessary by the Director to carry out the provisions of Section 38--13-1000 et seq.

Section III. Definitions.

A. "Director." The South Carolina Director of Insurance or his designee.

B. "Insurance group." For the purpose of this Act, the term "insurance group" shall mean those insurers and affiliates included within an insurance holding company system as defined in Section 38-13-1000 et seq.

C. "Insurer." The term "insurer" shall have the same meaning as set forth in Regulation 69-3, except that it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

D. "Senior Management." The term "senior management" shall mean any corporate officer responsible for reporting information to the board of directors at regular intervals or providing this information to shareholders or regulators and shall include, for example and without limitation, the Chief Executive Officer ("CEO"), Chief Financial Officer ("CFO"), Chief Operations Officer ("COO"), Chief Procurement Officer ("CPO"), Chief Legal Officer ("CLO"), Chief Information Officer ("CIO"), Chief Technology Officer ("CTO"), Chief Revenue Officer ("CRO"), Chief Visionary Officer ("CVO"), or any other "C" level executive.

Section IV. Filing Procedures

A. An insurer, or the insurance group of which the insurer is a member, required to file a CGAD by the Corporate Governance Annual Disclosure Act, Section 38--13-1000 et seq., shall, no later than June 1 of each calendar year, submit to the director a CGAD that contains the information described in Section V of these regulations.

B. The CGAD must include a signature of the insurer's or insurance group's chief executive officer or corporate secretary attesting to the best of that individual's belief and knowledge that the insurer or insurance group has implemented the corporate governance practices and that a copy of the CGAD has been provided to the insurer's or insurance group's Board of Directors (hereafter "Board") or at the appropriate committee thereof.

C. The insurer or insurance group shall have discretion regarding the appropriate format for providing the information required by these regulations and is permitted to customize the CGAD to provide the most relevant information necessary to permit the director to gain an understanding of the corporate governance structure, policies and practices utilized by the insurer or insurance group.

D. For purposes of completing the CGAD, the insurer or insurance group may choose to provide information on governance activities that occur at the ultimate controlling parent level, an intermediate holding company level and/or the individual legal entity level, depending upon how the insurer or insurance group has structured its system of corporate governance. The insurer or insurance group is encouraged to make the CGAD disclosures at the level at which the insurer's or insurance group's risk appetite is determined, or at which the earnings, capital, liquidity, operations, and reputation of the insurer are overseen collectively and at which the supervision of those factors are coordinated and exercised, or the level at which legal liability for failure of general corporate governance duties would be placed. If the insurer or insurance group determines the level of reporting based on these criteria, it shall indicate which of the three criteria was used to determine the level of reporting and explain any subsequent changes in level of reporting.

E. Notwithstanding Subsection A of this Section, and as outlined in Section 38-13-1020 of the Insurance Law, if the CGAD is completed at the insurance group level, then it must be filed with the lead state of the group as determined by the procedures outlined in the most recent Financial Analysis Handbook adopted by the NAIC. In these instances, a copy of the CGAD must also be provided to the chief regulatory official of any state in which the insurance group has a domestic insurer, upon request.

F. An insurer or insurance group may comply with this section by referencing other existing documents (e.g., ORSA Summary Report, Holding Company Form B or F filings, Securities and Exchange Commission (SEC) Proxy Statements, foreign regulatory reporting requirements, etc.) if the documents provide information that is comparable to the information described in Section V. The insurer or insurance group shall clearly reference the location of the relevant information within the CGAD and attach the referenced document if it is not already filed or available to the regulator.

Section V. Contents of Corporate Governance Annual Disclosure

A. The insurer or insurance group shall be as descriptive as possible in completing the CGAD, with inclusion of attachments or example documents that are used in the governance process, since these may provide a means to demonstrate the strengths of their governance framework and practices.

B. The CGAD shall describe the insurer's or insurance group's corporate governance framework and structure including consideration of the following.

(1) The Board and various committees thereof ultimately responsible for overseeing the insurer or insurance group and the level(s) at which that oversight occurs (e.g., ultimate control level, intermediate holding company, legal entity, etc.). The insurer or insurance group shall describe and discuss the rationale for the current Board size and structure; and

(2) The duties of the Board and each of its significant committees and how they are governed (e.g., bylaws, charters, informal mandates, etc.), as well as how the Board's leadership is structured, including a discussion of the roles of Chief Executive Officer (CEO) and Chairman of the Board within the organization.

C. The insurer or insurance group shall describe the policies and practices of the most senior governing entity and significant committees thereof, including a discussion of the following factors:

(1) How the qualifications, expertise and experience of each Board member meet the needs of the insurer or insurance group.

(2) How an appropriate amount of independence is maintained on the Board and its significant committees.

(3) The number of meetings held by the Board and its significant committees over the past year as well as information on director attendance.

(4) How the insurer or insurance group identifies, nominates and elects members of the Board and its committees. The discussion should include, for example:

(a) Whether a nomination committee is in place to identify and select individuals for consideration

(b) Whether term limits are placed on directors

(c) How the election and re-election processes function.

(d) Whether a Board diversity policy is in place and if so, how it functions.

(5) The processes in place for the Board to evaluate its performance and the performance of its committees, as well as any recent measures taken to improve performance (including any Board or committee training programs that have been put in place).

D. The insurer or insurance group shall describe the policies and practices for directing Senior Management, including a description of the following factors:

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(1) Any processes or practices (i.e., suitability standards) to determine whether officers and key persons in control functions have the appropriate background, experience and integrity to fulfill their prospective roles, including:

(a) Identification of the specific positions for which suitability standards have been developed and a description of the standards employed.

(b) Any changes in an officer's or key person's suitability as outlined by the insurer's or insurance group's standards and procedures to monitor and evaluate such changes.

(2) The insurer's or insurance group's code of business conduct and ethics, the discussion of which considers for example:

(a) Compliance with laws, rules, and regulations; and

(b) Proactive reporting of any illegal or unethical behavior.

(3) The insurer's or insurance group's processes for performance evaluation, compensation and corrective action to ensure effective senior management throughout the organization, including a description of the general objectives of significant compensation programs and what the programs are designed to reward. The description shall include sufficient detail to allow the director to understand how the organization ensures that compensation programs do not encourage and/or reward excessive risk taking. Elements to be discussed may include, for example:

(a) The Board's role in overseeing management compensation programs and practices.

(b) The various elements of compensation awarded in the insurer's or insurance group's compensation programs and how the insurer or insurance group determines and calculates the amount of each element of compensation paid.

(c) How compensation programs are related to both company and individual performance over time;

(d) Whether compensation programs include risk adjustment and how those adjustments are incorporated in to the program for employees at different levels;

(e) Any clawback provisions built into the programs to recover awards or payments if the performance measures upon which they are based are restarted or otherwise adjusted;

(f) Any other factors relevant in understanding how the insurer or insurance group monitors its compensation policies to determine whether its risk management objectives are met by incentivizing its employees.

(4) The insurer's or insurance group's plans for CEO and Senior Management succession.

E. The insurer or insurance group shall describe the processes by which the Board, its committees and Senior Management ensure an appropriate amount of oversight to the critical risk areas impacting the insurer's business activities, including a discussion of:

(1) How oversight and management responsibilities are delegated between the Board, its committees and Senior Management;

(2) How the Board is kept informed of the insurer's strategic plans, the associated risks, and steps that Senior Management is taking to monitor and manage those risks;

(3) How reporting responsibilities are organized for each critical risk area. The description should allow the director to understand the frequency at which information on each critical risk area is reported to and reviewed by Senior Management and the Board. This description may include, for example, the following critical risk areas of the insurer:

(a) Risk management processes (An ORSA Summary Report filer may refer to its ORSA Summary Report pursuant to the Risk Management and Own Risk and Solvency Assessment Model Act);

(b) Actuarial function;

(c) Investment decision-making processes;

(d) Reinsurance decision-making processes;

(e) Business strategy/finance decision-making processes;

(f) Compliance function;

(g) Financial reporting/ internal auditing; and

(h) Market conduct decision-making processes.

Section VI. Severability Clause

If any provision of these regulations, or the application thereof to any person or circumstance, is held invalid, such determination shall not affect other provisions or applications of these regulations which can be given effect without the invalid provision or application, and to that end the provision of these regulations are severable.

Fiscal Impact Statement:

No additional state funding is requested. The Department estimates that no additional costs will be incurred by the state in complying with the proposed amendments to 69-80.

Statement of Rationale:

Corporate Governance Annual Disclosure Regulation was passed in 2019 along with corresponding new legislation. Accordingly, some of the citations in the regulation referencing the new legislation need to be renumbered to accurately correspond to the correct provision in the new legislation.

Document No. 4931
DEPARTMENT OF INSURANCE
 CHAPTER 69

Statutory Authority: 1976 Code Sections 1-23-110, 38-3-110, and 38-61-30

69-5.1. Minimum Standards for the Readability of Commonly Purchased Insurance Policies.

Synopsis:

This regulation proposes amendments to the readability standards insurers must observe when drafting insurance policies. The amendments give the insurer the option of providing a certification that the form meets the Flesch Kincaid standard or providing the actual form and the score to the Department for its review and approval.

Notice of Drafting for the proposed amendments was published in the *State Register* on August 23, 2019.

Instructions:

Replace regulation as shown below. All other items and sections remain unchanged.

Text:

69-5.1. Minimum Standards for the Readability of Commonly Purchased Insurance Policies.

A. Purpose: The purpose of this Regulation is to establish minimum standards of readability applicable to all commonly purchased personal policies, contracts and certificates of insurance delivered or issued for delivery in this State.

This Regulation is not intended to increase the risk assumed by insurance companies or other entities subject to this Act or to supersede their obligation to comply with the substance of other insurance legislation applicable to such forms of insurance policies. This Regulation is not intended to impede flexibility and innovation in the development of policy forms or content or to lead to the standardization of policy forms or content.

A policy is a legal document. Revision of the policy to make it more readable must not lead to its devaluation as a legal document. The policy must comply with all statutory and regulatory requirements.

B. Definitions—As used in this Regulation:

- (1) “Director” is as defined in Section 38-1-20.
- (2) “Policy” or “Policy Forms” means any policy, certificate, rider, amendment, endorsement, contract, plan or agreement of personal insurance, and any renewal thereof including homeowners, dwelling fire, automobile, accident and health, life and all other forms of personal insurance delivered or issued for delivery

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in this State by any company subject to this Regulation; any certificate, contract or policy issued by a fraternal benefit society, and any certificate issued pursuant to a group insurance policy delivered or issued for delivery in this State. The Director may add other policies as he deems advisable.

(3) "Company" or "Insurer" means any life and health, accident, property and casualty, title or marine insurance company, reciprocal, county mutuals, fraternal benefit society, nonprofit health services corporation, nonprofit hospital service corporation, nonprofit medical service corporation, prepaid health plan, dental care plan, vision care plan, pharmaceutical plan, health maintenance organization, and all similar type organizations.

C. Applicability:

This Regulation shall apply to all policies delivered or issued for delivery in this State by any insurer on or after the date such forms must be approved under this Regulation, but nothing in this Regulation shall apply to:

- (1) Any policy which is a security subject to federal jurisdiction;
- (2) Any group policy; however, this shall not exempt any certificate issued pursuant to a group policy delivered or issued for delivery in this State or mass marketed certificates subject to approval by this Department;
- (3) Any group annuity contract which serves as a funding vehicle for pension, profit-sharing, or deferred compensation plans;
- (4) Commercial, fleet vehicle and incidental personal coverages which are a part of a commercial policy;
- (5) Any life, accident and health form used in connection with, as a conversion from, as an addition to, in exchange for, or issued pursuant to a contractual provision for, a policy delivered or issued for delivery on a form approved or permitted to be issued prior to the date such forms must be approved under this Regulation;
- (6) Renewal of a life or accident and health policy delivered or issued for delivery prior to the date such forms must be approved under this Regulation;
- (7) Surety or fidelity bonds.

D. Minimum Policy Readability Standards:

(1) In addition to any other requirements of law, no policy forms of personal insurance except as stated in Section C, shall be delivered or issued for delivery in this State on or after the dates such forms must be approved under this Regulation unless:

- (a) The text achieves a minimum score of 40 on the Flesch Reading Ease Test or an equivalent score on any other comparable test as provided in subsection (3) of this Section;
- (b) It is printed, except for specification pages, schedules and tables, in not less than ten point type, one point leaded;
- (c) The style, arrangement and overall appearance of the policy give no undue prominence to any portion of the text of the policy or to any endorsement or riders; and
- (d) It contains a table of contents or an index of the principal sections of the policy, if the policy has more than 3,000 words or if the policy is printed on more than three pages.

(2) For the purposes of this Section, a Flesch Reading Ease Test Score shall be measured by the following method:

(a) For a policy containing 10,000 words or less of text, the entire policy shall be analyzed. For a policy containing more than 10,000 words, the readability of two 100-word samples per page may be analyzed instead of the entire form. The samples shall be separated by at least 20 printed lines.

(b) The number of words and sentences in the text shall be counted and the total number of words divided by the total number of sentences. The figure obtained shall be multiplied by a factor of 1.015.

(c) The total number of syllables shall be counted and divided by the total number of words. The figure obtained shall be multiplied by a factor of 84.6.

(d) The sum of the figures computed under (b) and (c) subtracted from 206.835 equals the Flesch Reading Ease Test Score for the policy form.

(e) For purposes of this Section, the following procedures shall be used:

(1) A contraction, hyphenated word, numbers and letters when separated by spaces shall be counted as one word;

(2) A unit of words ending with a period, semicolon, or colon, but excluding headings and captions shall be counted as a sentence;

(3) A syllable means a unit of spoken language consisting of one or more letters of a word as divided by an accepted dictionary. Where the dictionary shows two or more equally acceptable pronunciations of a word, the pronunciation containing fewer syllables may be used.

(f) The term "text" as used in this Section shall include all printed matter except the following:

(1) The name and address of the insurer; the name, number or title of the policy; the table of contents or index; captions and sub-captions; specification pages, schedules or tables;

(2) Any policy language which is drafted to conform to the requirements of any federal law, regulation or agency interpretation; any policy language required by any collectively bargained agreement; any medical terminology; any words which are defined in the policy; and any policy language required by law or regulation; provided, however, the insurer identifies the language or terminology excepted by this subsection and certifies, in writing, that the language or terminology is entitled to be excepted by this subsection.

(3) Any other reading test may be approved by the Director for use as an alternative to the Flesch Reading Ease Test if it is comparable in result to the Flesch Reading Ease Test.

(4) Any non-English language policy delivered or issued for delivery in this State shall be deemed to be in compliance with Section D(1) of this Regulation if the insurer certifies that the policy is translated from an English language policy which complies with Section D(1) of this Regulation.

(5) Filings subject to this Section shall provide the actual score or be accompanied by a certification signed by an officer of the insurer or filing organization stating that the policy form meets the minimum requirements of Section D(1). Such certification shall state that the policy form meets the minimum reading ease test score on the test used or that the score is lower than the minimum required but should be approved in accordance with Section E. To confirm the accuracy of any certification or score, the Director may require the submission of further information to verify the certification or score in question. If it is necessary to alter coverage, such change must be noted and explained upon submission for filing.

(6) At the option of the insurer, riders, endorsements, and other forms made a part of the policy may be scored as separate forms or as part of the policy with which they may be used.

E. Powers of the Director: The Director may approve a policy which does not meet the minimum Flesch Reading Ease Test Score required herein whenever, in his sole discretion, he finds such approval:

(1) will provide a more accurate reflection of the readability of a policy form;

(2) is warranted by the nature of a particular policy, or

(3) is warranted by certain policy language which is drafted to conform to the requirements of any State law, regulation or agency interpretation.

F. Approval of Forms: A policy meeting the requirements of Section D(1) shall be approved, notwithstanding the provisions of any other law which specify the content of policies, if the policy provides the policyholders and claimants protection not less favorable than they would be entitled to under such laws.

G. Effective Dates:

This regulation, as amended, becomes effective upon publication in the State Register.

H. Penalties: Any insurer who violates the provisions of this regulation shall be subject to the penalties set forth in Section 38-2-10 of the Code of Laws of South Carolina 1976, as amended.

Fiscal Impact Statement:

No additional state funding is requested. The South Carolina Department of Insurance estimates that no additional costs will be incurred by the State and its political subdivisions in complying with the proposed revisions to Regulation 69-5.1.

Statement of Rationale:

The proposed changes are needed to accommodate technological changes and to further clarify readability requirements. This should help facilitate the insurance form review process.

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Document No. 4878
DEPARTMENT OF INSURANCE
CHAPTER 69

Statutory Authority: 1976 Code Sections 1-23-110 et seq., 38-3-110 et seq., and 38-73-70

69-56. Named Storm or Wind/Hail Deductible.

Synopsis:

Changes to Regulation 69-56 clarify the meaning of a “named storm” and the application of the named storm deductible or other named storm restrictions as well as provide requirements for language in policies regarding such deductibles.

The Notice of Drafting was published in the *State Register* on February 22, 2019.

Instructions:

Replace regulation as shown below. All other items and sections remain unchanged.

Text:

69-56. Hurricane, Named Storm or Wind/Hail Deductible.

Under S. C. Code Ann. Section 38-73-70 (1976), the Department of Insurance may make reasonable regulations for the enforcement of Chapter 73 entitled “Property, Casualty, Inland Marine and Surety Rates and Rate-making Organizations.”

A. Purpose: The purpose of this regulation is to clarify the process for insurers, including surplus lines insurers, to inform policyholders who purchase personal and commercial property policies of the presence of a hurricane, named storm or wind/hail deductible within their policies. The Department recognizes that an insurer may choose to have separate endorsements for each of hurricane, named storm or wind/hail deductibles or may choose to combine them into one endorsement.

B. Definitions:

(1) Named Storm Deductible is a separate deductible triggered by a weather-related event that has been named, designated or identified by the U.S. National Weather Service or the National Hurricane Center. It only includes a hurricane, tropical storm or tropical depression. Any storm or weather-related event given a name by any other person or entity does not qualify as a named storm, for purposes of a separate deductible. Any winter storm or weather event named or identified by the news media cannot be relied upon to trigger a named storm deductible.

(2) Wind/Hail Deductible is a separate deductible applied to a personal or commercial property insurance policy that applies to losses resulting from the perils of wind or hail, regardless of how named or applied and regardless of whether the deductible is calculated as a percentage of policy limits or a specified dollar amount.

C. No insurer may offer a new property policy to or renew an existing policy of an insured that includes a hurricane, named storm or wind/hail deductible unless the insurer:

(1) includes an example which illustrates how the deductible functions for a policy valued at \$100,000 and this illustration will include a clear explanation of the event which will trigger the deductible; and

(2) includes on the face of any policy that contains a separate hurricane, named storm or wind/hail deductible the following statement: THIS POLICY CONTAINS A SEPARATE DEDUCTIBLE FOR HURRICANE, NAMED STORM OR WIND/HAIL LOSSES, WHICH MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU. THE ENCLOSED EXAMPLE ILLUSTRATES HOW THE DEDUCTIBLE MIGHT AFFECT YOU. This identical statement shall also appear on the declarations page.

The language may be added to the policy by an amendatory endorsement.

D. Renewal Changes: No insurer may change a current property policy at renewal by implementing a hurricane, named storm, or wind/hail deductible or increasing the size of the hurricane, named storm or wind/hail deductible unless:

(1) the insurer includes an example which illustrates how the deductible functions for a policy valued at \$100,000 and this illustration must include a clear explanation of the event which will trigger the deductible; and

(2) the named insured signs or initials a disclosure that acknowledges that the named insured has read the example.

E. Regulatory Action. Any violation of this regulation may trigger penalties as set forth in S.C. Code Section 38-2-10.

F. Implementation. This regulation becomes effective upon publication in the State Register and applies to any property insurance policies issued or renewed 120 days following such publication. This regulation supersedes and replaces former regulation 69-56 originally issued in 2000.

Fiscal Impact Statement:

No additional state funding is requested. The Department estimates that no additional costs will be incurred by the state in complying with the proposed amendments to 69-56.

Statement of Rationale:

The proposed amendments to the regulation will clarify the meaning of a “named storm” and the application of the named storm deductible or other named storm restrictions as well as provide requirements for language in policies regarding such deductibles.

Document No. 4932
DEPARTMENT OF INSURANCE
 CHAPTER 69

Statutory Authority: 1976 Code Sections 1-23-110, 38-3-110, and 38-71-2200 et seq.

69-77. Pharmacy Benefits Managers.

Synopsis:

Regulation 69-77 is a new regulation promulgated to implement the provisions of Act No. 48 of 2019 (“the Act”) regarding the licensure and regulation of pharmacy benefits managers.

The Notice of Drafting was published in the *State Register* on August 23, 2019.

Instructions:

Print regulation as shown below. All other items and sections remain unchanged.

Text:

69-77. Pharmacy Benefits Managers.

Section I. Purpose

The purpose of this regulation is to implement Act No. 48 of 2019 (“the Act”) regarding pharmacy benefits managers and to provide licensing, reporting and activity standards for pharmacy benefits managers.

Section II. Licensure Requirements

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A. Initial License and Renewal. On or after January 1, 2021, a pharmacy benefits manager shall apply for a license on a form and in accordance with a licensing schedule prescribed by the Director or his designee. The terms “Director” and “designee” have the meaning set forth in Section 38-1-20 of the Code of Laws of South Carolina 1976, as amended.

B. The initial licensing schedule shall be set by bulletin or order of the Director. In 2022, and thereafter, a pharmacy benefits manager license shall be renewed annually no later than March 1 of each year.

C. Each application for a license shall be certified by an officer or authorized representative of the applicant and shall contain a statement that certifies the pharmacy benefits manager is in compliance with Section 38-71-2220 of the Code of Laws of South Carolina 1976, as amended. All proprietary information submitted by the pharmacy benefits manager under Section II of this regulation shall be considered confidential under Sections 38-71-2250 and 30-4-40 of the Code of Laws of South Carolina 1976, as amended.

D. The pharmacy benefits manager shall provide as part of the application for licensure the following:

(1) A non-refundable filing fee of \$1,000 for initial licensure and \$500 for renewal licenses;

(2) A copy of the basic organizational document of the pharmacy benefits manager, such as the articles of incorporation, articles of association, partnership agreement, trust agreement or other applicable documents, and all amendments thereto;

(3) a copy of the bylaws, organizational or similar document(s), if any, regulating the conduct or the internal affairs of the applicant;

(4) A copy of the pharmacy benefits manager’s provider manual and written agreement(s), excluding pricing information, but including audit procedures, which it uses for contracts entered into with pharmacists, pharmacies or pharmacy services administrative organizations in administration of pharmacy benefits for health care insurers in this State or a representative written agreement and provider manual, excluding pricing information, but including audit procedures, for each type of network provider, which it uses for contracts entered into with pharmacists, pharmacies or pharmacy services administrative organizations in administration of pharmacy benefits for health care insurers in this State;

(5) For the two preceding calendar years, a listing of health care insurers with which the pharmacy benefits manager was contracted in this State to perform claims processing services and the number of enrollees or beneficiaries covered by each health care insurer;

(6) The relevant documentation, such as a policies and procedures manual, that demonstrates the pharmacy benefits manager has adopted processes to ensure compliance with the requirements in Section 38-71-2240 of the Code of Laws of South Carolina 1976, as amended, including any written policies or procedures describing the appeals dispute resolution process for in-network or contracted pharmacists or pharmacies;

(7) A certified statement that indicates whether the applicant or officer with management or control:

(a) has been refused or denied a registration, license or certification to act as or provide the services of a pharmacy benefits manager or third-party administrator in any state, providing specific details separately for each such refusal or denial, if any, including the date, nature and disposition of the action; and

(b) has had any registration, license or certification to act as such suspended, revoked or nonrenewed for any reason by any state or federal entity, providing specific details separately for each such suspension, revocation or nonrenewal, if any, including the date, nature and disposition of the action, and attaching a copy of any relevant final order or similar document imposing the suspension, revocation or nonrenewal;

(8) A description of whether the applicant has had a business relationship with an insurer terminated for any fraudulent or illegal activities in connection with the administration of a pharmacy benefits plan (if so, attach specific details separately explaining this termination, including the date, and nature of the termination); and

(9) Any other relevant information deemed necessary by the Director or his designee to evaluate the application for licensure or compliance with the requirements of the Act and this regulation.

E. Review Process

(1) Initial and Renewal License Applications

For initial and renewal license applications, the Director or his designee shall review the application under Section II.D of this regulation, and may:

(a) approve the application and issue the applicant a pharmacy benefits manager license; or

(b) notify the applicant, in writing, that the application is incomplete and request additional information to complete the review; and, if the missing or requested information is not received within thirty (30) days from the date of the notification, the Director or his designee may deny the application; or

- (c) deny the application; and
 - (i) provide written notice to the applicant that the application has been denied stating or explaining the basis of the denial; and
 - (ii) advise the applicant that it may appeal the denial by requesting a hearing in accordance with Section 38-3-210 of the Code of Laws of South Carolina 1976, as amended, before the South Carolina Administrative Law Court.

(2) Standards of Review

(a) The Director or his designee shall deny an initial or renewal application for licensure for the following reasons:

- (i) the pharmacy benefits manager operates, or proposes to operate, in a hazardous condition and the services it administers, or proposes to administer, for health care insurers in this State may be hazardous to the insurance-buying public; or
- (ii) the pharmacy benefits manager has violated the requirements of the Act, this regulation or other applicable South Carolina law; or
- (iii) the pharmacy benefits manager has failed to timely submit information to complete review of the application under Section II of this regulation.

(b) In lieu of a denial of a renewal application, the Director or his designee may permit the pharmacy benefits manager to submit to the Director or his designee a corrective action plan to cure or correct deficiencies falling under Section II of this regulation, impose an administrative penalty under Section 38-2-10 et seq. of the Code of Laws of South Carolina, 1976 as amended, or both.

Section III. Contract Review

A. Contract Review

(1) Prohibited Contract Language

No contract entered into by a pharmacy benefits manager and a pharmacist or pharmacy which relates to participation or administration of a pharmacy benefits plan or program of a health care insurer shall contain language in violation of the Sections 38-71-2200 *et seq* of the Code of Laws of South Carolina 1976, as amended or other applicable provision of South Carolina law.

(2) Waiver Prohibited

The prohibitions set forth Sections 38-71-2220 *et seq* of the Code of Laws of South Carolina 1976, as amended cannot be waived by contract.

B. Marketing and Advertising

Pursuant to Section 38-71-2230, a pharmacy benefits manager shall not cause or knowingly permit the use of any advertisement, promotion, solicitation, representation, proposal, or offer that is untrue, deceptive, or misleading. The Department does not review or otherwise pre-approve marketing materials prior to their use. It is the responsibility of the pharmacy benefits manager to ensure that its marketing materials comply with the laws of the State of South Carolina.

Section IV. Examinations

A. Examination of Pharmacy Benefits Managers.

(1) Pursuant to Section 38-71-2250 of the Code of Laws of South Carolina 1976, as amended, the Director or his designee may examine the affairs of a pharmacy benefits manager for compliance with the requirements of the Act, applicable South Carolina law or requirements of this regulation.

(2) Any examination permitted under this Section shall follow the examination procedures and requirements applicable to health care insurers under Chapter 13, Title 38 of the Code of Laws of South Carolina 1976, as amended.

B. A pharmacy benefits manager shall not be regularly examined under the same time periods as insurers as required under Section 38-13-10 of the Code of Laws of South Carolina 1976, as amended, however, the Director or his designee may examine the pharmacy benefits manager pursuant to Section 38-71-2250 at any time he or she believes it reasonably necessary to ensure compliance with the Act, the provisions of this regulation, or Title 38.

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Section V. Record Keeping Requirements

A. Maximum Allowable Costs

In order to facilitate any examination conducted by the Director pursuant to Section IV of this regulation, pharmacy benefits managers shall maintain a record keeping system which shall track and monitor the following statistical information:

(1) the number of challenges or appeals the pharmacy benefits manager received under the maximum allowable cost provisions of the Act;

(2) the outcomes of each of those challenges or appeals, whether denied or upheld by the pharmacy benefits manager, and sufficient information to determine compliance with Section 38-71-2240. This information must include the following:

(i) notice to the challenging pharmacy of the appeal results and the information required by Section 38-71-2240; and

(ii) documentation of any changes made for similarly situated pharmacies as outlined in the Act.

B. A request under this Subsection shall be considered a special report pursuant to Section 38-13-160 of the South Carolina Code of Laws 1976, as amended, and all information submitted in the response shall be confidential. The requirements of this Subsection shall apply for appeals or challenges beginning with the first quarter of 2021.

C. Pharmacy Provider Complaints Related to Maximum Allowable Cost List Compliance under Section 38-71-2240 of the Code of Laws of South Carolina 1976, as amended.

(1) The pharmacy benefits manager shall designate the name, address, and phone number, including an electronic mail contact, of the organization which shall be responsible for responding to the Department for complaints the Department has received from pharmacy providers for alleged Maximum Allowable Cost List violations. The pharmacy benefits manager shall be subject to Section 38-13-70 of the Code of Laws of South Carolina 1976, as amended related to the time period for a response to the Department.

(2) A pharmacy provider or other person acting on its behalf shall make reasonable efforts to exhaust any internal appeal requirements of the pharmacy benefits manager prior to the filing of a complaint with the Department. However, a pharmacy provider shall not be required to exhaust internal appeal requirements of the pharmacy benefits manager if a pharmacy benefits manager has failed to abide by its Maximum Allowable Cost List appeal processes as described in Section 38-71-2240. A pharmacy benefits manager shall not be held responsible for failure to provide communication or timely processing in the event that a provider or pharmacy has not submitted sufficient information for the pharmacy benefits manager to process the appeal.

(3) The Department shall review the complaints, and upon determination of a violation of the Act or this regulation, institute regulatory action in accordance with the requirements set forth in Section VIII of this regulation.

(4) The Department may refer any complaints to the Office of the South Carolina Attorney General for investigation or other enforcement action in accordance with Section 38-3-110 of the Code of Laws of South Carolina 1976, as amended.

Section VI. Confidentiality

The Department may report on its activities relating to the implementation of the Act and this regulation in compliance with the confidentiality requirements set forth in the Act and this regulation.

Section VII. Transition of Licensing Status

A. The Director or his designee shall publish by order or bulletin the plan and timeframe for transitioning licenses from the third-party administrator license to the pharmacy benefits manager license.

B. Pharmacy benefits managers engaged exclusively or solely with administration of pharmacy benefits of self-funded health benefit plans in this State shall comply with the registration requirements of Chapter 51 of Title 38 of the Code of Laws of South Carolina 1976, as amended. For pharmacy benefits managers engaged in the administration of pharmacy benefits for both fully insured health benefits plans and self-funded health plans, a pharmacy benefits manager must comply with the Act and this regulation with respect to the provisions that apply to its fully insured health benefits plans.

Section VIII. Penalties

Violations of this regulation shall be subject to the penalties set forth in Section 38-2-10 through 38-2-30 of the Code of Laws of South Carolina 1976, as amended.

Section IX. Severability

Any section or provision of this regulation held by a court to be invalid or unconstitutional shall be considered severable and will not affect the validity of any other section or provision of this regulation.

Section X. Conflict

If any provision of this regulation is inconsistent with the Act, the provisions of the Act control.

Fiscal Impact Statement:

The South Carolina Department of Insurance estimates that no additional costs will be incurred by the State and its political subdivisions in complying with the proposed revisions to Regulation 69-77.

Statement of Rationale:

The proposed changes are needed to implement the new pharmacy benefits manager legislation.

Document No. 4923
DEPARTMENT OF LABOR, LICENSING AND REGULATION
BOARD OF ACCOUNTANCY
CHAPTER 1
Statutory Authority: 1976 Code Sections 40-1-70 and 40-2-70

- 1-01. General Requirements for Licensure as a CPA.
- 1-02. Examinations.
- 1-04. Reciprocity.
- 1-05. Firm registration.
- 1-06. Reinstatement.
- 1-07. Return of Certificate.
- 1-08. Continuing Professional Education.
- 1-09. Peer Review.
- 1-10. Professional Standards.
- 1-11. Application for Licensure as an Accounting Practitioner.
- 1-12. Safeguarding Client Files When a Licensee is Incapacitated, Disappears, or Dies.

Synopsis:

The South Carolina Board of Accountancy proposes to amend Chapter 1 of the Code of Regulations regarding requirements for licensure as a CPA, examinations, reciprocity, firm registration, reinstatement, continuing professional education, peer review, professional standards, licensure as an accounting practitioner, and safeguarding client files in the event of a licensee's incapacitation, disappearance or death.

A Notice of Drafting was published in the *State Register* on December 28, 2018.

Instructions:

Replace regulation as shown below. All other items and sections remain unchanged.

Text:

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CHAPTER 1 Department of Labor, Licensing and Regulation— Board of Accountancy

1-01. General Requirements for Licensure as a CPA.

A. Completed application for licensure shall be submitted on forms provided by the Board. All fees must accompany the application.

B. In order for an application to be considered, it must be complete, and all questions must be answered.

C. The licensee candidate cannot earn qualifying experience for licensure until the licensee candidate has completed twenty-four (24) semester hours of acceptable accounting education as described in 40-2-35(E)(3)(a), including financial accounting, managerial accounting, taxation, and auditing, which must be taught at the junior level or above as required per 40-2-35(C)(1).

1-02. Examinations.

A. An applicant for examination may apply to the Board for accommodation(s) to complete the Uniform CPA Examination. The applicant bears the burden of proving that the accommodation is required as a result of a verifiable hardship, which prevents compliance with the conditions of the administration of the examination.

B. An acceptable ethics exam will be designated by the Board and identified on the Board's website.

C. An acceptable South Carolina Rules and Regulations course will be designated by the Board and identified on the Board's website.

1-04. Deleted.

1-05. Firm registration, resident managers, firm names.

A. Firm registration requirements.

1. A firm with an office in this State, providing attest or compilation services, or using in its business name the title, "Certified Public Accountants", "Public Accountants", "Accounting Practitioners", or the abbreviation "CPAs", "PAs", or "APs", or using any other title, designation, words, letters, abbreviation, sign, card or device indicating the firm is a CPA firm or an Accounting Practitioner firm, must be registered with the Board.

2. A firm that does not have an office in this State but performs attest services described in Section 40-2-20(2)(a)(audits), (c)(examinations), or (d)(services under PCAOB Auditing Standards) for a client having a home office in this State, must be registered with the Board.

3. A licensee who does not perform services or use his or her title as described in 1-05(A)(1) is not required to obtain a firm registration.

4. A licensee may use the CPA, PA, or AP title in accordance with his or her licensure with his or her personal name.

B. There must be a designated resident manager in charge of each firm office in this State. The designated resident manager must be licensed by this Board and is responsible for office compliance with established professional standards including standards set by federal or state law or regulation.

C. A firm must not use a misleading firm name.

1. Former partners' names may be included in a firm name only if the former partner continues practicing public accounting with that firm, no longer practices public accounting, or is deceased.

2. A firm name shall not include the name or names of non-licensed owners.

3. The Board shall determine if a firm name is misleading and therefore prohibited, and all firm names are subject to Board approval.

1-06. Reinstatement.

For reinstatement of a license that has been inactive or lapsed for 3 years or more:

A. The required 120 hours of CPE must be completed within the previous 18 months, and

B. The required additional experience must be completed in accordance with the initial licensing experience requirements in effect at the time the reinstatement application is submitted.

1-07. Return of Certificate.

Any licensee whose license is not active for any reason must return his or her certificate to the Board.

1-08. Continuing Professional Education.

A. General Standards

1. Each licensee shall complete Continuing Professional Education (CPE) that contributes directly to his or her professional competence.

a. Each licensee shall earn forty (40) credit hours of acceptable CPE each calendar year as a condition of obtaining a renewal license (“Required CPE Credit Hours”).

b. When a licensee earns more than the required number of CPE credit hours in any calendar year, the excess credit hours, not exceeding twenty (20) credit hours, may be carried forward and treated as credit hours earned in the following year (“Carry-Over Credit”). Certain types of CPE as defined in this regulation may be limited or may not qualify for Carry-Over Credit.

c. Each licensee shall earn CPE credit hours in the subject of Ethics as required in these regulations.

d. No CPE is required and no carryover credit may be earned during the licensing year in which a person obtains an initial license.

2. General Mechanics for CPE – unless otherwise specified in this regulation:

a. One (1) hour of credit shall be granted for each fifty (50) minutes of actual instruction time (“CPE credit hours”). One-half (1/2) credit hour shall be granted for each twenty-five (25) minutes of actual instruction time after the first CPE credit hour has been earned in the same activity. Partial hours will be rounded down to the nearest one-half (1/2) credit hour.

b. CPE credit hours can only be earned for one CPE course during a given time and earning simultaneous CPE credit hours is prohibited.

c. Only class hours, actual hours of attendance, and not hours devoted to preparation, shall be eligible for computing CPE credit hours.

d. As evidence of earning qualifying CPE credit hours, a licensee must obtain a certificate of completion, supplied by the program sponsor, after completion of the CPE course. At a minimum, the certificate of completion must include the following information:

- (1) Name and address of sponsor;
- (2) Participant’s name;
- (3) Course title;
- (4) Course field of study;
- (5) Date of completion; and
- (6) Amount of CPE credit hours recommended.

e. No more than ten (10) credit hours of CPE can be earned in a single calendar day.

f. Licensees participating in only part of a CPE program must claim CPE credit only for the portion they attend or complete and only if the credit hours claimed are greater than the minimum required credit hours for that CPE course.

3. Compliance and Reporting

a. Licensees are responsible for compliance with all applicable CPE requirements and accurate reporting of CPE credit hours.

b. Licensees should claim CPE credit hours only when the CPE program sponsors have complied with the requirements set out in these regulations.

c. Licensees must retain evidence to support reported CPE credit hours for at least five (5) years from the due date of the CPE report or the date filed, whichever is later.

d. A licensee or the resident manager of a firm on behalf of a non-licensed owner may apply to the Board for accommodations to complete the required CPE and must show that the accommodation is required as a result of a verifiable hardship which prevents compliance with the CPE requirements.

e. The Board may accept another jurisdiction’s CPE credit hours from a licensee to the extent that jurisdiction’s requirements for those CPE credit hours are substantially equivalent to South Carolina requirements.

B. Subject Content

1. Personal Development, Non-Technical

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a. Personal development subjects are those non-technical areas of study that help achieve career advancement or enhance personal effectiveness at work, and are similar to and include topics such as career planning, leadership, and time management.

b. Not more than twenty (20%) percent or 8 hours of the Required CPE Credit Hours may be in personal development subjects, as approved by the Board. Personal development subjects that exceed this limit shall not be available for Carry-Over Credit.

2. Ethics

a. Ethics is generally defined as a set of moral principles, either at the individual level or in the context of a culture or society as a whole. Ethics is also a philosophical framework used to analyze what constitutes right or wrong courses of action given a particular situation or set of circumstances.

b. By the end of each fixed three (3) year period, six (6) CPE credit hours must be obtained in ethics of which two (2) CPE credit hours must be in a board approved South Carolina Rules and Regulations course as described in these regulations. The dates of each fixed three (3) years Ethics period are defined on the Board website.

c. The Board will designate the approved author of the two (2) hour South Carolina Rules and Regulations course of the Board's website.

d. The two (2) hours South Carolina Rules and Regulations course can be counted only once toward the six (6) hour ethics requirement during each three (3) year period. The remaining four (4) hours of the six (6) hour ethics requirement must be in other ethics topics.

C. Program Delivery Methods

1. Sponsored Program Delivery Methods

a. Live Instruction

(1) Live Instruction is a program in which participants engage simultaneously through interaction of a real-time instructor or discussion leader and includes the required elements of attendance monitoring. Live Instruction CPE Programs meeting the requirements contained in this regulation qualify for CPE credit.

(2) On-Site Live Instruction Program consists of Live Instruction at a specific location.

(3) Online Live Instruction Program consists of Live Instruction using technology and/or remote access, whether or not broadcast at the same time the program is created, but offered at a scheduled date and time.

(4) CPE Instructors or Discussion Leaders

(a) CPE for instructing or leading discussions includes only those instructors or discussion leaders of qualified CPE programs.

(b) CPE credit hours will be granted equal to twice the number of CPE participation hours in the course. For repeat presentations, CPE credit hours can be claimed only if the licensee can demonstrate the learning activity content was substantially changed and such change required additional study or research.

b. Self-Study

(1) A Self-Study program is a program in which the participant has control over time, place and/or pace of learning and is completed without the assistance or interaction of a real-time instructor or discussion leader.

(2) Not more than fifty (50%) percent (20 hours) of the Required CPE Credit Hours may be in Self-Study programs.

(3) Self-Study CPE credit hours are not available for Carry-Over Credit.

(4) Only Self-Study courses registered under Quality Assurance Services (QAS) of NASBA will qualify for CPE credit hours.

(5) As evidence of completing qualifying Self-Study course, the sponsor provided certificate of completion must include the information required in Regulation 1-08(A)(2)(d) and the registration QAS sponsor number.

(6) Each Self-Study course claimed on an annual renewal must be accompanied by the Self-Study certificate of completion as defined in these regulations.

c. Nano-Learning

(1) A Nano-Learning program is a program designed to permit a participant having control over time, place and/or pace of learning to learn a given subject in a minimum of 10 minutes through the use of electronic

media (including technology applications and processes and computer-based or web-based technology) and without interaction with a real-time instructor.

(2) One-fifth (1/5) hour of credit shall be granted for ten (10) minutes of a single Nano-Learning program, exclusive of the qualified assessment.

(3) Not more than five (5%) percent (2 hours) of the Required CPE Credit Hours may be in Nano-Learning programs.

(4) Nano-Learning CPE credit hours are not available for Carry-Over Credit.

(5) In order for a Nano-Learning program to qualify as a CPE course, it must include the following:

(a) The learning objective(s) of the program;

(b) Any instructions that participants need to navigate through the program;

(c) A qualified assessment; and

(d) A certificate of completion supplied by the Nano-Learning program sponsor containing the required information in Regulation 1-08(A)(2)(d), after satisfactory completion of a qualified assessment.

2. Non-Sponsored Delivery Methods

a. Higher Education

(1) Non-Sponsored Higher Education CPE credit hours are not available for Carry-Over Credit.

(2) Participant

(a) Course for Credit

(i) Courses for Credit include only accredited university or college courses that have been successfully completed by the licensee for credit.

(ii) Each semester hour university or college credit completed shall equal fifteen (15) CPE credit hours. In the case of universities or colleges on the quarter system, each quarter hour university or college credit completed shall equal ten (10) CPE credit hours.

(iii) Each Course for Credit claimed on an annual renewal must be accompanied by a transcript issued by the university or college, showing successful completion.

(b) Not-for-Credit Course

(i) Not-for-Credit Courses include only accredited university or college courses successfully completed without receiving any credit.

(ii) CPE credit hours for a Not-for-Credit Course are determined in the same manner as a Course for Credit.

(iii) Each Not-for-Credit Course claimed on an annual renewal must be accompanied by documentation showing attendance at the course or documentation showing successful completion of the course with a final grade equal to a pass rating or higher.

(3) Professors and Instructors

(a) For purposes of this section, Professors and Instructors are those that teach university and college undergraduate and graduate level courses.

(b) Professors and Instructors shall be granted CPE credit hours at the rate of ten (10) credit hours for each three (3) semester hour (or prorated equivalent) course taught.

(c) CPE credit hours for teaching university, college, and graduate level courses shall be limited to twenty-five (25%) percent (10 hours) of the Required CPE Credit Hours.

(d) CPE credit hours shall not be granted for teaching accounting principles, basic financial accounting, basic managerial accounting, or any other introductory accounting course, either undergraduate or graduate level.

(e) CPE credit hours shall be granted only for the first presentation within a two (2) year period. Repeated presentations during the two (2) year period do not qualify for CPE credit hours.

b. Authoring Published Works or CPE Programs

(1) General Standards

(a) Authoring published articles/books or authoring CPE programs ("Authored Works") includes only those that contribute to the professional competence of the licensee.

(b) CPE credit hours for preparation of Authored Works may be given on a self-declaration basis up to twenty-five (25%) percent (10 hours) of the Required CPE Credit Hours. The Board has the final determination of the amount of CPE credit hours so awarded.

(c) CPE credit hours for Authored Works is not available for Carry-Over Credit.

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(d) Each Authored Work claimed on an annual renewal must be accompanied by a copy of that work that names the licensee as an author.

c. Participation in Quality Verification Reviews and Peer Reviews

(1) Quality Verification Reviews (QVRs) are technical reviews by licensees appointed by the Board, of professional work submitted to the State and of publicly available professional work of licensees.

(2) Participation in QVRs or service on a peer review acceptance body which qualifies under Reg. 1-09, qualify for CPE hours at the rate of one CPE hour for each hour spent performing these duties.

(3) No more than 16 hours of CPE credit may be claimed per year for performing these duties, and these CPE credit hours are not eligible for carry-over credit.

d. Staff Meetings

(1) Only the portion of a staff meeting that is designed as a program of learning and complies with the requirements in this regulation qualifies for CPE credit hours.

e. Participation in technical sessions at meetings of recognized national and state accounting organizations.

(1) No more than 16 hours of CPE credit may be claimed per year for performing these duties, and these CPE credit hours are not eligible for carry-over credit.

f. Programs offered by other recognized professional organizations, industrial or commercial firms, proprietary schools, or governmental entities may qualify for CPE credit hours, provided all other requirements of this regulation are met.

D. Standards for CPE Program Sponsors

1. General Standards for CPE Program Sponsors

a. CPE sponsors are expected to present learning activities that comply with course descriptions and objectives.

b. CPE sponsors must employ an effective means for evaluating learning activity quality with respect to content and presentation, as well as provide a mechanism for participants to assess whether learning objectives were met.

c. The Board shall accept only Other Qualifying Programs that provide written documentation showing that the work in the attended program has actually been accomplished by the licensee.

2. Live Instruction Sponsors

a. General Standards for Live Instruction Sponsors

(1) Live Instruction must be conducted by persons whose background training, education and experience qualify them in the subject matter of the particular CPE program (a "subject matter expert").

(2) An outline of the Live Instruction program presented must be prepared in advance and shall be maintained by the sponsor.

(3) Live Instruction must be at least one (1) CPE credit hour (fifty minutes) in length and the sponsor must calculate the course CPE credit hours.

(4) When a meal is scheduled during a CPE program, no credit will be allowed for the meal period unless the schedule provides for fifty (50) minutes of uninterrupted instruction.

(5) A certificate of attendance as described in these regulations must be given to each participant at the end of the Live Instruction program.

(6) Records showing compliance with this section must be preserved and maintained by the sponsor for a period of at least five (5) years from the presentation date of the Live Instruction program.

(7) At the beginning of the Live Instruction program, the sponsor should read the following statement or a statement very similar: "It is the responsibility of the licensee to be accountable for the hours earned during the CPE course. The licensee should not engage in any other activities that would denigrate the learning objective of the course to the licensee or others. If the other activity is unavoidable, then that time should be subtracted from the overall CPE credit."

3. Self-Study Sponsors

a. Self-Study courses shall qualify for CPE credit hours, provided the course has been approved by QAS.

b. The sponsor of Self-Study courses must provide the licensee with a certificate of completion that includes the information state in Reg. 1-08(C)(1)(b)(5).

1-09. Peer Review.

A. As a condition of firm registration and/or renewal (including those firms registered in other jurisdictions operating in this state under practice privilege), a licensed firm providing any of the following services to the public shall enroll in a qualified peer review program.

1. Audits;
2. Reviews of financial statements;
3. Compilations of financial statements;
4. Examinations of prospective financial statements;
5. Compilations of prospective financial statements;
6. Agreed-upon procedures of prospective financial statements;
7. Examination of written assertions; and
8. Agreed-upon procedures of written assertions.

B. A licensed firm not providing any of the services listed in Paragraph (A) of this regulation is exempt from peer review. Upon the issuance of the first report provided to a client, the firm must enroll in a qualified peer review program. As long as these services are provided, continued participation in a qualified peer review program is required.

C. Acceptable peer review programs are:

1. AICPA Peer Review Program;
2. Any other peer review program found to be substantially equivalent to the “Standards for Performing and Reporting on Peer Reviews” promulgated by the American Institute of Certified Public Accountants(AICPA) and published on that organization’s website (www.aicpa.org).

D. An authorized peer review program may charge a fee to firms required to participate in the peer review program in order to cover costs of program administration.

E. Firms shall not rearrange their structure or act in any manner with the intent to avoid participation in peer review.

F. Compliance

1. A registered firm enrolled for peer review shall provide to the Board upon request the following:
 - a. Peer review due date;
 - b. Peer review year end date;
 - c. Peer review acceptance letter from peer review program.
2. A peer review is not complete until the peer review acceptance letter is issued by the peer review program.
3. If a firm fails to complete peer review in a timely fashion, the Board may refuse to renew the firm registration and/or take disciplinary action as appropriate.

G. Ethical duties of reviewer

1. A reviewer shall be independent with respect to the reviewed registered firm and comply with the AICPA Standards for Performing and Reporting on Peer Reviews.
2. Information concerning the participating CPA firm or its clients or personnel that is obtained as a consequence of the review is confidential and shall not be disclosed to anyone not involved in the peer review process.

1-10. Professional Standards.

In addition to the requirements and prohibitions found in S.C. Code 40-2-5 et seq.,:

A. Licensees shall comply with all federal or state laws governing their business and personal affairs and shall not engage in any acts discreditable to the profession as defined by the Ethical Standards of the AICPA. In general, a licensee may rely upon the interpretations of those standards published by the Professional Ethics Executive Committee of the AICPA.

B. Complying with professional standards includes timely filing all applicable tax/information and all other regulatory returns for himself/herself or any entity for which the licensee is responsible.

C. Client records include all information provided by the client and all documents provided to the client (or on behalf of the client) including the materials necessary (including electronic files) to support the final work performed (financial statements, tax returns, etc.). Client records do not constitute other work files or documents, which the licensee may use to audit, test or verify the accuracy of a client’s account balances and/or transaction classes (revenues, expenses).

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D. A licensee or registered firm shall not employ within South Carolina, directly or indirectly in the practice of accounting, a person whose license is revoked or suspended by this Board or by the board of accountancy in any other jurisdiction. Employing such a person in South Carolina as an accountant, investigator, tax preparer or in any other capacity connected with the practice of accounting subjects the licensee or registered firm to discipline by the Board.

1-11. Application for Licensure as an Accounting Practitioner.

A. To meet the educational qualifications for licensure as an accounting practitioner,

1. the applicant shall submit an official transcript signed by the college or university registrar and bearing the college or university seal to prove education and degree requirements; photocopies of transcripts will not be accepted; and

2. a major in accounting shall include at least twenty-four (24) semester hours, or equivalent in quarter hours, of credit in accounting courses. No more than three (3) semester hours in business law courses and three (3) semester hours in taxation courses may be counted as accounting courses; and

3. the Board shall accept a transcript from any college or university accredited by the Southern Association of Colleges and Schools and any other accrediting association having the equivalent standards.

B. To meet the examination requirement for licensure as an accounting practitioner, the applicant shall take sections of the Uniform Certified Public Accountant Examination prepared by the AICPA and receive a passing grade on the following subjects:

1. Financial Accounting and Reporting (FAR);
2. Regulations (REG).

1-12. Safeguarding Client Records When a Licensee is Incapacitated, Disappears, or Dies.

A. Each licensee or firm that has custody or ownership of client records shall designate a partner, personal representative, or other responsible party to assume responsibility for client records in the case of incapacity or death of the licensee or dissolution of the firm.

B. Where the licensee is incapacitated, disappears, or dies, and no responsible party is known to exist, the Administrator of the Board may petition the Board for an order appointing another licensee or licensees to inventory the records and to take actions as appropriate to protect the interests of the clients. The order of appointment shall be public.

C. The licensee appointed pursuant to Reg. 1-12(B) shall:

1. Take custody of the records and trust or escrow accounts of the licensee whose practice has been discontinued or interrupted.

2. Notify each client in a pending matter and, in the discretion of the appointed licensee, in any other matter, at the client's address shown in the records, by first class mail, of the client's right to obtain any papers, money or other property to which the client is entitled and the time and place at which the papers, money or other property may be obtained, calling attention to any urgency in obtaining the papers, money or other property;

3. Publish, on the appointed licensee's website for thirty (30) days and in a newspaper of general circulation in the county or counties in which the licensee whose practice has been discontinued or interrupted last resided or engaged in any substantial practice of accounting, once a week for three consecutive weeks, notice of the discontinuance or interruption of the accountant's practice. The notice shall include the name and address of the licensee whose practice has been discontinued or interrupted; the time, date and location where clients may pick up their records; and the name, address and telephone number of the appointed licensee. The notice shall also be mailed, by first class mail, to any errors and omissions insurer or other entity having reason to be informed of the discontinuance or interruption of the accounting practice;

4. Release to each client the papers, money or other property to which the client is entitled. Before releasing the property, the appointed licensee shall obtain a receipt from the client for the property;

5. With the consent of the client, file notices or petitions on behalf of the client in tax or probate matters where jurisdictional time limits are involved and other representation has not yet been obtained; and

6. Perform any other acts directed in the order of appointment.

Fiscal Impact Statement:

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

Statement of Rationale:

The updated regulations pertaining to licensure, examination, reciprocity, firm registration, reinstatement, continuing education, peer review, professional standards, application for licensure as an accounting practitioner, and safeguarding client records when a licensee is incapacitated, disappears or dies.

Document No. 4937
DEPARTMENT OF LABOR, LICENSING AND REGULATION
BUILDING CODES COUNCIL
CHAPTER 8
Statutory Authority: 1976 Code Sections 6-9-40 and 40-1-70

Article 8. International Building Code.

Synopsis:

The South Carolina Building Codes Council proposes to amend Chapter 8, Article 8, to correct scrivener's errors in the modifications to the 2018 South Carolina Building Codes, the International Building Code.

A Notice of Drafting was published in the *State Register* on October 25, 2019.

Instructions:

Replace regulation as shown below. All other items and sections remain unchanged.

Text:

ARTICLE 8
INTERNATIONAL BUILDING CODE

2018 International Building Code Modification Summary

(Statutory Authority: 1976 Code Section 6-9-40)

8-800. International Building Code.

NOTE-This article is based upon the International Building Code, 2018 Edition, in accordance with the statutory amendments to acts governing the Building Codes Council, except for the modifications referenced below. This code is identical to the 2018 Edition of the International Building Code except for the following modifications:

8-801. IBC Section 202.

Chapter 2 Definitions

The following two definitions are added to those appearing in Section 202 of the 2018 International Building Codes:

Vapor Retarder, Ground Contact: Ground contact vapor retarder class shall be defined using the requirements of ASTM E1745, Class A, B, or C - Standard specification for water vapor retarders used in contact with soil or granular fill under concrete slabs.

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Primitive Camp Structure: shall include any structure permanent or temporary in nature, used for outdoor camping (transient), open on at least one side with no fully enclosed habitable spaces, less than 400 square feet under roof, and not classified as a residential occupancy due to lack of electrical, plumbing, mechanical and sprinkler systems.

8-802. IBC Section 303.4 Assembly Group A-3

Add to the listing of A-3 occupancies the following use: Structures, without a commercial kitchen, used in agritourism activity as defined by S.C. Code Ann. 46-53-10(1).

8-803. IBC Section 312.1 General

The term "Primitive Camp Structure" is added to the list of examples in this section.

8-804. IBC Section 706.1 General.

Fire walls shall be constructed in accordance with Sections 706.2 through 706.11. Each portion of a building separated by one or more firewalls may be considered a separate building. The extent and location of such fire walls shall provide a complete separation. Where a fire wall separates occupancies that are required to be separated by a fire barrier wall, the most restrictive requirements of each separation shall apply.

8-805. IBC Section 903.2.9 Group S-1.

An automatic sprinkler system shall be provided throughout all buildings containing a Group S-1 occupancy where one of the following conditions exists:

1. A Group S-1 fire area exceeds 12,000 square feet (1115 m²).
2. A Group S-1 fire area is located more than three stories above grade plane.
3. The combined area of all Group S-1 fire areas on all floors, including any mezzanines, exceeds 24,000 square feet (2230 m²).
4. A Group S-1 fire area used for the storage of commercial motor vehicles where the fire area exceeds 5,000 square feet (464 m²).
5. A Group S-1 occupancy used for the storage of upholstered furniture or mattresses where the fire area exceeds 2,500 square feet (232 m²). Exception: This section, when acceptable to the Authority Having Jurisdiction, does not apply to self-storage facilities that are single-story, fire area(s) less than 12,000 square feet, and the building is only accessible from exterior entry points and is not provided with interior hallways, spaces or corridors.

8-806. IBC Section 1009.4 Elevators.

In order to be considered part of an accessible means of egress, an elevator shall comply with the emergency operation and signaling device requirements of Section 2.27 of ASME A17.1. Standby power shall be provided in accordance with Chapter 27 and Section 3003. The elevators shall be accessed from an area of refuge complying with Section 1009.6.

Exceptions:

1. Areas of refuge are not required at the elevator in open parking garages.
2. Areas of refuge are not required in buildings and facilities equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2
3. Areas of refuge are not required at elevators not required to be located in a shaft in accordance with Section 712.
4. Areas of refuge are not required at elevators serving smoke-protected assembly seating areas complying with Section 1029.6.2.
5. Areas of refuge are not required for elevators accessed from a refuge area in conjunction with a horizontal exit.

8-807. IBC Section 1016.2 Egress through intervening spaces.

Egress through intervening spaces shall comply with this section.

1. Exit access through an enclosed elevator lobby is permitted. Access to not less than one of the required exits shall be provided without travel through the enclosed elevator lobbies required by Section 3006. Where the

path of exit access travel passes through an enclosed elevator lobby, the level of protection required for the enclosed elevator lobby is not required to be extended to the exit unless direct access to an exit is required by other sections of this code.

2. Egress from a room or space shall not pass through adjoining or intervening rooms or areas, except where such adjoining rooms or areas and the area served are accessory to one or the other, are not a Group H occupancy and provide a discernible path of egress travel to an exit.

Exception: Means of egress are not prohibited through adjoining or intervening rooms or spaces in a Group H, S or F occupancy where the adjoining or intervening rooms or spaces are the same or a lesser hazard occupancy group.

3. An exit access shall not pass through a room that can be locked to prevent egress.

4. Means of egress from dwelling units or sleeping areas shall not lead through other sleeping areas, toilet rooms or bathrooms.

Exception: Dwelling units or sleeping areas in R1 and R2 occupancies shall be permitted to egress through other sleeping areas serving adjoining rooms that are part of the same dwelling unit or guest room.

5. Egress shall not pass through kitchens, storage rooms, closets or spaces used for similar purposes.

Exceptions:

1. Means of egress are not prohibited through a kitchen area serving adjoining rooms constituting part of the same dwelling unit or sleeping unit.

2. Means of egress are not prohibited through stockrooms in Group M occupancies where all of the following are met:

2.1 The stock is of the same hazard classification as that found in the main retail area.

2.2 Not more than 50 percent of the exit access is through the stockroom.

2.3 The stockroom is not subject to locking from the egress side.

2.4 There is a demarcated, minimum 44-inch wide (1118mm) aisle defined by a wall not less than 42 inches high or similar construction that will maintain the required width and lead directly from the retail area to the exit without obstructions.

8-808. IBC Section 1803.2 Investigation required.

Geotechnical investigations shall be conducted in accordance with Sections 1803.3 through 1803.5.

Exceptions:

1. The building official shall be permitted to waive the requirement for a geotechnical investigation where satisfactory data from adjacent areas is available that demonstrates an investigation is not necessary for any of the conditions in Sections 1803.5.1 through 1803.5.6 and Sections 1803.5.11.

2. For single story buildings not more than 5,000 sq ft and not more than 30 ft in height, a site specification investigation report is not required if the seismic design category is determined by the design professional in accordance with Chapter 20 of ASCE 7.

8-809. IBC Section 1907.1 General.

The thickness of concrete floor slabs supported directly on the ground shall not be less than 3 1/2 inches (89mm). A 10-mil (0.010 inch) polyethylene ground contact vapor retarder with joints lapped not less than 6 inches (152 mm) shall be placed between the base course or subgrade and the concrete floor slab, or other approved equivalent methods or materials shall be used to retard vapor transmission through the floor slab.

8-810. IBC Section 2303.2.2 Other means during manufacture

For wood products impregnated with chemicals by other means during manufacture, the treatment shall be an integral part of the manufacturing process of the wood product. The treatment shall provide permanent protection to all surfaces of the wood product.

8-811. IBC Section Appendix H Signs.

Adopt Appendix H.

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Fiscal Impact Statement:

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

Statement of Rationale:

The updated regulations will correct scribes' errors in the modifications to the 2018 South Carolina Building Codes, the International Building Code. The Council proposes to correct two drafting errors that occurred during the adoption process. Specifically, R.8-805 should have reflected that the language added to number (5) five is an exception. Number (5) five will now read: "A Group S-1 occupancy used for the storage of upholstered furniture or mattresses where the fire area exceeds 2,500 square feet (232m). Exception: This section, when acceptable to the Authority Having Jurisdiction, does not apply to self-storage type facilities that are single story, fire area(s) less than 12,000 square feet, and the building is only accessible from exterior entry points and is not provided with interior hallways, spaces or corridors." Additionally, the Council proposes to restore "IBC Section 1009.4 Elevators" in the regulations. The section appeared in the 2015 edition of the Building Codes, but during the adoption process for the 2018 Codes, was inadvertently stricken in its entirety. Upon further review of the modification requests and transcripts, the Council determined that the request and subsequent vote was to simply remove the line reading, "Elevators shall also comply with 3008 Occupant Evacuation Elevators." The change proposed herein will correct that error.

Document No. 4938
DEPARTMENT OF LABOR, LICENSING AND REGULATION
BUILDING CODES COUNCIL
CHAPTER 8
Statutory Authority: 1976 Code Sections 6-9-40 and 40-1-70

Article 9. International Fire Code.

Synopsis:

The South Carolina Building Codes Council proposes to amend Chapter 8, Article 9, to correct scribes' errors in the modifications to the 2018 South Carolina Building Codes, the International Fire Code.

A Notice of Drafting was published in the *State Register* on October 25, 2019.

Instructions:

Replace regulations as shown below. All other items and sections remain unchanged.

Text:

ARTICLE 9
INTERNATIONAL FIRE CODE

2018 International Fire Code Modification Summary

(Statutory Authority: 1976 Code Section 6-9-40)

8-900. International Fire Code.

NOTE-This article is based upon the International Fire Code, 2018 Edition, in accordance with the statutory amendments to acts governing the Building Codes Council, except for the modifications referenced below.

This code is identical to the 2018 Edition of the International Fire Code except for the following modifications:

8-901. IFC Section 202 General definitions.

Recreational Fire: An outdoor fire burning materials other than rubbish where the fuel being burned is not contained in an incinerator, outdoor fireplace, portable outdoor fireplace, barbeque grill or barbeque pit and has a total fuel area of 3 feet (914 mm) or less in diameter and 2 feet (610 mm) or less in height for pleasure, religious, ceremonial to include sky lanterns, cooking, warmth or similar purpose.

8-902. IFC Section 202 General definitions.

Primitive Camp Structure: Shall include any structure permanent or temporary in nature, used for outdoor camping (transient), open on at least one side with no fully enclosed habitable spaces, less than 400 square feet under roof, and not classified as a residential occupancy due to lack of electrical, plumbing, mechanical and sprinkler systems.

8-903. IFC Section 202 General definitions.

Add to the listing of A-3 occupancies the following use: Structures, without a commercial kitchen, used in agritourism activity as defined by S.C. Code Ann. 46-53-10(1).

8-904. IFC Table 315.7.6(1) Pile separation distances.

Use this table instead of the table in the 2018 IFC.

TABLE 315.7.6(1)
SEPARATION DISTANCE BETWEEN WOOD PALLET STACKS AND BUILDINGS

WALL CONSTRUCTION	OPENING TYPE	WOOD PALLET SEPARATION DISTANCE (FEET)		
		Less than or equal to 50 pallets	51 to 200 pallets	Over 200 pallets
Masonry	None	2	2	2
Masonry	Fire-rated glazing with open sprinklers	2	5	20
Masonry	Fire-rated glazing	5	10	20
Masonry	Plain glass with sprinklers	5	10	20
Noncombustible	None	5	10	20
Wood with open sprinklers		5	10	20
Wood	None	15	30	90
Any	Plain glazing	15	30	90

8-905. IFC Section 503.2.1 Dimensions.

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

8-906. IFC Section 507.1 Required water supply.

An approved water supply capable of supplying the required fire flow for fire protection shall be provided to premises on which facilities, buildings, or portions of buildings are hereafter constructed or moved into or within the jurisdiction to meet the necessary fire flow as determined by the fire code official. Where public water supply is inadequate or not available, an approved alternate water source meeting the fire flow requirements shall be provided. Fire flow performance tests shall be witnessed by the fire code official or representative prior to final approval. Exception. One and two family dwellings, including attached or detached accessory structures.

8-907. IFC Section 507.5.1 Where required.

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Where a portion of the facility or building hereafter constructed or moved into or within the jurisdiction is more than 500 feet (152 m) from a hydrant on a fire apparatus access road, as measured by an approved route around the exterior of the facility or building, on-site fire hydrants and mains shall be provided where required by the fire code official.

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

Exceptions:

1. For Group R-3 and Group U occupancies, the distance requirement shall be 600 feet (183 m).
2. For buildings equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2, the distance requirement shall be 600 feet (183 m).

8-908. IFC Section 901.6.3 Records.

Records of all system inspections, tests, and maintenance required by the referenced standards shall be maintained. Copies of the inspection reports shall be sent to the local jurisdiction by the servicing vendor as prescribed by the Fire Code Official.

8-909. IFC Section 903.2.9 Group S-1.

An automatic sprinkler system shall be provided throughout all buildings containing a Group S-1 occupancy where one of the following conditions exists:

1. A Group S-1 fire area exceeds 12,000 square feet (1115 m²).
2. A Group S-1 fire area is located more than three stories above grade plane.
3. The combined area of all Group S-1 fire areas on all floors, including any mezzanines, exceeds 24,000 square feet (2230 m²).
4. A Group S-1 fire area used for the storage of commercial motor vehicles where the fire area exceeds 5,000 square feet (464 m²).
5. A Group S-1 occupancy used for the storage of upholstered furniture or mattresses where the fire area exceeds 2,500 square feet (232m²). Exception: This section, when acceptable to the Authority Having Jurisdiction, does not apply to self-storage facilities that are single-story fire areas less than 12,000 square feet, and the building is only accessible from exterior entry points and is not provided with interior hallways, spaces or corridors.

8-910. IFC Section 905.3 Required installations.

Standpipe systems are not required in Group R-3 occupancies.

8-911. IFC 1016.2 Egress through intervening spaces.

Egress through intervening spaces shall comply with this section.

1. Exit access through an enclosed elevator lobby is permitted. Access to not less than one of the required exits shall be provided without travel through the enclosed elevator lobbies required by Section 3006 of the International Building Code. Where the path of exit access travel passes through an enclosed elevator lobby, the level of protection required for the enclosed elevator lobby is not required to be extended to the exit unless direct access to an exit is required by other sections of this code.

2. Egress from a room or space shall not pass through adjoining or intervening rooms or areas, except where such adjoining rooms or areas and the area served are accessory to one or the other, are not a Group H occupancy and provide a discernible path of egress travel to an exit.

Exception: Means of egress are not prohibited through adjoining or intervening rooms or spaces in a Group H, S, or F occupancy where the adjoining or intervening rooms or spaces are the same or a lesser hazard occupancy group.

3. An exit access shall not pass through a room that can be locked to prevent egress.
4. Means of egress from dwelling units or sleeping areas shall not lead through other sleeping areas, toilet rooms or bathrooms.

Exception: Dwelling units or sleeping areas in R-1 and R-2 occupancies shall be permitted to egress through other sleeping areas serving adjoining rooms that are part of the same dwelling unit or guest room.

5. Egress shall not pass through kitchens, storage rooms, closets, or spaces used for similar purposes.

Exceptions:

1. Means of egress are not prohibited through a kitchen area serving adjoining rooms constituting part of the same dwelling unit or sleeping unit.

2. Means of egress are not prohibited through stockrooms in Group M occupancies where all of the following are met:

2.1 The stock is of the same hazard classification as that found in the main retail area.

2.2 Not more than 50 percent of the exit access is through the stockroom.

2.3 The stockroom is not subject to locking from the egress side.

2.4 There is a demarcated, minimum 44-inch-wide (1118 mm) aisle defined by a wall not less than 42 inches high or similar construction that will maintain the required width and lead directly from the retail area to the exit without obstructions.

8-912. IFC Section 2307.4 Location of dispensing operations and equipment.

The point of transfer for LP-gas dispensing operations shall be separated from buildings and other structures in accordance with NFPA 58 Table 6.7.2.1 and IFC Section 2306.7.

Exception: The point of transfer for LP-gas dispensing operations need not be separated from canopies that are constructed in accordance with the International Building Code and that provide weather protection for the dispensing equipment.

LP-gas containers shall be located in accordance with Chapter 61. LP-gas storage and dispensing equipment shall be located outdoors and in accordance with Section 2306.7.

8-913. IFC Section 2307.7 Public fueling of motor vehicles.

“Self-service LP-gas dispensing systems, including key, code and card lock dispensing systems, shall be limited to the filling of permanently mounted containers providing fuel to the LP-gas powered vehicle”, is removed.

8-914. IFC Section 6101.1 Scope.

Storage, handling and transportation of liquefied petroleum gas (LP-gas) and the installation of LP-gas equipment pertinent to systems for such uses shall comply with this chapter and NFPA 58. Properties of LP-gas shall be determined in accordance with Annex B of NFPA 58.

8-915. IFC Section 6103.2.1.1 Use in basement, pit or similar location.

LP-gas containers complying 6103.2.2 shall be permitted to be used in basements and above grade underfloor spaces provided such location has adequate ventilation for equipment utilization. Equipment with attached cylinders shall not be left unattended or stored in such location after use. LP-gas container storage shall comply with Section 6109.7. Self contained torch assemblies may be used in accordance with 6103.2.1.6.

8-916. IFC Section 6103.2.1.6 Use with self-contained torch assemblies.

Portable LP-gas containers are allowed to be used to supply approved self contained torch assemblies or similar appliances. Such containers shall not exceed a water capacity of 2.7 pounds (1.2 kg).

8-917. IFC Section 6106.1 Attendants.

Dispensing of LP-gas shall be performed by a qualified attendant that meets the requirements of this section and NFPA 58 Section 4.4.

8-918. IFC Section 6107.4 Protecting containers from vehicles.

Exception: An alternative method may be used that meets the intent of this section with the approval of the AHJ.

8-919. IFC Section 6109.13 Protection of containers.

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LP-gas containers shall be stored within a suitable enclosure or otherwise protected against tampering. Vehicle protections shall be required as required by the fire code official in accordance with IFC 312 or NFPA 58 8.4.2.2.

8-920. IFC Section 6110.1 Temporarily out of service.

Containers not connected for service at customer locations. LP-gas containers at customer locations that are not connected for service shall comply with all of the following:

1. Have LP-gas container outlets, except relief valves, closed and plugged or capped.
2. Be positioned with the relief valve in direct communication with the LP-gas container vapor space.

8-921. IFC Section 6111.2.1 Near residential, educational and institutional occupancies and other high-risk areas.

Separation distance requirements may be reduced to not less than 50 feet as approved by the fire code official, based upon a completed fire safety analysis and consideration of special features such as topographical conditions, capacity of the LP-gas vehicle and the capabilities of the local fire department. The Office of the State Fire Marshal will provide an approved fire safety analysis to be utilized for this specific requirement.

Fiscal Impact Statement:

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

Statement of Rationale:

The updated regulations would correct scribes' errors that occurred during the adoption process for the modifications to the 2018 Codes. In 8-904, corrections would capitalize the heading, add "or equal to" to the section reading "Less than 50 pallets" and correct the spelling of "Distance" in the chart. The correction would also move the section labeled "Exception" in 8-909 to appear after number five in the series to show that it only applies to number five and not the entire section. The corrections would further restore IFC Section 905.3 Required installations. Standpipe systems are not required in Group R-3 occupancies." The corrections would also add the word "torch" to the header of 8-915 so that it correctly reflects the header in the model code IFC Section 6103.2.1.6, "Use with self-contained torch assemblies." Finally, the corrections would rectify the misspelling of Fire Marshal in the current section 8-920, to be renumbered as 8-921.

Document No. 4939
DEPARTMENT OF LABOR, LICENSING AND REGULATION
BUILDING CODES COUNCIL
CHAPTER 8
Statutory Authority: 1976 Code Sections 6-9-40 and 40-1-70

8-1005. IFGC Section 413.5 Private fueling of motor vehicles.

8-1006. IFGC Section 505.1.1 Commercial cooking appliances vented by exhaust hoods.

Synopsis:

The South Carolina Building Codes Council proposes to amend Chapter 8, Article 10, to correct scribes' errors in the modifications to the 2018 South Carolina Building Codes, the International Fuel Gas Code.

A Notice of Drafting was published in the *State Register* on October 25, 2019.

Instructions:

Replace regulations as shown below. All other items and sections remain unchanged.

Text:

8-1005. IFGC Section 412.10 Private fueling of motor vehicles.

Self-service LP-gas dispensing systems, including key, code and card lock dispensing systems, shall not be open to the public. In addition to the requirements of the International Fire Code, self-service LP-gas dispensing systems shall be provided with an emergency shutoff switch located within 100 feet (30 480 mm) of, but not less than 20 feet (6096 mm) from, dispensers and the owner of the dispensing facility shall ensure the safe operation of the system and the training of users.

8-1006. IFGC Section 505.1.1 Commercial cooking appliances vented by exhaust hoods.

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

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

Fiscal Impact Statement:

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

Statement of Rationale:

The updated regulations will correct scriveners' errors in the modifications to the 2018 South Carolina Building Codes, the International Fuel Gas Code. The Council proposes to correct the International Fuel Gas Code section referenced in 8-1005 to reflect that it is Section 412.10 instead of 413.5. The Council further proposes to restore the text of section 505.1.1 appearing before the stated exception in 8-1006.

Document No. 4940
DEPARTMENT OF LABOR, LICENSING AND REGULATION
BUILDING CODES COUNCIL
 CHAPTER 8
 Statutory Authority: 1976 Code Section 6-9-40, 6-9-50, and 6-9-55

8-1301. IMC Section 504.8.2 Duct Installation.

Synopsis:

The South Carolina Building Codes Council proposes to amend Chapter 8, Article 13, to correct a scrivener's error in the modifications to the 2018 South Carolina Building Codes, the International Mechanical Code.

A Notice of Drafting was published in the *State Register* on October 25, 2019.

Instructions:

Replace regulations as shown below. All other items and sections remain unchanged.

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Text:

ARTICLE 13 INTERNATIONAL MECHANICAL CODE

8-1301. IMC Section 504.8.2 Duct Installation.

Exhaust ducts shall be supported at intervals not to exceed 8 feet and within 16 inches of each side of a joint that is not installed in a vertical orientation, secured in place, making rigid contact with the duct at not less than 4 equally spaced points or 2/3rds contact if strap is used. All brackets and strapping must be noncombustible. The insert end of the duct shall extend into the adjoining duct or fitting in the direction of airflow. The overlap shall comply with Section 603.4.2. Ducts shall not be joined with screws or similar devices that protrude into the inside of the duct. Exhaust ducts shall be sealed in accordance with Section 603.9. Where dryer ducts are enclosed in wall or ceiling cavities, such cavities shall allow the installation without deformation. The duct work may be ovalized as long as it terminates in an approved duct box. Minor imperfections located on the duct, in areas other than along the seam, do not constitute a violation of this section.

Fiscal Impact Statement:

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

Statement of Rationale:

The proposed regulations will incorporate modifications to the 2018 International Mechanical Code as adopted by the South Carolina Building Codes Council.

Document No. 4941
DEPARTMENT OF LABOR, LICENSING AND REGULATION
BUILDING CODES COUNCIL
CHAPTER 8
Statutory Authority: 1976 Code Sections 6-9-40, 6-9-50, and 6-9-55

Article 12. International Residential Code.

Synopsis:

The South Carolina Building Codes Council proposes to amend Chapter 8, Article 12, to correct scribes' errors in the modifications to the 2018 South Carolina Building Codes, the International Residential Code.

A Notice of Drafting was published in the *State Register* on October 25, 2019.

Instructions:

Replace regulation as shown below. All other items and sections remain unchanged.

Text:

ARTICLE 12 INTERNATIONAL RESIDENTIAL CODE

2018 International Residential Code Modification Summary

(Statutory Authority: 1976 Code Section 6-9-40)

8-1200. International Residential Code.

NOTE-This article is based upon the International Residential Code, 2018 Edition, in accordance with the statutory amendments to acts governing the Building Codes Council, except for the modifications referenced below.

This code is identical to the 2018 Edition of the International Residential Code except for the following modifications:

8-1201. IRC Section R202 Definitions

Accepted Engineering Practice - The performance design of structures and/or structural elements that vary from prescriptive design methods of this code. Such design shall be made with accepted design standards by a South Carolina licensed Architect or Engineer as permitted by existing state law.

8-1202. IRC Figure R302.1 Exterior walls.

Exception 6. a. The minimum fire separation distance for improvement constructed on a lot shown on: [i] a recorded bonded or final subdivision plat, or [ii] a sketch plan, site plan, plan of phased development or preliminary plat approved by the local governing authority which was recorded or approved prior to the implementation of IRC 2012 which shows or describes lesser setbacks than the fire separation distances provided in Table R302.1(1) shall be equal to the lesser setbacks, but in no event less than 3 feet.

b. The minimum fire separation distance for improvements constructed on a lot where the local governing authority has prior to the implementation of IRC 2012: [i] accepted exactions or issued conditions, [ii] granted a special exception, [iii] entered into a development agreement, [iv] approved a variance, [v] approved a planned development district, or [vi] otherwise approved a specific development plan which contemplated or provided for setbacks less than the fire separation distances provided in Table R302.1(1) shall be equal to the lesser setback, but in no event less than 3 feet.

8-1203. IRC Section R302.5.1 Opening protection.

Openings from a private garage directly into a room used for sleeping purposes shall not be permitted. Other openings between the garage and residence shall be equipped with solid wood doors not less than 1 3/8 inches (35 mm) in thickness, solid or honeycomb core steel doors not less than 1 3/8 inches (35 mm) thick, or 20-minute fire-rated doors.

8-1204. Section R.302.13 Fire Protection of Floors.

Floor assemblies that are not required elsewhere in this code to be fire-resistance rated, shall be provided with a 1/2-inch (12.7 mm) gypsum wallboard membrane, 5/8-inch (16 mm) wood structural panel membrane, or equivalent on the underside of the floor framing member. Penetrations or openings for ducts, vents, electrical outlets, lighting, devices, luminaires, wires, speakers, drainage, piping and similar openings or penetrations shall be permitted.

Exceptions:

1. Floor assemblies located directly over a space protected by an automatic sprinkler system in accordance with Section P2904, NFPA 13D, or other approved equivalent sprinkler system.
2. Floor assemblies located directly over a crawl space.
3. Portions of floor assemblies shall be permitted to be unprotected where complying with the following:
 - 3.1. The aggregate area of the unprotected portions does not exceed 80 square feet (7.4 m²) per story.
 - 3.2. Fireblocking in accordance with Section R302.11.1 is installed along the perimeter of the unprotected portion to separate the unprotected portion from the remainder of the floor assembly.
4. Wood floor assemblies using dimension lumber or structural composite lumber equal to or greater than 2-inch by 10-inch (50.8 mm by 254 mm) nominal dimension, or other approved floor assemblies demonstrating equivalent fire performance.

8-1205. IRC Section R303.4 Mechanical ventilation.

The Building Codes Council does not adopt IRC Section R303.4.

8-1206. IRC Figure R307.1 Minimum Fixture Clearances.

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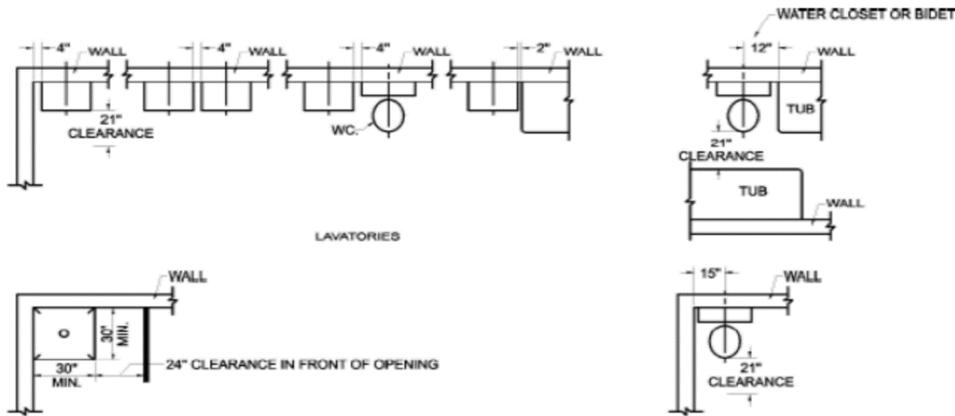


FIGURE 307.2
MINIMUM FIXTURE CLEARANCES

8-1207. IRC Section R311.7.5.1 Risers.

The maximum riser height shall be 7³/₄ inches (196 mm). The maximum riser height for masonry stairs shall be 8 inches (203 mm). The riser shall be measured vertically between leading edges of the adjacent treads. The greatest riser height within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm). Risers shall be vertical or sloped from the underside of the nosing of the tread above at an angle not more than 30 degrees (0.51 rad) from the vertical. Open risers are permitted provided that the opening between treads does not permit the passage of a 4-inch-diameter (102 mm) sphere.

Exception: The opening between adjacent treads is not limited on stairs with a total rise of 30 inches (762 mm) or less.

8-1208. IRC Section R312.1.1 Where required.

Guards shall be located along open-sided walking surfaces of all decks, porches, balconies, stairs, ramps and landings that are located more than 30 inches measured vertically to the floor or grade below and at any point where a downward slope exceeds 3V:12H within 36 inches (914 mm) horizontally to the edge of the open side. Insect screening shall not be considered as a guard.

8-1209. IRC Section R312.2 Window Fall Protection

The Building Codes Council does not adopt IRC Section R312.2.

The Building Codes Council does not adopt IRC Section R312.2.1.

The Building Codes Council does not adopt IRC Section R312.2.2.

8-1210. IRC Section R313 Automatic Fire Sprinkler Systems.

R313.1 Townhouse automatic fire sprinkler systems. An automatic residential fire sprinkler system shall not be required to be installed in townhouses when constructed in accordance with R302.2.

Exception: An automatic residential fire sprinkler system shall not be required where additions or alterations are made to existing townhouses that do not have an automatic residential fire sprinkler system installed.

R313.1.1 Design and installation. Automatic residential fire sprinkler systems when installed for townhouses shall be designed and installed in accordance with Section P2904 or NFPA 13D.

R313.2 One- and two-family dwellings automatic fire systems. An automatic residential fire sprinkler system shall not be required to be installed in one- and two-family dwellings.

Exception: An automatic residential fire sprinkler system shall not be required for additions or alterations to existing buildings that are not already provided with an automatic residential fire sprinkler system.

R313.2.1 Design and installation. Automatic residential fire sprinkler systems when installed shall be designed and installed in accordance with Section P2904 or NFPA 13D.

8-1211. IRC Section R315.2.2 Alterations, Repairs and Additions.

Exception 2. Installation, alteration or repairs of plumbing or mechanical systems other than installation or alteration of fuel-fired systems and appliances are exempt from the requirements of this section.

8-1212. IRC Section R317.1.1 Field treatment.

Field-cut ends, notches and drilled holes of preservative-treated wood shall be treated in the field in accordance with AWWPA M4 or in accordance with the preservative-treated wood product manufacturer's recommendations.

8-1213. IRC Section 318.1 Subterranean termite control methods.

A seventh item is added which reads:

7. Treatments may be conducted as outlined in Section 27-1085 of the Rules and Regulations for the Enforcement of the SC Pesticide Control Act and enforced by the Clemson University Department of Pesticide Regulation.

8-1214. IRC 318.4 Foam Plastic Protection.

In areas where the probability of termite infestation is "very heavy" as indicated in Figure R301.2(7), extruded and expanded polystyrene, polyisocyanurate and other foam plastics shall not be installed on the exterior face or under interior or exterior foundation walls or slab foundations located below grade. The clearance between foam plastics installed above grade and exposed earth shall be not less than 6 inches (152 mm). For crawl space applications, foam plastic shall be installed so as to provide a termite inspection gap of no less than 6 inches along the top of the foundation wall and foundation sill plate.

Exceptions:

1. Buildings where the structural members of walls, floors, ceilings and roofs are entirely of noncombustible materials or pressure-preservative-treated wood.
2. On the interior side of basement walls.

8-1215. IRC Section R319.1 Address ID.

Buildings shall be provided with approved address identification. The address identification shall be legible and placed in a position that is visible from the street or road fronting the property. Address identification characters shall contrast with their background. Address numbers shall be Arabic numbers or alphabetical letters. Numbers shall not be spelled out. Each character shall be not less than 4 inches (102 mm) in height with a stroke width of not less than 0.5 inch (12.7 mm). Where access is by means of a private road and the building address cannot be viewed from the public way, a monument, pole or other sign or means shall be used to identify the structure. Address identification shall be maintained.

8-1216. IRC Section R322.1 General.

Buildings and structures constructed in whole or in part in flood hazard areas, including A or V Zones and Coastal A Zones, as established in Table R301.2(1), and substantial improvement and repair of substantial damage of buildings and structures in flood hazard areas, shall be designed and constructed in accordance with the provisions contained in this section. Buildings and structures that are located in more than one flood hazard area shall comply with the provisions associated with the most restrictive flood hazard area. Buildings and structures located in whole or in part in identified floodways shall be designed and constructed in accordance with ASCE 24. Where there is a conflict with this code and a locally adopted flood ordinance, the more restrictive provision shall apply.

8-1217. IRC Section R404.1.9.2 Masonry piers supporting floor girders.

Masonry piers supporting wood beams and girders sized in accordance with Tables R602.7(1) and R602.7(2) shall be permitted in accordance with this section. Piers supporting girders for interior bearing walls shall be filled solidly with grout or type M or S mortar and shall have a minimum nominal dimension of 8 inches (203 mm) and a maximum height not exceeding 10 times the nominal thickness from the top of footing to bottom of sill plate or girder. Piers supporting beams and girders for exterior bearing walls shall be filled solidly with grout or type M or S mortar; shall contain a minimum of one #4 (13 mm) dowel mid-depth; and shall have a minimum

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nominal dimension of 8 inches (203 mm) and a maximum height of 4 times the nominal thickness from top of footing to bottom of sill plate or girder unless it can be shown by accepted engineering practice that there is sufficient foundation wall along the foundation line to resist the imposed lateral loads, in which case the maximum height shall not exceed 10 times the nominal thickness. Girders and sill plates shall be anchored to the pier or footing in accordance with Section R403.1.6 or Figure R404.1.5(1). Floor girder bearing shall be in accordance with Section R502.6.

8-1218. IRC Section R408.3 Unvented Crawl Space.

Ventilation openings in under-floor spaces specified in Sections R408.1 and R408.2 shall not be required where the following items are provided:

1. Exposed earth is covered with a continuous vapor retarder meeting ASTM E 1745 Class A. Joints of the vapor retarder shall overlap by 6 inches (152 mm) and shall be sealed or taped. The edges of the vapor retarder shall extend not less than 6 inches (152 mm) up the stem wall and shall be attached and sealed to the stem wall or insulation.

2. One of the following is provided for the under-floor space:

- 2.1 Continuously operated mechanical exhaust ventilation at a rate equal to 1 cubic foot per minute (0.47 L/s) for each 50 square feet (4.7 m²) of crawl space floor area, including an air pathway to the common area (such as a duct or transfer grille), and perimeter walls insulated in accordance with Section N1102.2.11 of this code.

- 2.2 Conditioned air supply sized to deliver at a rate equal to 1 cubic foot per minute (0.47L/s) for each 50 square feet (4.7 m²) of under-floor area, including a return air pathway to the common area (such as a duct or transfer grille), and perimeter walls insulated in accordance with Section N1102.2.11 of this code.

- 2.3 Plenum in existing structures complying with Section M1601.5, if under-floor space is used as a plenum.

- 2.4 Dehumidification sized to provide 70 pints (33 liters) of moisture removal per day for every 1,000 square feet (93m²) of crawl space floor area.

8-1219. IRC Section R408.4 Access.

Access shall be provided to all under-floor spaces. Access openings through the floor shall be a minimum of 18 inches by 24 inches (457 mm by 610 mm). Openings through a perimeter wall shall be not less than 16 inches by 24 inches (407 mm by 610 mm). Where any portion of the through-wall access is below grade, an areaway not less than 16 inches by 24 inches (407 mm by 610 mm) shall be provided. The bottom of the areaway shall be below the threshold of the access opening. See Section M1305.1.4 for access requirements where mechanical equipment located under floors.

8-1220. IRC Section R502.11.4 Truss design.

Truss design drawings. Truss design drawings, prepared in compliance with Section R502.11.1, shall be provided to the building official at the time of inspection. Truss design drawings shall be provided with the shipment of trusses delivered to the job site. Truss design drawings shall include at a minimum the information specified as follows:

1. Slope or depth, span and spacing.
2. Location of all joints.
3. Required bearing widths.
4. Design loads as applicable:
 - 4.1. Top chord live load.
 - 4.2. Top chord dead load.
 - 4.3. Bottom chord live load.
 - 4.4. Bottom chord dead load.
 - 4.5. Concentrated loads and their points of application.
 - 4.6. Controlling wind and earthquake loads.
5. Adjustments to lumber and joint connector design values for conditions of use.
6. Each reaction force and direction.

7. Joint connector type and description, e.g., size, thickness or gauge, and the dimensioned location of each joint connector except where symmetrically located relative to the joint interface.
8. Lumber size, species and grade for each member.
9. Connection requirements for:
 - 9.1. Truss-to-girder-truss;
 - 9.2. Truss ply-to-ply; and
 - 9.3. Field splices.
10. Calculated deflection ratio and/or maximum description for live and total load.
11. Maximum axial compression forces in the truss members to enable the building designer to design the size, connections and anchorage of the permanent continuous lateral bracing. Forces shall be shown on the truss drawing or on supplemental documents.
12. Required permanent truss member bracing location.

8-1221. IRC Section R506.2.3 Vapor Retarder.

A 6-mil (0.006 inch; 152 mum) polyethylene or approved vapor retarder with joints lapped not less than 6 inches (152 mm) shall be placed between the concrete floor slab and the base course or the prepared subgrade where no base course exists.

Exception: The vapor retarder is not required for the following:

1. Utility buildings and other unheated accessory structures.
2. For unheated storage rooms having an area of less than 70 square feet (6.5 m²) and carports.
3. Driveways, walks, patios and other flatwork not likely to be enclosed and heated at a later date.
4. Where approved by the building official, based on local site conditions.

8-1222. IRC Section R606.7 Piers.

The unsupported height of masonry piers shall not exceed 10 times their least dimension. Where structural clay tile or hollow concrete masonry units are used for isolated piers to support beams and girders, the cellular spaces shall be filled solidly with grout or Type M or S mortar, except that unfilled hollow piers shall be permitted to be used if their unsupported height is not more than four times their least dimension. Where hollow masonry units are solidly filled with grout or Type M or S mortar, the allowable compressive stress shall be permitted to be increased as provided in Table R606.9.

8-1223. IRC Section R802.10.1 Wood Truss Design.

Truss design drawings, prepared in conformance to Section R802.10 shall be provided to the building official at the time of their inspection. Truss design drawings shall be provided with the shipment of trusses delivered to the job site. Truss design drawings shall include, at a minimum, the following information:

1. Slope or depth, span and spacing.
2. Location of all joints.
3. Required bearing widths.
4. Design loads as applicable.
 - 4.1. Top chord live load (as determined from Section R301.6).
 - 4.2. Top chord dead load.
 - 4.3. Bottom chord live load.
 - 4.4. Bottom chord dead load.
 - 4.5. Concentrated loads and their points of application.
 - 4.6. Controlling wind and earthquake loads.
5. Adjustments to lumber and joint connector design values for conditions of use.
6. Each reaction force and direction.
7. Joint connector type and description such as size, thickness or gage and the dimensioned location of each joint connector except where symmetrically located relative to the joint interface.
8. Lumber size, species and grade for each member.
9. Connection requirements for:
 - 9.1. Truss to girder-truss.
 - 9.2. Truss ply to ply.

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9.3. Field splices.

10. Calculated deflection ratio and/or maximum description for live and total load.

11. Maximum axial compression forces in the truss members to enable the building designer to design the size, connections and anchorage of the permanent continuous lateral bracing. Forces shall be shown on the truss design drawing or on supplemental documents.

12. Required permanent truss member bracing location.

8-1224. IRC Section R905.2.8.5 Drip Edge.

A drip edge shall be provided at eaves and rake edges of asphalt shingle roofs where required by the manufacturer.

8-1225. IRC Section M1411.6 Insulation of refrigerant piping.

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

8-1226. IRC Chapter 11 Energy Efficiency.

The Building Codes Council does not adopt IRC Chapter 11.

8-1227. IRC Section M1411.8 Locking access port caps.

The Building Codes Council does not adopt IRC Section M1411.8.

8-1228. IRC Section M1502.3 Duct termination.

Exhaust ducts shall terminate on the outside of the building. Exhaust duct terminations shall be in accordance with the dryer manufacturer's installation instructions. Exhaust duct terminations shall be equipped with a backdraft damper. Screens shall not be installed at the duct termination.

8-1229. IRC Section M1502.4.2 Duct Installation.

Exhaust ducts shall be supported at intervals not to exceed 8 feet and within 16 inches of each side of a joint that is not installed in a vertical orientation, secured in place, making rigid contact with the duct at not less than 4 equally spaced points or 2/3rds contact if strap is used. All brackets or strapping must be noncombustible. The insert end of the duct shall extend into the adjoining duct or fitting in the direction of airflow. The overlap shall comply with Section M1601.4.2. Ducts shall not be joined with screws or similar devices that protrude into the inside of the duct. Exhaust ducts shall be sealed in accordance with Section M1601.4.1. Where dryer ducts are enclosed in wall or ceiling cavities, such cavities shall allow the installation without deformation. The duct work may be ovalized as long as it terminates in an approved duct box. Minor imperfections located on the duct, in areas other than along the seam, do not constitute a violation.

8-1230. IRC Section M1502.4.5 Duct length.

The maximum length of a clothes dryer exhaust duct shall not exceed 35 feet (10668 mm) from the dryer location to the wall or roof termination.

8-1231. IRC Section M1503.6 Makeup air required.

Exhaust hood systems capable of exhausting more than 400 cubic feet per minute (0.19m³/s) shall be mechanically or naturally provided with makeup air at a rate approximately equal to the exhaust air rate more than 400 cubic feet per minute. Such makeup air systems shall be equipped with not less than one damper. Each damper shall be a gravity damper or an electrically operated damper that automatically opens when the exhaust system operates. Dampers shall be accessible for inspection, service, repair and replacement without removing permanent construction or any other ducts not connected to the damper being inspected, serviced, repaired or replaced.

8-1232. IRC Section M1504.3 Exhaust Openings.

Air exhaust openings shall terminate as follows:

1. Not less than 3 feet (914 mm) from property lines.
2. Not less than 3 feet (914 mm) from gravity air intake openings, operable windows and doors.
3. Not less than 10 feet (3048 mm) from mechanical air intake openings except where the exhaust opening is located not less than 3 feet (914 mm) above the air intake opening. Openings shall comply with Sections R303.5.2 and R303.6.

Exception: Bathrooms, water closets shower spaces.

8-1233. IRC Section M1601.4.1 Joints, seams and connections.

Longitudinal and transverse joints, seams and connections in metallic and nonmetallic ducts shall be constructed as specified in SMACNA HVAC Duct Construction Standards-Metal and Flexible and NAIMA Fibrous Glass Duct Construction Standards. Joints, longitudinal and transverse seams, and connections in ductwork shall be securely fastened and sealed with welds, gaskets, mastics (adhesives), mastic- plus-embedded-fabric systems, liquid sealants or tapes.

Tapes and mastics used to seal fibrous glass ductwork shall be listed and labeled in accordance with UL 181A and shall be marked "181A-P" for pressure-sensitive tape, "181 A-M" for mastic or "181 A-H" for heat-sensitive tape. Tapes and mastics used to seal metallic and flexible air ducts and flexible air connectors shall comply with UL 181B and shall be marked "181 B-FX" for pressure-sensitive tape or "181 BM" for mastic. Duct connections to flanges of air distribution system equipment shall be sealed and mechanically fastened. Mechanical fasteners for use with flexible nonmetallic air ducts shall comply with UL 181B and shall be marked 181B-C. Crimp joints for round metallic ducts shall have a contact lap of not less than 1 inch (25 mm) and shall be mechanically fastened by means of not less than three sheet-metal screws or rivets equally spaced around the joint. Closure systems used to seal all ductwork shall be installed in accordance with the manufacturers' instructions.

Exceptions:

1. Spray polyurethane foam shall be permitted to be applied without additional joint seals.
2. Where a duct connection is made that is partially inaccessible, three screws or rivets shall be equally spaced on the exposed portion of the joint so as to prevent a hinge effect.
3. For ducts having a static pressure classification of less than 2 inches of water column (500 Pa), additional closure systems shall not be required for continuously welded joints and seams and locking-type joints.

8-1234. IRC Section G2418.2 Design and Installation.

Piping shall be supported with pipe hooks, pipe straps, bands, brackets, hangers, or building structural components suitable for the size of piping, of adequate strength and quality, and located at intervals so as to prevent or damp out excessive vibration.

8-1235. IRC Section P2503.6 Shower Liner Test.

Where shower floors and receptors are made water tight by the application of materials required by Section P2709.2, the completed liner installation shall be tested. Shower liner shall be tested to the lesser of the depth of threshold or 2" and shall be operated at normal pressure for a test period of not less than 15 minutes, and there shall be no evidence of leakage.

8-1236. IRC Section P2603.5 Freezing.

In localities having a winter design temperature of 32°F (0°C) or lower as shown in Table R301.2(1) of this code, a water pipe shall not be installed outside of a building, in exterior walls, in attics or crawl spaces, or in any other place subjected to freezing temperatures unless adequate provision is made to protect it from freezing by insulation or heat or both. Water service pipe shall be installed not less than 12 inches (305 mm) deep and not less than 6 inches (152 mm) below the frost line.

8-1237. IRC Section P2903.10 Hose Bibb.

This section is deleted without substitution.

8-1238. IRC Section P2904.1 General.

The design and installation of residential fire sprinkler systems shall be in accordance with NFPA 13D or Section P2904 which shall be considered equivalent to NFPA 13D. Partial residential sprinkler systems shall be

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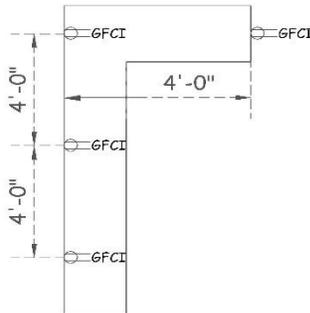
permitted to be installed only in buildings not required to be equipped with a residential sprinkler system. Section P2904 shall apply to stand-alone and multipurpose wet-pipe sprinkler systems that do not include the use of antifreeze. A multipurpose fire sprinkler system shall provide domestic water to both fire sprinklers and plumbing fixtures. A stand-alone sprinkler system shall be separate and independent from the water distribution system. A backflow preventer shall not be required to separate a stand-alone sprinkler system from the water distribution system. Any individual offering to contract for the design, installation, testing, and/or maintenance of a residential multipurpose fire sprinkler systems, as referred in Section P2904, must be certified and licensed through the South Carolina Contractors Licensing Board.

8-1239. IRC Section E3802.4 In unfinished basements.

Where type NM or SE cable is run at angles with joists in unfinished basements, cable assemblies containing two or more conductors of sizes 6 AWG and larger and assemblies containing three or more conductors of sizes 8 AWG and larger shall not require additional protection where attached directly to the bottom of the joists. Smaller cables shall be run either through bored holes in joists or on running boards. Type NM or SE cable installed on the wall of an unfinished basement shall be permitted to be installed in a listed conduit or tubing or shall be protected in accordance with Table E3802.1. Conduit or tubing shall be provided with a suitable insulating bushing or adapter at the point where the cable enters the raceway. The sheath of the Type NM or SE cable shall extend through the conduit or tubing and into the outlet or device box not less than 1/4 inch (6.4 mm). The cable shall be secured within 12 inches (305 mm) of the point where the cable enters the conduit or tubing. Metal conduit, tubing, and metal outlet boxes shall be connected to an equipment grounding conductor complying with Section E3908.13. [334.15(C)]

8-1240. Section R3901.4.3 Peninsular countertop space.

Not less than one receptacle outlet shall be installed at each peninsular countertop long dimension space having a long dimension of 48 inches (1220 mm) or greater and a short dimension of 12 inches (305 mm) or greater. A peninsular countertop is measured from the connected perpendicular wall. [210.52(C)(3)].



8-1241. IRC Section R3902.16 Arc Fault Circuit Interrupted Protection.

In areas other than kitchen and laundry areas, branch circuits that supply 120-volt single-phase, 15- and 20-ampere outlets installed in family rooms, dining rooms, living rooms, parlors, libraries, dens, bedrooms, sunrooms, recreations rooms, closets, hallways, and similar rooms or areas shall be protected by any of the following: [210.12(A)]

1. A listed combination-type arc-fault circuit-interrupter, installed to provide protection of the entire branch circuit. [210.12(A)(1)]

2. A listed branch/feeder-type AFCI installed at the origin of the branch-circuit in combination with a listed outlet branch-circuit-type arc-fault circuit-interrupter installed at the first outlet box on the branch circuit. The first outlet box in the branch circuit shall be marked to indicate that it is the first outlet of the circuit. [210.12(A)(2)]

3. A listed supplemental arc-protection circuit breaker installed at the origin of the branch circuit in combination with a listed outlet branch-circuit-type arc-fault circuit interrupter installed at the first outlet box on the branch circuit where all of the following conditions are met:

3.1 The branch-circuit wiring shall be continuous from the branch-circuit overcurrent device to the outlet branch-circuit arc-fault circuit-interrupter.

3.2 The maximum length of the branch-circuit wiring from the branch-circuit overcurrent device to the first outlet shall not exceed 50 feet (15.2 m) for 14 AWG conductors and 70 feet (21.3 m) for 12 AWG conductors.

3.3 The first outlet box on the branch circuit shall be marked to indicate that it is the first outlet on the circuit. [210.12(A)(3)].

4. A listed outlet branch-circuit type arc-fault circuit interrupter installed at the first outlet on the branch circuit in combination with a listed branch-circuit overcurrent protective device where all of the following conditions are met:

4.1 The branch-circuit wiring shall be continuous from the branch-circuit overcurrent device to the outlet branch-circuit arc-fault circuit-interrupter.

4.2 The maximum length of the branch-circuit wiring from the branch-circuit overcurrent device to the first outlet shall not exceed 50 feet (15.2 m) for 14 AWG conductors and 70 feet (21.3m) for 12 AWG conductors.

4.3 The first outlet box on the branch circuit shall be marked to indicate that it is the first outlet on the circuit.

4.4 The combination of the branch-circuit overcurrent device and outlet branch-circuit AFCI shall be identified as meeting the requirements for a system combination-type AFCI and shall be listed as such.

8-1242. IRC Section Appendix H Patio Covers.

The Building Codes Council does adopt IRC Section Appendix H.

8-1243. IRC Section Appendix J Existing Buildings.

The Building Codes Council does adopt IRC Section Appendix J.

8-1244. IRC Section Appendix Q Tiny Houses

The Building Codes Council does adopt IRC Section Appendix Q.

Fiscal Impact Statement:

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

Statement of Rationale:

The South Carolina Building Codes Council proposes to amend Chapter 8, Article 12, to correct errors reflected in the modifications to the 2018 South Carolina Building Codes, the International Residential Code. The scriveners' errors include: adding "R" before the reference to R312.2.2 in 8-1209; adding "fire" where it was omitted from the phrase, "automatic residential fire sprinkler system" in R.8-1210; adding in the remainder of a sentence that was inadvertently omitted in the prior version ("are exempt from the requirements of this exception") in R.8-1211; adding in the word "restrictive" where it was omitted from the phrase, "the more restrictive provision shall apply" in R.8-1216; replacing "under" with "unvented" in a heading in R.8-1218; removing subsection ".1" from a cross-reference to R802.10; replacing Roman numerals with superscripts in 8-1225; removing the word "substantial" which was serving as a modifier for "deformation" and replacing the word "same" with "seam" in 8-1229; replacing a reference to IRC Section M1503.6 which was incorrectly stated as 1503.4 in 8-1231; restoring number three in a series that was inadvertently deleted, now reading, "Not less than 10 feet (3048 mm) from mechanical air intake openings except where the exhaust opening is located not less than 3 feet (914 mm) above the air intake opening. Openings shall comply with Sections R303.5.2 and R303.6." in 8-1232; adding the letter "s" to the word "temperature" in 8-1236; deleting "crawl space" from a heading in 8-1239; restoring an inadvertently omitted section, "The combination of the branch-circuit overcurrent device and outlet branch-circuit AFCI shall be identified as meeting the requirements for a system combination-type AFCO and shall be listed as such" in 8-1241.

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Document No. 4942
DEPARTMENT OF LABOR, LICENSING AND REGULATION
BUILDING CODES COUNCIL
CHAPTER 8

Statutory Authority: 1976 Code Sections 6-9-40 and 40-1-70

8-1101. NEC Article 90.2(B)(5) Scope.

Synopsis:

The South Carolina Building Codes Council proposes to amend Chapter 8, Article 11, to correct a scrivener's error in the modifications to the 2018 South Carolina Building Codes, the 2017 Edition of the National Electrical Code.

A Notice of Drafting was published in the *State Register* on October 25, 2019.

Instructions:

Replace regulations as shown below. All other items and sections remain unchanged.

Text:

8-1101. NEC Article 90.2(B)(5) Not Covered.

b. Are located in legally established easements, rights-of-way, or by other agreements either designated by or recognized by public service commissions, utility commissions, or other regulatory agencies having jurisdiction for such installations, or

Fiscal Impact Statement:

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

Statement of Rationale:

The updated regulations are proposed to correct a scrivener's error in the modifications to the 2018 South Carolina Building Codes, the 2017 Edition of the National Electrical Code.

Document No. 4889
DEPARTMENT OF LABOR, LICENSING AND REGULATION
BOARD OF CHIROPRACTIC EXAMINERS
CHAPTER 25

Statutory Authority: 1976 Code Section 40-9-30(D)(3)

- 25-1. Organization, Administration and Procedure.
- 25-2. Application for Licensure.
- 25-3. Licensure by Endorsement.
- 25-4. Volunteer Licensure under Special Circumstances.
- 25-5. Professional Practices.
- 25-6. Professional Conduct.
- 25-7. Code of Ethics.
- 25-8. Advertising and Solicitation.
- 25-9. Disciplinary Actions and Procedures.
- 25-10. Inactive Status. (New Section)

Synopsis:

The South Carolina Board of Chiropractic Examiners proposes to add regulations: clarifying licensure requirements for applicants with lapsed out-of-state licenses; allowing CE credits for teaching assistants; exempting new graduates of accredited chiropractic colleges from CE requirements if the graduation date and licensing date fall within the same license renewal period; requiring licensees to report CE hours to the electronic tracking system; and establishing procedures governing inactive license status.

Additionally, the Board proposes to amend: R.25(A)(1) and (2) to change the lapsed license cutoff from three to four years to make renewal easier for licensees; and R.25-5(B) to define one hour of CE credit and to correspondingly delete the sixty-minute descriptor from R.25-5(B)(4)(d) and renumber accordingly.

The Board further proposes to amend the following regulations for purposes of correcting scrivener's errors and clarifying existing language: R.25-1, R.25-2, R.25-3, R.25-4, R.25-5, R.25-6 and R.25-8.

A Notice of Drafting was published in the *State Register* on April 26, 2019.

Instructions:

Replace regulation as shown below. All other items and sections remain unchanged.

Text:

25-1. Organization, Administration and Procedure.

Purpose. The Board of Chiropractic Examiners ("Board") was created to protect the health, safety and welfare of the public. This purpose is achieved through the establishment of minimum qualifications for entry into the profession and through swift and effective discipline for those practitioners who violate the applicable laws or rules promulgated thereunder.

25-2. Application for Licensure.

A. Application. Any person desiring to be licensed as a chiropractor must apply to the Board and provide all information and documentation required by the Board. Applications and accompanying documents will be valid for one (1) year from the initial application date. After one (1) year, a new application with attendant documents and appropriate fees must be submitted. Applicants must be within ninety (90) days of graduation or graduated, and have passed all applicable National Board examinations. Applications must include:

(1) Pre-professional education transcript. A certified copy of the applicant's transcript from an accredited pre-professional college. An applicant's transcript must indicate two years (60 semester hours) toward a degree from a college or university accredited by the Southern Association of Colleges and Schools or an accrediting agency of equal status and recognition.

(2) Chiropractic college transcript. A certified copy of the applicant's transcript from a chiropractic college accredited by or having recognized candidate status with the Council of Chiropractic Education or with the Commission on Accreditation of the Straight Chiropractic Academic Standards Association or meeting equivalent standards. Students who are within ninety (90) days of graduation may submit an attested letter from the chiropractic college establishing estimated date of graduation.

(3) National Board of Chiropractic Examiners scores. Applicants must have completed and passed all required parts of the National Board examinations prior to application for the South Carolina license.

(a) Graduates from a chiropractic college prior to July 1, 1987, must have passed Parts I and II and/or passed an examination approved by the Board, such as the Special Purpose Examination for Chiropractic (SPEC) or Part IV.

(b) Graduates from a chiropractic college on or after July 1, 1987, but before January 1, 1997, must have passed Parts I, II and III and passed a practical examination approved by the Board, such as the Special Purpose Examination for Chiropractic (SPEC) or Part IV.

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(c) Applicants graduating from a chiropractic college on or after January 1, 1997, must have passed Parts I, II, III, and IV with the National Board of Chiropractic Examiners (NBCE) recommended passing score.

(4) South Carolina Board of Chiropractic Examiners Ethics and Jurisprudence Examination. Applicants shall be tested in South Carolina law and ethics and pass with a score of seventy-five percent (75%) or more. If an applicant fails to achieve a score of seventy-five percent (75%) or more the applicant may retake the examination within one (1) year.

(5) Verification(s) of Licensure. Complete verification of licensure, active or inactive, is required from each state in which the applicant is or has been licensed.

(6) Photographs. Two (2) recent passport-size photographs of the applicant.

(7) Fees.

Licensure fees will be established by the Department in conjunction with the Board and adjudicated in accordance with Sections 40-9-50 and 40-1-50(D).

B. Denial of application. An application may be denied if the applicant has committed any act which indicates that the applicant does not possess the character and fitness to practice chiropractic, including any act that would be grounds for disciplinary action against a licensed chiropractor.

25-3. Licensure by Endorsement.

A license may be granted for applicants who meet the following requirements:

A. Applicant must have been licensed for one (1) continuous year immediately preceding application to this Board.

B. Applicants who matriculated after July 1, 1987, must meet all National Board examination requirements as set forth in Section 25-2.

C. Applicants who matriculated prior to July 1, 1987, must:

(1) have passed a state examination substantially equivalent to the National Board examinations or passed National Board Parts I and II;

(2) if National Board examination Parts I and II have not been passed, a Waiver form must be completed and submitted from the state in which the applicant was licensed by examination, to include subjects tested and grades.

D. Verification of licensure from every state where a license has been held, active or inactive, current or expired. Verification must be received directly from the respective state board to the South Carolina Board of Chiropractic Examiners.

E. Applicant must take and pass the South Carolina Ethics and Jurisprudence Examination with a score of 75% or more.

F. Applications for endorsement are valid for one year only, and the application must be completed within one (1) year of the initial application date.

G. An applicant whose license from another state has been expired for four (4) years or less must complete a new application and provide satisfactory evidence of Board-approved continuing education (CE) hours to cover the time period during which the license was expired.

H. An applicant whose license from another state has been expired for more than four (4) years must complete a new application and take and pass the SPEC examination or a substantially equivalent future NBCE examination, or meet requirements in effect at the time of the new application.

25-4. Volunteer Licensure under Special Circumstances.

A. Volunteer and Special Event Licensure. The Board shall issue a volunteer or special event license for one calendar year or a part of a year, renewable annually upon approval by the Board. A volunteer or special event license must limit practice to a specific site(s) and practice setting(s) and purpose. The Board must not charge application or licensure fees or other fees in connection with the issuance or renewal of a volunteer or special event license. Requirements for a volunteer or special event license shall be as follows:

(1) satisfactory completion of a volunteer or special event license, including documentation of chiropractic college graduation and practice history;

(2) documentation of specific proposed practice sites and settings and proposed practice purposes, as provided for in subsections B or C;

(3) documentation that applicant has been previously issued an unrestricted license to practice chiropractic in this state or another state of the United States;

(4) documentation that applicant has never been the subject of any disciplinary action in any jurisdiction;

(5) for volunteer licenses, documentation and acknowledgment that the applicant has no expectation of payment or compensation and must not receive any payment or compensation, either direct or indirect or monetary or in-kind, for chiropractic care or any health services rendered.

B. Practice purposes for volunteer licenses.

During the period for which a volunteer license is issued, the following are the practice purposes upon which a volunteer license may be issued and renewed:

(1) Needy and Indigent Care. A chiropractor's practice must be exclusively and totally devoted to providing chiropractic care to the needy and indigent in South Carolina.

(2) State of emergency. A chiropractor's practice must be exclusively and totally devoted to providing chiropractic care to citizens of the State in areas which have been declared by the Governor to be in a state of emergency.

C. Emergency License. This license shall be for chiropractors who wish to devote their expertise exclusively to providing chiropractic care to citizens of the State in areas which have been declared by the Governor's office to be in a state of emergency. It will limit practice to a specific site(s) and practice setting(s). There will be no licensure or other fees associated with this Emergency License. Requirements for the Emergency License shall be as follows:

(1) satisfactory completion of a Volunteer License Application, including documentation of chiropractic college graduation and practice history;

(2) documentation of specific proposed practice location(s); and

(3) documentation that applicant has a current, unrestricted license to practice chiropractic in this state or another state of the United States;

D. Special Event License. A chiropractor's practice must be exclusively and totally devoted to providing chiropractic care while traveling with a team or organization in this State. A chiropractor issued a license pursuant to this section may treat only members of the team or organization with which the chiropractor is associated during the period in which the team or organization is in this State. The special event license must be issued by the Board prior to the event for which the license is required.

25-5. Professional Practices.

A. Lapsed or Expired South Carolina Licenses.

(1) A chiropractor whose license has been expired for more than twelve (12) months but four (4) years or less, may reactivate the license by submitting an Application for Reinstatement, satisfactory evidence of CE for each lapsed or expired renewal cycle, if applicable, and each renewal cycle's license fee plus the applicable penalty.

(2) A chiropractor whose license has been expired for more than four (4) years must complete a new application and take and pass the SPEC examination, or meet requirements in effect at the time of the new application.

B. Continuing Education (CE). As a pre-requisite for biennial renewal of a practitioner's license, the licensee must complete a minimum of thirty-six (36) hours of approved professional CE, no more than half of which may be online. "One continuing education (CE) hour" shall mean a minimum of fifty (50) minutes of interactive instruction or organized learning. Of the thirty-six (36) CE hours, two (2) hours are required in rules and regulations of the S.C. Board of Chiropractic Examiners (limited to four (4) hours per renewal period) and two (2) hours in risk management which include, but are not limited to, boundary or public health issues.

(1) Acceptable educational programs or courses are those that are:

(a) presented and/or sponsored by accredited chiropractic colleges;

(b) taught by post-graduate level instructors of an accredited college or school approved by the Board;

or

(c) presented and/or sponsored by other individuals or organizations approved by the Board.

(2) In addition, CE may also be granted by:

(a) administering Part IV of the National Board of Chiropractic Examination, which may count toward fifteen (15) hours of CE per administration, including risk management and boundary issues credit;

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(b) attendance at Federation of Chiropractic Licensing Boards/National Board of Chiropractic Examiners (FCLB/NBCE) meetings, which may be accepted as twelve (12) hours of CE per meeting;

(c) teaching a course at an accredited chiropractic college, which may provide the number of CE hours commensurate with the hours earned by the students taking the course;

(d) serving as a teaching assistant for a course at an accredited chiropractic college, which can earn one-half of the hours earned by students taking the course;

(e) out-of-state licensees meeting their home state's CE requirements, which will satisfy the Board's CE requirements;

(f) teaching an approved CE seminar, which may provide the number of CE hours equal to the number of hours taught in the course limited to eighteen (18) hours per renewal period; and

(g) attending a test committee of NBCE, which may be accepted as twelve (12) hours of CE per meeting.

(3) CE Exemption. Chiropractors who graduate from an accredited chiropractic college and become licensed to practice chiropractic within the same biennial license renewal period are exempted from the thirty-six (36) hour CE requirement during that same biennial renewal period. Their senior year chiropractic college classes and their license examination preparation and testing are deemed to adequately fulfill the aims of the CE requirement during this time period. This exemption is allowed only for those who graduate and are licensed within the same renewal period; chiropractic college graduates who become licensed during a renewal period other than that of their graduation are not eligible for this exemption.

(4) Sponsor Requirements. All sponsors seeking approval for educational programs must submit a written request to the Board Administrator at least ninety (90) days prior to the scheduled date of the presentation, be PACE (Providers of Approved Continuing Education)-approved (provided it is within the scope of chiropractic practice), South Carolina Chiropractic Association, Palmetto State Chiropractic Association, or other associations or organizations approved by the Board in its discretion. Non-PACE-approved providers shall:

(a) have a mechanism for the maintenance of records for no fewer than three (3) years;

(b) have a method of monitoring and verifying attendance;

(c) provide each participant adequate documentation of participation in the program to include:

(i) name and license number of participant;

(ii) name and address of the sponsoring individual(s) or organization;

(iii) name of program;

(iv) number of hours completed;

(v) date and location of program;

(vi) authorized signature.

(d) not present sales promotions during the CE seminar or presentation. Sales promotions are appropriate by sponsors or instructors outside the seminar or presentation, or outside the room during a seminar or presentation.

(5) Program Approval Requirements. Requests for program approval must include the following information:

(a) name and address of the sponsoring individual(s) or organization;

(b) instructors' name and credentials;

(c) outline of program content;

(d) the number of actual hours of instruction;

(e) the method of monitoring and certifying attendance;

(f) location at which the program will be presented;

(g) the dates on which the program will be presented;

(h) course approval is valid for two (2) renewal periods.

(6) Program approval will be based on the following criteria:

(a) The program will enhance the practitioner's knowledge and skill in the practice of chiropractic as defined by state law.

(b) The instructors are sufficiently qualified in the field of instruction either by practical or academic experience or both.

(c) The program will be held in a suitable setting, conducive to learning.

(d) Adequate monitoring or certifying measures are provided.

(7) Practice-building subject matter (administration, finance, etc.) will not be approved for license renewal.

(8) Comprehensive Approval. A comprehensive approval allows the provider or sponsor to submit an application indicating all course offerings for a given calendar year. Requests for a comprehensive approval may be submitted to the Board office at least ninety (90) days prior to the beginning of each year or ninety (90) days prior to the beginning of a scheduled program. Providers and sponsors shall be responsible for renewal approval.

C. Retention and Audit. Licensees must maintain copies of attendance certificates for four (4) years from the last renewal date. The Board may conduct random audits of licensees on an annual or biennial basis to certify compliance with CE requirements.

D. Waiver During Period of Temporary Medical Disability. The Board reserves the right to waive CE requirements for individual cases involving extraordinary hardship or incapacitating illness. A licensee may be eligible for waiver or extension who, upon written application to the Board and for good cause shown, demonstrates that the applicant is unable to participate in a sufficient number of regular continuing education programs for license renewal.

E. Therapeutic Modalities. Usage of therapeutic modalities is permitted only by those chiropractors who have passed the National Board of Chiropractic Examiners (NBCE) physiotherapy exam or a substantially equivalent future NBCE examination. Chiropractors licensed in South Carolina prior to June 1, 1986, are exempt from this examination. Therapeutic modalities are limited to those modalities within the chiropractic scope of practice.

(1) Permitted Machines. The following machines are approved for use in therapeutic modalities:

- (a) high Frequency Diathermy: Shortwave diathermy, Microwave diathermy, Ultrasound;
- (b) low Frequency Direct current: Low voltage galvanism, High voltage galvanism;
- (c) alternating Current: Sine Wave, Faradic, Transcutaneous Stimulation;
- (d) medium Frequency Current: Interferential;
- (e) combination currents: Ultrasound with sine, Ultrasound with high voltage, Sine with galvanism;
- (f) cold laser and intense pulse light (IPL) therapy;
- (g) such other machines as may be approved by the Board, in its discretion.

(2) The following therapy procedures are approved for use in therapeutic modalities:

- (a) heat: hot moist packs, heating pads, infrared, paraffin, ultraviolet;
- (b) cold: cold packs, ice massages, ice therapy;
- (c) hydrotherapy: whirlpool, hubbard tanks;
- (d) nutritional therapies;
- (e) exercise and massage;
- (f) rehabilitation and rehabilitative procedures;
- (g) manipulation under anesthesia.

(3) The following traction therapies are approved for use in therapeutic modalities: cervical, thoracic, lumbar, pelvic, intersegmental.

(4) Use of Diagnostic Equipment and Testing Procedures. A chiropractor may request diagnostic and testing procedures, consistent with all other applicable laws and regulations, and may perform those tests which are consistent with the chiropractic scope of practice as approved by the Board in its discretion.

F. Terms and Definitions.

(1) Accepted terms are Chiropractic Physician, D.C., Chiropractor, Doctor of Chiropractic.

(2) Chiropractors may not refer to themselves as physical therapists or physiotherapists.

G. Licensees must report CE hours to the electronic tracking system designated by the South Carolina Department of Labor, Licensing and Regulation for CE compliance and monitoring. Licensees who fail to meet the CE requirements will be notified in writing of their deficit, ordered to cease practice, and advised to obtain CE. Failure of the CE audit results in a lapsed license. After the Board is in receipt of the approved CE credits, the Board staff will reinstate the license to active status.

The following sanctions will be imposed:

(1) First Offense: Private Reprimand and \$2000 fine.

(2) Second Offense: Hearing scheduled before the Board.

If evidence is received that the licensee continued to practice after an order to cease and desist from practice, the matter will be scheduled for a hearing before the Board, and the licensee will not be permitted to resume practice pending hearing and until further order of the Board.

H. Manipulation Under Anesthesia (MUA)

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(1) For purposes of this regulation, Manipulation Under Anesthesia (MUA) means a manipulation of the spinal column and its immediate articulations by a licensed practitioner (DC, MD or DO) of a patient who is under the administration of anesthesia performed by a physician licensed in this state who is Board certified or Board eligible in anesthesiology by the American Board of Medical Specialties or American Osteopathic Association.

(2) Manipulation under anesthesia (MUA) may be performed by a DC in collaboration with an MD or DO, as long as the MUA is performed in accordance with this regulation. MUA shall be performed by two practitioners (a doctor of chiropractic, "DC," and a medical physician, "MD," or doctor of osteopathic medicine, "DO") who constitute the collaborative treatment team and have attained their certificates of training in MUA as described in this regulation. The two MUA practitioners must be in addition to the anesthesiologist. One practitioner must be designated primary practitioner; the second practitioner will serve as the first assistant. Practitioners, including MDs and DOs, performing MUA must be appropriately trained through a course of instruction approved by their respective boards.

(3) The practitioners must have proper training demonstrated by successful completion of a postgraduate educational course approved by their respective boards.

(4) The DC must have proper training demonstrated by successful completion of a postgraduate educational course approved by the Board or which has been approved by a Council on Chiropractic Education (CCE) accredited chiropractic college prior to performing the procedure.

(5) MUA must be performed in an appropriately licensed hospital or ambulatory surgical center or office based surgical facility approved by American Association of Ambulatory Surgery Facilities (AAASF); Accreditation Association for Ambulatory Health Care (AAAHC); the Joint Commission on Accreditation of Healthcare Organizations (JCAHO); or the Healthcare Facilities Accreditation Program (HFAP), a division of the American Osteopathic Association; or any other agency approved by the South Carolina Board of Medical Examiners in statute or regulation.

(6) The patient must receive a medical evaluation and clearance prior to undergoing MUA. It is the responsibility of the MD or DO to conduct an appropriate medical evaluation regarding the patient's ability to undergo the procedure. A physician licensed and Board certified or Board eligible as a medical specialist in anesthesiology must complete an evaluation of the patient's suitability for undergoing anesthesia in accordance with American Society of Anesthesiologists (ASA) standards of care for Monitored Anesthesia Care (MAC).

(7) It shall be the responsibility of the practitioners (DC, MD or DO) to submit their documentation of appropriate training in MUA to their respective boards in accordance with the established parameters of this regulation.

(8) Patient safety shall be of paramount concern, and shall be regulated by proper training, patients' selection criteria, medical clearance for anesthesia, and by following the standards and protocols for the performance of MUA.

(9) Failure of a practitioner to follow the standard of care contained in this section while performing MUA shall constitute unprofessional conduct.

25-6. Professional Conduct.

A. Unprofessional Acts. The following acts or activities by a licensee of this Board constitute unprofessional, unethical or illegal conduct and grounds for disciplinary action. The following acts are not to be considered all-inclusive and are subject to revisions and additions necessary to carry out the Board's purpose of protecting the health, safety and welfare of the public.

(1) Limitation of Practice. Persons licensed by the Board shall be limited to:

- (a) the care and performance of therapeutic or hygienic treatment of patients;
- (b) the x-ray of patients; and
- (c) such other procedures as are generally used in the practice of chiropractic.

(2) Such other procedures as are generally used in the practice of chiropractic shall be limited to:

- (a) the use of diagnostic and therapeutic procedures;
- (b) the adjustment and manipulation of articulations;
- (c) the treatment of inter-segmental disorders for alleviation of related neurological, muscular, and osseous joint complex aberrations.

(3) Patient care shall be conducted with due regard for environmental, hygiene, sanitation, rehabilitation and physiological therapeutic procedures designed to assist in the restoration and maintenance of neurological and osseous integrity.

(4) Diagnostic or therapeutic procedures shall not include the use of:

- (a) drugs;
- (b) surgery;
- (c) cauterization;
- (d) desiccation or coagulation of tissues;
- (e) rectal examinations;
- (f) gynecological examinations;
- (g) obstetrics;
- (h) catheterization with a needle;
- (i) injecting of dyes for radiological procedures;
- (j) lumbar puncture to obtain spinal fluid;
- (k) treatment of cancer or x-ray therapy.

(5) Fraud or deceit in applying for a license or in taking an examination.

(6) Making misleading, deceptive, untrue or fraudulent representations or communications in the practice of chiropractic.

(7) Unprofessional conduct, gross incompetence, negligence or misconduct in the practice of chiropractic.

(8) Disobedience to a lawful rule or order of the Board.

(9) Practicing while license is suspended or lapsed.

(10) Being convicted of a felony or misdemeanor.

(11) Having a license to practice chiropractic suspended, revoked or refused or receiving other disciplinary actions by the proper chiropractic licensing authority of another state, territory, possession or country.

(12) Being unable to practice chiropractic with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals or any other type of material, or as a result of any mental or physical condition. In enforcing this paragraph, the Board shall, upon probable cause, have authority to compel a chiropractor to submit to a mental or physical examination by physicians approved by the Board.

(13) Knowingly aiding, assisting, procuring or advising any unlicensed person to practice chiropractic contrary to this act or regulations of the Board.

(14) Committing immoral or unprofessional conduct. Unprofessional conduct shall include any departure from, or failure to conform to, the standards of acceptable and prevailing chiropractic practice. Actual injury to a patient need not be established.

(15) Improper charges, fraud. Improper charges constitute a form of fraudulent and deceptive practice. Improper charges or fraud may include, but are not limited to: Intentionally submitting to any third-party payor a claim for a service or treatment which was not actually provided to a patient.

(16) A chiropractor shall not receive payment, commission, or any type of gratuity for referral of patients.

B. X-ray and Patient Records Release.

(1) A patient or the patient's legal representative has a right to receive a copy of patient records and x-rays, or have the records transferred, upon written request, when accompanied by a written authorization from the patient or patient's representative to release the record and to receive these records within fourteen (14) calendar days of the date of request.

(2) A chiropractor may rely on the representations of a health and life insurance carrier or administrator of health and life insurance claims that the authorization of the patient or of a person upon whose status the patient's claim depends for release of the record is on file with the carrier as an authorization to release medical information.

(3) Unpaid charges incurred by the patient are not grounds for refusal to release records.

(4) A chiropractor may charge reasonable costs for copying patient records not to exceed those found in statute.

C. Closure of or departure from a chiropractic practice.

(1) In accordance with 25-6(F), when departing or closing a chiropractic practice, current and former patients and the Board must be notified by written or electronic mail correspondence a minimum of sixty (60) days prior to the closure. The notice must include:

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- (a) the office closing date;
- (b) where records will be stored;
- (c) how to obtain records;
- (d) a release of information form
- (e) deadline for submitting records request; and
- (f) information on how to contact a new chiropractor/healthcare provider.

(2) An announcement should be placed in the local newspaper of the closure at least sixty (60) calendar days prior to the closure.

D. In the event the chiropractor chooses to terminate the relationship with the patient and no longer plans to provide or render professional services, the patient shall be notified in writing by certified mail at his or her last known address. The chiropractor shall offer the patient a referral to seek other care and the ability to obtain his or her records.

E. Specialty Certification. Practitioners may not advertise or hold themselves out as a specialist or specializing in any activity unless the practitioner is certified from:

(1) a specialty council approved by the American Chiropractic Association or International Chiropractors Association;

(2) a specialty taught by a chiropractic college accredited by the Council on Chiropractic Education, or its equivalent specialty board or council; or

(3) a specialty approved by the Board.

F. Chiropractic Records. A practitioner must keep written chiropractic records justifying the course of treatment of the patient for a minimum of ten (10) years for adult patients and at least thirteen (13) years for minors. These minimum record-keeping periods begin on the last date of treatment.

G. Contagious and Infectious Diseases. In all cases of known or suspected contagious or infectious diseases occurring within this State, the attending practitioner shall report such disease to the county health department within twenty-four (24) hours, stating the name and address of the patient and the nature of the disease.

(1) The Department of Health and Environmental Control shall designate the diseases it considers contagious and infectious.

(2) Any practitioner who fails to comply with this provision is subject to penalties imposed by the appropriate health department.

25-7. Code of Ethics.

A. Doctors of Chiropractic shall be guided by the highest standards of moral conduct. Chiropractors shall exemplify professional qualities in all dealings with patients, the general public and other members of the profession.

B. The Doctor of Chiropractic reserves the option to establish a chiropractor/patient relationship.

(1) A chiropractor/patient relationship requires that the chiropractor make an informed judgment based on training and experience. This will require that the chiropractor:

(a) discuss with the patient the analysis and the evidence for it, and the risks and benefits of various treatment options; and

(b) ensure the availability of the chiropractic coverage for patient follow-up care.

C. The Doctor of Chiropractic owes a duty to maintain the highest degree of skill and care by keeping abreast of all new developments in Chiropractic to improve knowledge and skill in the Science, Art and Philosophy of Chiropractic.

D. A Doctor of Chiropractic holds in confidence all information obtained at any time during the course of the chiropractor/patient relationship except where required by law or to protect the welfare of the patient or community.

E. A chiropractor may not assume to speak for the chiropractic profession. The chiropractor should qualify remarks as a personal opinion and not necessarily that of the profession.

F. The commission of an act of sexual misconduct or sexual relations by a chiropractor with a patient is unprofessional conduct and cause for disciplinary action pursuant to Section 25-6 of this chapter. Sexual misconduct is defined as engaging in, soliciting or otherwise attempting to engage in, any form of sexual relationship, activity or contact with a current patient, or with a former patient who has received a professional consultation, diagnostic service or therapeutic service within the past ninety (90) days.

25-8. Advertising and Solicitation.

A. Professional Standards. Advertising practices by chiropractors should be ethical and professional. The individual chiropractor is responsible for ensuring that communications, solicitations, or advertisements connected to his or her practice of chiropractic comply with this regulation.

B. For the purpose of this regulation, the terms communication, solicitation or advertisement shall mean any message, written or digital broadcast or offer made by or on behalf of a licensee.

C. Signs, solicitations, or advertisements shall clearly indicate that chiropractic services are being offered.

D. A communication, solicitation or advertisement shall not:

(1) contain a material misrepresentation of fact or law, or omit a fact necessary to make the statement considered as a whole not materially misleading;

(2) create an unjustified expectation about results the chiropractor can achieve, or state or imply that the chiropractor can achieve results that violate the rules of Professional Conduct, the Code of Ethics, or other law;

(3) compare the chiropractor's services with other chiropractors' or practitioners' services, unless the comparison can be factually substantiated;

(4) fail to indicate clearly, expressly or by context, that it is an advertisement;

(5) involve intrusion, coercion, duress, compulsion, intimidation, threats, or harassing conduct, particularly those communications requiring an immediate response such as in-person or live telephone contact;

(6) solicit a prospective patient while transmitted at the scene of an accident or en route to a hospital, emergency care center or other health care facility;

(7) advertise free x-ray services without explanation of need or otherwise imply indiscriminate use of x-radiation.

E. Every licensee shall display prominently in the licensee's office the word chiropractor or D.C.

25-9. Disciplinary Actions and Procedures.

A. Complaint; Determination of Just Cause. Any action of the Board shall commence only after the Board receives a written complaint. If the Board determines, after a preliminary investigation, the facts are not sufficient to support an alleged violation, the Complainant will be notified, and the complaint dismissed.

(1) Initial complaints regarding alleged professional misconduct that involve what may be determined to be an imminent threat to the public, incorporating a finding to that effect in an order, may require the issuance of a temporary suspension order. A temporary suspension order may be issued without a prior hearing being afforded to the licensee, in which event the licensee may request by the close of the next business day after receipt of the order a review by an administrative hearing officer. The fact of suspension or restriction of a license, and the fact of any subsequent related action, is public information under the Freedom of Information Act after issuance of an order, unless a review by the administrative hearing officer has been timely requested in writing. Filing a written request for a review by the administrative hearing officer does not stay the temporary suspension and no stay may be issued; however, the fact of the issuance of the temporary suspension order must not be made public until the time for requesting a review has passed or the administrative hearing officer issues an order after a review hearing. Upon proper written request, a review hearing must be held by the administrative hearing officer within three business days of the filing of the request for review, unless otherwise agreed by the parties. If the issuance of the temporary suspension order is not sustained by the administrative hearing officer, the matter must remain confidential and must not be made public, except to the extent the Board considers it relevant to the final decision of the Board.

B. Formal Complaint and Board Hearing. If the Board determines sufficient facts exist to support an alleged violation, disciplinary action will proceed as follows:

(1) The Office of General Counsel shall provide thirty (30) days' notice to the Complainant and the Respondent and schedule a hearing before the Board.

(2) The General Counsel's office shall present the case for the Complainant before the Board.

(3) The Respondent and counsel shall have the right to appear before the Board at such hearing, submit briefs and be heard in oral argument.

(4) Thereafter, the Board will file a final certified report of its findings of fact, conclusions of law and disciplinary action to be taken.

(5) The Board will notify the Complainant and the Respondent of such action.

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(6) A decision by the Board to revoke, suspend or otherwise restrict a license, or to limit or otherwise discipline a licensee, shall require a majority vote by the Board.

(7) A decision by the Board to revoke, suspend or otherwise restrict a license or to limit or otherwise discipline a licensee, or one who is found to be practicing chiropractic in noncompliance with this chapter shall not become effective until the tenth (10) day following the date of delivery to the Respondent of a written copy of the decision. The Board's decision will constitute a final administrative decision.

C. Appeal of Decision. The Board's final administrative decision shall be subject to appeal to the Administrative Law Court. The Respondent shall serve notice of the appeal upon the Board within thirty (30) days from the delivery date of the Board's decision to the Respondent. Service of a petition for a review of the decision shall stay the Board's decision pending completion of the appellate process.

D. Proceedings Confidential Until Filed. As authorized by Sections 40-9-97 and 30-4-70, S. C. Code of Laws 1976, unless and until otherwise ordered by this Board, all proceedings and documents relating to complaints and hearings thereon and to proceedings in connection therewith shall be confidential, unless the Respondent shall in writing request that they be public. The Administrator of the Board shall keep secure in the Board's offices all written records and documents pertaining to disciplinary procedures.

25-10. Inactive Status.

A. A licensee may place a license on inactive status by completing and submitting to the Board an application for inactive status on or before the renewal date of the license along with payment of one-half (1/2) of the license renewal fee. A licensee on inactive status may renew the inactive status at each renewal period; provided, however, that a licensee may not be on inactive status for more than three consecutive renewal periods or a total of six (6) years and must pay one-half (1/2) of the license renewal fee at each renewal of the inactive status.

B. Under the inactive license status, a licensee is prohibited from seeing patients, performing chiropractic adjustments, or engaging in any practice normally associated with an active chiropractic license.

C. A licensee on inactive status must maintain the same amount of approved professional CE hours as a licensee on active status and must report the same to the electronic tracking service designated by the South Carolina Department of Labor, Licensing and Regulation for CE compliance and monitoring at each renewal period.

D. In order to reactivate an inactive license, the licensee must submit a renewal application, pay the renewal license fee, and demonstrate that he or she has met the CE requirements for each renewal period that the license was on inactive status.

E. A license that has been on inactive status for more than six (6) years automatically expires if the licensee has not applied to renew the license.

F. A lapsed or expired license may not be placed on inactive status and can only be reinstated as required in regulation.

Fiscal Impact Statement:

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

Statement of Rationale:

The updated regulations will: clarify licensure requirements for applicants with lapsed out-of-state licenses; allow CE credits for teaching assistants; exempt new graduates of accredited chiropractic colleges from CE requirements if the graduation date and licensing date fall within the same license renewal period; require licensees to report CE hours to the electronic tracking system; and establish procedures governing inactive license status. They will also change the lapsed license cutoff from three to four years and will define one hour of CE credit and correspondingly delete the sixty-minute descriptor. Scrivener's errors will also be corrected in this proposed regulation.

Document No. 4921
DEPARTMENT OF LABOR, LICENSING AND REGULATION
BOARD OF COSMETOLOGY
 CHAPTER 35

Statutory Authority: 1976 Code Section 40-13-70

35-23. Continuing Education Requirements; Expired Licenses.

35-24. Continuing Education Programs.

Synopsis:

The South Carolina Board of Cosmetology proposes to amend R.35-23 and 35-24 regarding continuing education and continuing education programs. Specifically, as to R.35-23, the Board proposes to reduce the continuing education requirements for cosmetologists, nail technicians and estheticians from 12 hours biennially to 4 hours biennially and to establish the subjects in which continuing education should be obtained to ensure the health and safety of the public: board laws and regulations, client safety, and/or infection control to include sanitation and disinfection. Additionally, the Board proposes to reduce the continuing education requirements for instructors from 12 hours biennially to 4 hours biennially. The Board further proposes to allow the continuing education hours to be obtained in-person or online. As to R.35-24, the Board proposes clarifying the requirements for continuing education programs, establishing guidance for in-person and online course offerings. The Board additionally establishes requirements to ensure continuing education participants' identities are confirmed and that they receive credit for their attendance at approved courses.

A Notice of Drafting was published in the *State Register* on December 28, 2018.

Instructions:

Replace regulation as shown below. All other items and sections remain unchanged.

Text:

35-23. Continuing Education Requirements; Expired Licenses.

(A) For license renewal, all persons licensed by the board as cosmetologists, nail technicians and estheticians must show satisfactory evidence of having obtained four (4) contact hours of board-approved continuing education specific to board laws and regulations, client safety, and/or infection control to include sanitation and disinfection during the licensing period. These hours may be completed through a board-approved in-person class or an online class.

(B) Initial License. Any person shall not be required to complete continuing education during the first licensing period. During the second licensing period and thereafter, the continuing education requirements shall apply.

(C) Expired License. Any license expired for three (3) years or less may be reinstated if the applicant pays the reinstatement fee and submits proof to the board of completion of continuing education requirements for renewal.

After three (3) years, the license is no longer renewable by payment of fees. Both the theory and practical examinations must be re-taken and passed. The licensee will then be considered on the same basis as a newly-licensed individual.

(D) Instructor License – For license renewal, all persons licensed by the Board as instructors must show satisfactory evidence of having obtained four (4) contact hours of board-approved continuing education geared toward teaching during the licensing period. These hours may be completed through a board-approved in-person class or an online class.

(E) The revisions to Reg. 35-23 continuing education requirements regarding the number of hours, permissible instruction in person or online, and course content are effective beginning with the 2021 license renewal period.

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35-24. Continuing Education Programs.

(A) Continuing education programs shall meet the criteria established by the board in conjunction with the University of South Carolina. Only continuing education programs approved by the board will be accepted toward meeting license renewal requirements.

(1) The continuing education course shall meet the following criteria for approval:

(a) All education must be generic in nature. All courses must have content sufficient to meet the required number of contact hours for instruction.

(b) All education shall be conducted and monitored by a board approved organization or association. For in-person courses, sponsors must monitor the signing in and out of participants to assure the presence of participants for the required contact hours.

(c) All organizations or associations desiring to sponsor continuing education shall present to the board prior to October 1 of each year a course outline which shall include but may not be limited to the following:

(i) Instructors Name(s) and summary of qualifications

(ii) Course outline including lesson plans

(iii) User and administrative log-in information for online courses

(iv) List of monitors

(2) Approval of a course is valid for the term of the licensing period in which it was approved, until December 31 of the year preceding the year in which the licensing period ends, or as otherwise determined by the Board; however, the Board may require the provider, during the approved period, to revise a program to update or correct the course material. The provider must timely resubmit the course for board review if it wishes to again provide the course for continuing education credit.

(B) Verification. Each licensee for renewal shall maintain evidence of having earned the required number of hours of continuing education for a period of four years. These records are subject to audit by the board and the licensee may be disciplined for failure to maintain them.

(C) Program Format, Time Frame, and Space for In-Person Courses.

(1) The program shall not include breaks and lunch periods in the calculation of credit for time attended.

(2) The program shall be completely generic. No mention, promotion or selling of products can take place.

(3) If the program for any reason is late starting, the ending time shall be extended accordingly.

(4) There shall be no early dismissals except for emergencies.

(5) Adequate space shall be provided so that each attendee shall be able to see and hear all segments of the program.

(6) Chairs shall be provided.

(7) Smoking shall be curtailed while the program is ongoing. Smoking shall take place only during breaks and lunch periods or only in designated areas.

(8) All participants in the CE programs shall provide two forms of identification any time they enter the education area, one of which must be a government-issued photographic identification and one of which must be a copy of the participant's board-issued license.

(D) Program Format for Online Courses.

(1) The program shall be completely generic. No mention, promotion or selling of products can take place.

(2) Prior to beginning instruction, all participants in the program shall provide two forms of identification, one of which must be a government-issued photographic identification and one of which must be a copy of the participant's board issued license. This identification shall be required to be resubmitted at least once during the course.

(E) Instructors and Monitors of Continuing Education.

(1) Instructors shall be licensed Instructors, Hair Fashion Committee Members or Hair Designer Guild Members, except that board-approved Methods of Teaching instructors may teach Instructor continuing education. Any deviation from this list must receive approval by the board. Licensees of this board who participate in teaching a continuing education program with instructors who do not meet these qualifications may be disciplined by the board for aiding the unlicensed practice of cosmetology.

(a) Instructors shall not receive CE credit for any continuing education program they teach.

(2) For In-Person courses:

(a) A monitor shall be on duty at all times while the program is ongoing; and

(b) Monitors shall see that all attendees sign a check in and check out sheet; and

(c) It shall be the duty of the monitor to see that order is maintained at all times and that the verification of attendance forms are completed and signed at the end of the program.

(3) For Online courses, the monitor shall verify that the course has been fully completed by the participant.

(F) The board must approve an organization or association to provide continuing education that qualifies to meet renewal and reinstatement requirements. The board may withdraw approval for an organization or association that fails to comply with the board's statutes and regulations regarding continuing education.

(G) Verification Forms and Electronic Verification Templates. Providers must timely submit to the University of South Carolina in an approved format, verification of a participant's attendance on forms or on an electronic template approved by the board and the University of South Carolina. For in-person courses, all participants and providers shall complete and submit an attendance verification form, which shall not be passed out or completed until the program is over. For online classes, providers shall complete and submit an electronic verification template after the participant has completed the course in full.

(1) The monitor is responsible for ensuring that the attendance verification information submitted on the form or on the template includes the participant's full name, license number, and license type as it is all shown on the participant's board-issued license.

(2) Each sponsoring organization or association shall mail the verification forms for in-person classes and email the electronic verification template for online classes to the University of South Carolina, along with the required registration fee set by the University of South Carolina.

(3) The forms and electronic verification templates shall be kept on record with the University of South Carolina for four years as verification that the participants have met the continuing education requirements.

(4) All participants shall receive from the University of South Carolina a Continuing Education Unit (CEU) Certificate proving verification.

(5) The verification forms or electronic verification template can be obtained by the organizations or associations from the University of South Carolina at least two (2) weeks prior to the start date of the course.

(H) Certifying Agent. The University of South Carolina will serve as the certifying agent for all providers by providing University of South Carolina Continuing Education Unit (CEU) Certificates for participants when the following conditions are met:

(1) The course submitted by any of the course providers must be fully approved by the board.

(2) A complete copy of all participants' verification forms and electronic verification templates must be forwarded to the University of South Carolina before the certifying process can begin. Certificates will be mailed to participants.

(3) The certifying costs shall include:

(a) a University of South Carolina (CEU) Certificate for participant; and

(b) a complete list of course participants forwarded to the sponsoring organization or association; and

(c) a complete list of course participants and their board-issued license numbers forwarded to LLR; and

(d) Permanent transcripts developed and maintained on each participant by the University of South Carolina. Retrieval of transcripts by participants will be subject to the policies of the University of South Carolina.

(I) Board to Observe Program. The board or its designated agents may observe any continuing education program at any time.

Fiscal Impact Statement:

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

Statement of Rationale:

The updated regulations will reduce the continuing education requirements for cosmetologists, nail technicians and estheticians from 12 hours biennially to 4 hours biennially and to establish the subjects in which continuing education should be obtained to ensure the health and safety of the public: board laws and regulations, client safety, and/or infection control to include sanitation and disinfection. Additionally, the regulations will reduce the continuing education requirements for instructors from 12 hours biennially to 4 hours biennially. The regulations will allow the continuing education hours to be obtained in-person or online. As to R.35-24, the

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regulations will clarify and establish requirements for continuing education programs, and will establish guidance for in-person and online course offerings. The regulations will additionally establish requirements to ensure continuing education participants' identities are confirmed and that they receive credit for their attendance at approved courses.

Document No. 4890
DEPARTMENT OF LABOR, LICENSING AND REGULATION
BOARD OF DENTISTRY
CHAPTER 39

Statutory Authority: 1976 Code Sections 40-1-50(D), 40-1-70, and 40-15-40(G)

- 39-8. Laboratory Work Authorization Form.
- 39-10. Sanitary Standards
- 39-11. Ethics

Synopsis:

The South Carolina Board of Dentistry proposes to amend regulations regarding laboratory work authorization forms, sanitary standards and ethics.

A Notice of Drafting was published in the *State Register* on March 22, 2019.

Instructions:

Replace regulation as shown below. All other items and sections remain unchanged.

Text:

39-8. Laboratory Interactions.

A. All dental laboratory work must have an accompanying authorization document. This document may be physical or electronic and must contain, at a minimum, the following:

1. The laboratory name and mailing address;
2. The authorizing dentist's name, mailing address, contact information, and license number;
3. The name of the patient;
4. The type of prosthesis, as well as clear instructions on all components of the prosthesis.

These components include, but are not limited to, type of materials desired, occlusal contacts in centric occlusion and all excursive movements, types of clasps, attachments, esthetic characteristics, and other pertinent items; and

5. The signature, either physical or electronic, of the dentist.

B. All materials that have had contact with patients must be disinfected following the Centers for Disease Control (CDC) Guidelines and clearly marked when being sent to an off-site laboratory from a dentist.

C. All materials that are to be placed in patient contact must be disinfected following CDC Control Guidelines and clearly marked when being sent from an off-site laboratory to a dentist.

39-10. Sanitary Standards.

A. All dental offices and dental laboratories shall provide and maintain sanitary facilities and conditions in accordance with the following regulations:

1. All dental practices shall conform to and comply with the current recommendations and guidelines of the CDC relating to infection control practices for dentistry and/or dental offices.

2. It is the responsibility of all dentists and dental hygienists licensed by the State and all other personnel who are utilized by a licensed dentist and who assist in a dental practice and may be exposed to body fluids such as blood or saliva to maintain familiarity with these recommendations and guidelines.

3. Premises:
 - a. The premises shall be kept neat and clean, and free of accumulated rubbish and substances of a similar nature which create a public health nuisance.
 - b. The premises shall be kept free of all insects and vermin. Proper methods for their eradication or control should be utilized.
 - c. Water of a safe, sanitary quality, from a source approved by the health officer, shall be piped under pressure and in an approved manner, to all equipment and fixtures where the use of water is required.
 - d. All plumbing shall be in accordance with the local plumbing ordinances.
4. Housekeeping:
 - a. Comfortable and sanitary conditions for patients and employees shall be maintained constantly.
 - b. All liquid and human waste, including floor wash water, shall be disposed of through trapped drains into a public sanitary sewer system in localities where such system is available. In localities where a public sanitary system is not available, liquid and human waste shall be disposed of through trapped drains in a manner approved by a health officer.
5. Toilet Facilities:
 - a. There shall be adequate toilet facilities on the premises of every dental office. They shall conform to the standards the State Board of Health.
6. Sterilization:
 - a. All instruments or equipment used in the treatment of dental patients shall be sterilized in compliance with the current recommendations of the CDC.
 - b. Each facility shall ensure compliance by all personnel with existing federal and state infection control procedures.

39-11. Ethics.

Section 1 PRINCIPLE: PATIENT AUTONOMY (“self-governance”). The dentist has a duty to respect the patient’s rights to self-determination and confidentiality.

This principle expresses the concept that professionals have a duty to treat the patient according to the patient’s desires, within the bounds of accepted treatment, and to protect the patient’s confidentiality. Under this principle, the dentist’s primary obligations include involving patients in treatment decisions in a meaningful way, with due consideration being given to the patient’s needs, desires and abilities, and safeguarding the patient’s privacy.

CODE OF PROFESSIONAL CONDUCT

1.A. PATIENT INVOLVEMENT.

The dentist should inform the patient of the proposed treatment, and any reasonable alternatives, in a manner that allows the patient to become involved in treatment decisions.

1.B. PATIENT RECORDS.

Dentists are obliged to safeguard the confidentiality of patient records. Dentists shall maintain patient records in a manner consistent with the protection of the welfare of the patient. Upon request of a patient of another dental practitioner, dentists shall provide any information in accordance with applicable law that will be beneficial for the future treatment of the patient.

ADVISORY OPINIONS

1.B.1. CONFIDENTIALITY OF PATIENT RECORDS

The dominant theme in Code Section 1.B is the protection of the confidentiality of a patient’s records. The statement in this section that relevant information in the records should be released to another dental practitioner assumes that the dentist requesting the information is the patient’s present dentist. There may be circumstances where the former dentist has an ethical obligation to inform the present dentist of certain facts. Code Section 1.B assumes that the dentist releasing relevant information is acting in accordance with applicable law. Dentists should be aware that the laws of the various jurisdictions in the United States are not uniform and some confidentiality laws appear to prohibit the transfer of pertinent information, such as HIV seropositivity. Absent certain knowledge that the laws of the dentist’s jurisdiction permit the forwarding of this information, a dentist

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should obtain the patient's written permission before forwarding health records which contain information of a sensitive nature, such as HIV seropositivity, chemical dependency or sexual preference. If it is necessary for a treating dentist to consult with another dentist or physician with respect to the patient, and the circumstances do not permit the patient to remain anonymous, the treating dentist should seek the permission of the patient prior to the release of data from the patient's records to the consulting practitioner. If the patient refuses, the treating dentist should then contemplate obtaining legal advice regarding the termination of the dentist-patient relationship.

Section 2 PRINCIPLE: NONMALEFICENCE ("do no harm") The dentist has a duty to refrain from harming the patient.

This principle expresses the concept that professionals have a duty to protect the patient from harm. Under this principle, the dentist's primary obligations include keeping knowledge and skills current, knowing one's own limitations and when to refer to a specialist or other professional, and knowing when and under what circumstances delegation of patient care to auxiliaries is appropriate.

CODE OF PROFESSIONAL CONDUCT

2.A. EDUCATION

The privilege of dentists to be accorded professional status rests primarily in the knowledge, skill and experience with which they serve their patients and society. All dentists, therefore, have the obligation of keeping their knowledge and skill current.

2.B. CONSULTATION AND REFERRAL

Dentists shall be obliged to seek consultation, if possible, whenever the welfare of patients will be safeguarded or advanced by utilizing those who have special skills, knowledge, and experience. When patients visit or are referred to specialists or consulting dentists for consultation:

1. The specialists or consulting dentists upon completion of their care shall return the patient, unless the patient expressly reveals a different preference, to the referring dentist, or, if none, to the dentist of record for future care.

2. The specialists shall be obliged when there is no referring dentist and upon a completion of their treatment to inform patients when there is a need for further dental care.

ADVISORY OPINION

2.B.1. SECOND OPINIONS.

A dentist who has a patient referred by a third party¹ for a "second opinion" regarding a diagnosis or treatment plan recommended by the patient's treating dentist should render the requested second opinion in accordance with this *Code of Ethics*. In the interest of the patient being afforded quality care, the dentist rendering the second opinion should not have a vested interest in the ensuing recommendation.

2.C. USE OF AUXILIARY PERSONNEL.

Dentists shall be obliged to protect the health of their patients by only assigning to qualified auxiliaries those duties which can be legally delegated. Dentists shall be further obliged to prescribe and supervise the patient care provided by all auxiliary personnel working under their direction.

2.D. PERSONAL IMPAIRMENT.

It is unethical for a dentist to practice while abusing controlled substances, alcohol or other chemical agents which impair the ability to practice. All dentists have an ethical obligation to urge chemically impaired colleagues to seek treatment.

ADVISORY OPINION

2.D.1. ABILITY TO PRACTICE.

A dentist who contracts any disease or becomes impaired in any way that might endanger patients or dental staff shall, with consultation and advice from a qualified physician or other authority, limit the activities of practice to those areas that do not endanger patients or dental staff. A dentist who has been advised to limit the activities of his or her practice should monitor the aforementioned disease or impairment and make additional limitations to the activities of the dentist's practice, as indicated.

2.E. POSTEXPOSURE, BLOODBORNE PATHOGENS.

All dentists, regardless of their bloodborne pathogen status, have an ethical obligation to immediately inform any patient who may have been exposed to blood or other potentially infectious material in the dental office of the need for postexposure evaluation and follow-up and to immediately refer the patient to a qualified health care practitioner who can provide postexposure services. The dentist’s ethical obligation in the event of an exposure incident extends to providing information concerning the dentist’s own bloodborne pathogen status to the evaluating health care practitioner, if the dentist is the source individual, and to submitting to testing that will assist in the evaluation of the patient. If a staff member or other third person is the source individual, the dentist should encourage that person to cooperate as needed for the patient’s evaluation.

2.F. PATIENT ABANDONMENT.

Once a dentist has undertaken a course of treatment, the dentist should not discontinue that treatment without giving the patient adequate notice and the opportunity to obtain the services of another dentist. Care should be taken that the patient’s oral health is not jeopardized in the process.

2.G. PERSONAL RELATIONSHIPS WITH PATIENTS.

Dentists should avoid interpersonal relationships that could impair their professional judgment or risk the possibility of exploiting the confidence placed in them by a patient.

Section 3 PRINCIPLE: BENEFICENCE (“do good”). The dentist has a duty to promote the patient’s welfare.

This principle expresses the concept that professionals have a duty to act for the benefit of others. Under this principle, the dentist’s primary obligation is service to the patient and the public-at-large. The most important aspect of this obligation is the competent and timely delivery of dental care within the bounds of clinical circumstances presented by the patient, with due consideration being given to the needs, desires and values of the patient. The same ethical considerations apply whether the dentist engages in fee-for-service, managed care or some other practice arrangement. Dentists may choose to enter into contracts governing the provision of care to a group of patients; however, contract obligations do not excuse dentists from their ethical duty to put the patient’s welfare first.

CODE OF PROFESSIONAL CONDUCT

3.A. COMMUNITY SERVICE.

Since dentists have an obligation to use their skills, knowledge and experience for the improvement of the dental health of the public and are encouraged to be leaders in their community, dentists in such service shall conduct themselves in such a manner as to maintain or elevate the esteem of the profession.

3.B. RESEARCH AND DEVELOPMENT.

Dentists have the obligation of making the results and benefits of their investigative efforts available to all when they are useful in safeguarding or promoting the health of the public.

3.C. ABUSE AND NEGLECT.

Dentists shall be obliged to become familiar with the signs of abuse and neglect and to report suspected cases if required by South Carolina law.

3.D. PROFESSIONAL DEMEANOR IN THE WORKPLACE.

Dentists have the obligation to provide a workplace environment that supports respectful and collaborative relationships for all those involved in oral health care.

ADVISORY OPINION

3.D.1. DISRUPTIVE BEHAVIOR IN THE WORKPLACE.

Dentists are the leaders of the oral healthcare team. As such, their behavior in the workplace is instrumental in establishing and maintaining a practice environment that supports the mutual respect, good communication, and high levels of collaboration among team members required to optimize the quality of patient care provided. Dentists who engage in disruptive behavior in the workplace risk undermining professional relationships among team members, decreasing the quality of patient care provided, and undermining the public’s trust and confidence in the profession.

Section 4 PRINCIPLE: JUSTICE (“fairness”). The dentist has a duty to treat people fairly.

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This principle expresses the concept that professionals have a duty to be fair in their dealings with patients, colleagues and society. Under this principle, the dentist's primary obligations include dealing with people justly and delivering dental care without prejudice. In its broadest sense, this principle expresses the concept that the dental profession should actively seek allies throughout society on specific activities that will help improve access to care for all.

CODE OF PROFESSIONAL CONDUCT

4.A. PATIENT SELECTION.

While a dentist, in serving the public, may exercise reasonable discretion in selecting patients for their practices, dentists shall not refuse to accept patients into their practice or deny dental service to patients because of the patient's race, creed, color, gender, sexual orientation or gender identity or national origin.

ADVISORY OPINION

4.A.1. PATIENTS WITH BLOODBORNE PATHOGENS.

A dentist has the general obligation to provide care to those in need. A decision not to provide treatment to an individual because the individual is infected with Human Immunodeficiency Virus, Hepatitis B Virus, Hepatitis C Virus or another bloodborne pathogen, based solely on that fact, is unethical. Decisions with regard to the type of dental treatment provided or referrals made or suggested should be made on the same basis as they are made with other patients. As is the case with all patients, the individual dentist should determine if he or she has the need of another's skills, knowledge, equipment or experience. The dentist should also determine, after consultation with the patient's physician, if appropriate, if the patient's health status would be significantly compromised by the provision of dental treatment.

4.B. EMERGENCY SERVICE.

Dentists shall be obliged to make reasonable arrangements for the emergency care of their patients of record. Dentists shall be obliged when consulted in an emergency by patients not of record to make reasonable arrangements for emergency care. If treatment is provided, the dentist, upon completion of treatment, is obliged to return the patient to his or her regular dentist unless the patient expressly reveals a different preference.

4.C. EXPERT TESTIMONY.

Dentists may provide expert testimony when that testimony is essential to a just and fair disposition of a judicial or administrative action.

ADVISORY OPINION

4.C.1. CONTINGENT FEES.

It is unethical for a dentist to agree to a fee contingent upon the favorable outcome of the litigation in exchange for testifying as a dental expert.

4.D. REBATES AND SPLIT FEES.

Dentists shall not accept or tender "rebates" or "split fees."

ADVISORY OPINION

4.D.1. SPLIT FEES IN ADVERTISING AND MARKETING SERVICES.

The prohibition against a dentist's accepting or tendering rebates or split fees applies to business dealings between dentists and any third party, not just other dentists. Thus, a dentist who pays for advertising or marketing services by sharing a specified portion of the professional fees collected from prospective or actual patients with the vendor providing the advertising or marketing services is engaged in fee splitting. The prohibition against fee splitting is also applicable to the marketing of dental treatments or procedures via "social coupons" if the business arrangement between the dentist and the concern providing the marketing services for that treatment or those procedures allows the issuing company to collect the fee from the prospective patient, retain a defined percentage or portion of the revenue collected as payment for the coupon marketing service provided to the dentist and remit to the dentist the remainder of the amount collected. Dentists should also be aware that the laws or regulations in their jurisdictions may contain provisions that impact the division of revenue collected from prospective patients between a dentist and a third party to pay for advertising or marketing services.

Section 5 PRINCIPLE: VERACITY ("truthfulness") The dentist has a duty to communicate truthfully.

This principle expresses the concept that professionals have a duty to be honest and trustworthy in their dealings with people. Under this principle, the dentist's primary obligations include respecting the position of

trust inherent in the dentist-patient relationship, communicating truthfully and without deception, and maintaining intellectual integrity.

CODE OF PROFESSIONAL CONDUCT

5.A. REPRESENTATION OF CARE.

Dentists shall not represent the care being rendered to their patients in a false or misleading manner.

ADVISORY OPINIONS

5.A.1. DENTAL AMALGAM AND OTHER RESTORATIVE MATERIALS.

Based on current scientific data, the ADA has determined that the removal of amalgam restorations from the non-allergic patient for the alleged purpose of removing toxic substances from the body, when such treatment is performed solely at the recommendation of the dentist, is improper and unethical. The same principle of veracity applies to the dentist's recommendation concerning the removal of any dental restorative material.

5.A.2. UNSUBSTANTIATED REPRESENTATIONS.

A dentist who represents that dental treatment or diagnostic techniques recommended or performed by the dentist has the capacity to diagnose, cure or alleviate diseases, infections or other conditions, when such representations are not based upon accepted scientific knowledge or research, is acting unethically.

5.B. REPRESENTATION OF FEES.

Dentists shall not represent the fees being charged for providing care in a false or misleading manner.

ADVISORY OPINIONS

5.B.1. WAIVER OF COPAYMENT.

A dentist who accepts a third party¹ payment under a copayment plan as payment in full without disclosing to the third party¹ that the patient's payment portion will not be collected, is engaged in overbilling. The essence of this ethical impropriety is deception and misrepresentation; an overbilling dentist makes it appear to the third party¹ that the charge to the patient for services rendered is higher than it actually is.

5.B.2. OVERBILLING.

It is unethical for a dentist to increase a fee to a patient solely because the patient is covered under a dental benefits plan.

5.B.3. FEE DIFFERENTIAL.

The fee for a patient without dental benefits shall be considered a dentist's full fee.² This is the fee that should be represented to all benefit carriers regardless of any negotiated fee discount. Payments accepted by a dentist under a governmentally funded program, a component or constituent dental society sponsored access program, or a participating agreement entered into under a program with a third party shall not be considered or construed as evidence of overbilling in determining whether a charge to a patient, or to another third party¹ in behalf of a patient not covered under any of the aforementioned programs constitutes overbilling under this section of the *Code*.

5.B.4. TREATMENT DATES.

A dentist who submits a claim form to a third party¹ reporting incorrect treatment dates for the purpose of assisting a patient in obtaining benefits under a dental plan, which benefits would otherwise be disallowed, is engaged in making an unethical, false or misleading representation to such third party.¹

5.B.5. DENTAL PROCEDURES.

A dentist who incorrectly describes on a third party¹ claim form a dental procedure in order to receive a greater payment or reimbursement or incorrectly makes a non-covered procedure appear to be a covered procedure on such a claim form is engaged in making an unethical, false or misleading representation to such third party¹.

5.B.6. UNNECESSARY SERVICES.

A dentist who recommends and performs unnecessary dental services or procedures is engaged in unethical conduct. The dentist's ethical obligation in this matter applies regardless of the type of practice arrangement or contractual obligations in which he or she provides patient care.

5.C. DISCLOSURE OF CONFLICT OF INTEREST.

A dentist who presents educational or scientific information in an article, seminar or other program shall disclose to the readers or participants any monetary or other special interest the dentist may have with a company whose products are promoted or endorsed in the presentation. Disclosure shall be made in any promotional material and in the presentation itself.

5.D. DEVICES AND THERAPEUTIC METHODS.

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Except for formal investigative studies, dentists shall be obliged to prescribe, dispense, or promote only those devices, drugs and other agents whose complete formulae are available to the dental profession. Dentists shall have the further obligation of not holding out as exclusive any device, agent, method or technique if that representation would be false or misleading in any material respect.

ADVISORY OPINIONS

5.D.1. REPORTING ADVERSE REACTIONS.

A dentist who suspects the occurrence of an adverse reaction to a drug or dental device has an obligation to communicate that information to the broader medical and dental community, including, in the case of a serious adverse event, the Food and Drug Administration (FDA).

5.D.2. MARKETING OR SALE OF PRODUCTS OR PROCEDURES.

Dentists who, in the regular conduct of their practices, engage in or employ auxiliaries in the marketing or sale of products or procedures to their patients must take care not to exploit the trust inherent in the dentist-patient relationship for their own financial gain. Dentists should not induce their patients to purchase products or undergo procedures by misrepresenting the product's value, the necessity of the procedure or the dentist's professional expertise in recommending the product or procedure.

In the case of a health-related product, it is not enough for the dentist to rely on the manufacturer's or distributor's representations about the product's safety and efficacy. The dentist has an independent obligation to inquire into the truth and accuracy of such claims and verify that they are founded on accepted scientific knowledge or research.

Dentists should disclose to their patients all relevant information the patient needs to make an informed purchase decision, including whether the product is available elsewhere and whether there are any financial incentives for the dentist to recommend the product that would not be evident to the patient.

5.E. PROFESSIONAL ANNOUNCEMENT.

In order to properly serve the public, dentists should represent themselves in a manner that contributes to the esteem of the profession. Dentists should not misrepresent their training and competence in any way that would be false or misleading in any material respect³.

5.F. ADVERTISING.

Although any dentist may advertise, no dentist shall advertise or solicit patients in any form of communication in a manner that is false or misleading in any material respect³.

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5.F.1. PUBLISHED COMMUNICATIONS.

If a dental health article, message or newsletter is published in print or electronic media under a dentist's byline to the public without making truthful disclosure of the source and authorship or is designed to give rise to questionable expectations for the purpose of inducing the public to utilize the services of the sponsoring dentist, the dentist is engaged in making a false or misleading representation to the public in a material respect³.

5.F.2. EXAMPLES OF "FALSE OR MISLEADING."

The following examples are set forth to provide insight into the meaning of the term "false or misleading in a material respect."³ These examples are not meant to be all-inclusive. Rather, by restating the concept in alternative language and giving general examples, it is hoped that the membership will gain a better understanding of the term. With this in mind, statements shall be avoided which would: a) contain a material misrepresentation of fact, b) omit a fact necessary to make the statement considered as a whole not materially misleading, c) be intended or be likely to create an unjustified expectation about results the dentist can achieve, and d) contain a material, objective representation, whether express or implied, that the advertised services are superior in quality to those of other dentists, if that representation is not subject to reasonable substantiation. Subjective statements about the quality of dental services can also raise ethical concerns. In particular, statements of opinion may be misleading if they are not honestly held, if they misrepresent the qualifications of the holder, or the basis of the opinion, or if the patient reasonably interprets them as implied statements of fact. Such statements will be evaluated on a case by case basis, considering how patients are likely to respond to the impression made by the advertisement as a whole. The fundamental issue is whether the advertisement, taken as a whole, is false or misleading in a material respect³.

5.F.3. UNEARNED, NONHEALTH DEGREES.

A dentist may use the title Doctor or Dentist, D.D.S., D.M.D. or any additional earned, advanced academic degrees in health service areas in an announcement to the public. The announcement of an unearned academic

degree may be misleading because of the likelihood that it will indicate to the public the attainment of specialty or diplomate status. For purposes of this advisory opinion, an unearned academic degree is one which is awarded by an educational institution not accredited by a generally recognized accrediting body or is an honorary degree. The use of a nonhealth degree in an announcement to the public may be a representation which is misleading because the public is likely to assume that any degree announced is related to the qualifications of the dentist as a practitioner. Some organizations grant dentists fellowship status as a token of membership in the organization or some other form of voluntary association. The use of such fellowships in advertising to the general public may be misleading because of the likelihood that it will indicate to the public attainment of education or skill in the field of dentistry. Generally, unearned or nonhealth degrees and fellowships that designate association, rather than attainment, should be limited to scientific papers and curriculum vitae.

5.F.4. REFERRAL SERVICES.

There are two basic types of referral services for dental care: not-for-profit and the commercial. The not-for-profit is commonly organized by dental societies or community services. It is open to all qualified practitioners in the area served. A fee is sometimes charged the practitioner to be listed with the service. A fee for such referral services is for the purpose of covering the expenses of the service and has no relation to the number of patients referred. In contrast, some commercial referral services restrict access to the referral service to a limited number of dentists in a particular geographic area. Prospective patients calling the service may be referred to a single subscribing dentist in the geographic area and the respective dentist billed for each patient referred. Commercial referral services often advertise to the public stressing that there is no charge for use of the service and the patient may not be informed of the referral fee paid by the dentist. There is a connotation to such advertisements that the referral that is being made is in the nature of a public service. A dentist is allowed to pay for any advertising permitted by the *Code*, but is generally not permitted to make payments to another person or entity for the referral of a patient for professional services. While the particular facts and circumstances relating to an individual commercial referral service will vary, the council believes that the aspects outlined above for commercial referral services violate the *Code* in that it constitutes advertising which is false or misleading in a material respect and violates the prohibitions in the *Code* against fee splitting³.

5.F.5. INFECTIOUS DISEASE TEST RESULTS.

An advertisement or other communication intended to solicit patients which omits a material fact or facts necessary to put the information conveyed in the advertisement in a proper context can be misleading in a material respect. A dental practice should not seek to attract patients on the basis of partial truths which create a false impression.³ For example, an advertisement to the public of HIV negative test results, without conveying additional information that will clarify the scientific significance of this fact contains a misleading omission. A dentist could satisfy his or her obligation under this advisory opinion to convey additional information by clearly stating in the advertisement or other communication: "This negative HIV test cannot guarantee that I am currently free of HIV."

5.F.6. WEBSITES AND SEARCH ENGINE OPTIMIZATION.

Many dentists employ an Internet website to announce their practices, introduce viewers to the professionals and staff in the office, describe practice philosophies and impart oral health care information to the public. Dentists may use services to increase the visibility of their websites when consumers perform searches for dentally-related content. This technique is generally known as "search engine optimization" or "SEO." Dentists have an ethical obligation to ensure that their websites, like their other professional announcements, are truthful and do not present information in a manner that is false and misleading in a material respect.³ Also, any SEO techniques used in connection with a dentist's web site should comport with the *ADA Principles of Ethics and Code of Professional Conduct*.

5.G. NAME OF PRACTICE.

Since the name under which a dentist conducts his or her practice may be a factor in the selection process of the patient, the use of a trade name or an assumed name that is false or misleading in any material respect is unethical. Use of the name of a dentist no longer actively associated with the practice may be continued for a period not to exceed one year³.

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5.G.1. DENTIST LEAVING PRACTICE.

Dentists leaving a practice who authorize continued use of their names should receive competent advice on the legal implications of this action. With permission of a departing dentist, his or her name may be used for

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more than one year, if, after the one year grace period has expired, prominent notice is provided to the public through such mediums as a sign at the office and a short statement on stationery and business cards that the departing dentist has retired from the practice.

5.H. ANNOUNCEMENT OF SPECIALIZATION AND LIMITATION OF PRACTICE.

A dentist may ethically announce as a specialist to the public in any of the dental specialties recognized by the American Dental Association including dental public health, endodontics, oral and maxillofacial pathology, oral and maxillofacial radiology, oral and maxillofacial surgery, orthodontics and dentofacial orthopedics, pediatric dentistry, periodontics, and prosthodontics, and in any other areas of dentistry for which specialty recognition has been granted under the standards required or recognized in the practitioner's jurisdiction, provided the dentist meets the educational requirements required for recognition as a specialist adopted by the American Dental Association or accepted in the jurisdiction in which they practice*. Dentists who choose to announce specialization should use "specialist in" and shall devote a sufficient portion of their practice to the announced specialty or specialties to maintain expertise in that specialty or those specialties. Dentists whose practice is devoted exclusively to an announced specialty or specialties may announce that their practice "is limited to" that specialty or those specialties. Dentists who use their eligibility to announce as specialists to make the public believe that specialty services rendered in the dental office are being rendered by qualified specialists when such is not the case are engaged in unethical conduct. The burden of responsibility is on specialists to avoid any inference that general practitioners who are associated with specialists are qualified to announce themselves as specialists.

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5.H.1. DUAL DEGREED DENTISTS.

Nothing in Section 5.H shall be interpreted to prohibit a dual degreed dentist who practices medicine or osteopathy under a valid state license from announcing to the public as a dental specialist provided the dentist meets the educational, experience and other standards set forth in the *Code* for specialty announcement and further providing that the announcement is truthful and not materially misleading. In the case of the ADA, the educational requirements include successful completion of an advanced educational program accredited by the Commission on Dental Accreditation, two or more years in length, as specified by the Council on Dental Education and Licensure, or being a diplomate of an American Dental Association recognized certifying board for each specialty announced.

5.H.2. SPECIALIST ANNOUNCEMENT OF CREDENTIALS IN NON-SPECIALTY INTEREST AREAS.

A dentist who is qualified to announce specialization under this section may not announce to the public that he or she is certified or a diplomate or otherwise similarly credentialed in an area of dentistry not recognized as a specialty area by the American Dental Association unless:

1. The organization granting the credential grants certification or diplomate status based on the following: a) the dentist's successful completion of a formal, full-time advanced education program (graduate or postgraduate level) of at least 12 months' duration; and b) the dentist's training and experience; and c) successful completion of an oral and written examination based on psychometric principles; and

2. The announcement includes the following language: [Name of announced area of dental practice] is not recognized as a specialty area by the American Dental Association. Nothing in this advisory opinion affects the right of a properly qualified dentist to announce specialization in an ADA-recognized specialty area(s) as provided for under Section 5.H of this *Code* or the responsibility of such dentist to limit his or her practice exclusively to the special area(s) of dental practice announced. Specialists shall not announce their credentials in a manner that implies specialization in a non-specialty interest area.

5.I. GENERAL PRACTITIONER ANNOUNCEMENT OF SERVICES.

General dentists who wish to announce the services available in their practices are permitted to announce the availability of those services so long as they avoid any communications that express or imply specialization. General dentists shall also state that the services are being provided by general dentists. No dentist shall announce available services in any way that would be false or misleading in any material respect³.

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5.I.1. GENERAL PRACTITIONER ANNOUNCEMENT OF CREDENTIALS IN INTEREST AREAS IN GENERAL DENTISTRY.

A general dentist may not announce to the public that he or she is certified or a diplomate or otherwise similarly credentialed in an area of dentistry not recognized as a specialty area by the American Dental Association unless:

1. The organization granting the credential grants certification or diplomate status based on the following:
 - a) the dentist's successful completion of a formal, full-time advanced education program (graduate or postgraduate level) of at least 12 months duration; and b) the dentist's training and experience; and c) successful completion of an oral and written examination based on psychometric principles;
2. The dentist discloses that he or she is a general dentist; and
3. The announcement includes the following language: [Name of announced area of dental practice] is not recognized as a specialty area by the American Dental Association.

5.I.2. CREDENTIALS IN GENERAL DENTISTRY.

General dentists may announce fellowships or other credentials earned in the area of general dentistry so long as they avoid any communications that express or imply specialization and the announcement includes the disclaimer that the dentist is a general dentist. The use of abbreviations to designate credentials shall be avoided when such use would lead the reasonable person to believe that the designation represents an academic degree, when such is not the case.

NOTES:

1. A third party is any party to a dental prepayment contract that may collect premiums, assume financial risks, pay claims, and/or provide administrative services.
2. A full fee is the fee for a service that is set by the dentist, which reflects the costs of providing the procedure and the value of the dentist's professional judgment.
3. Advertising, solicitation of patients or business or other promotional activities by dentists or dental care delivery organizations shall not be considered unethical or improper, except for those promotional activities which are false or misleading in any material respect.
4. Completion of three years of advanced training in oral and maxillofacial surgery or two years of advanced training in one of the other recognized dental specialties prior to 1967.
 - * In the case of the ADA, the educational requirements include successful completion of an advanced educational program accredited by the Commission on Dental Accreditation, two or more years in length, as specified by the Council on Dental Education and Licensure, or being a diplomate of an American Dental Association recognized certifying board for each specialty announced.

Fiscal Impact Statement:

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

Statement of Rationale:

The South Carolina Board of Dentistry proposes to update its regulations pertaining to laboratory work authorization forms to provide more guidance to the public. The Board further seeks to update its regulations related to be sanitary standards to be consistent with CDC standards. Finally, the Board is striking its ethics code and reissuing the same, following consideration of the ADA Code of Ethics and updated advisory opinions.

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Document No. 4905
DEPARTMENT OF LABOR, LICENSING AND REGULATION
BOARD OF FUNERAL SERVICE
CHAPTER 57

Statutory Authority: 1976 Code Sections 40-1-70 and 40-19-60

57-15. Inspection Guidelines.

Synopsis:

The South Carolina Board of Funeral Service proposes to amend R.57-15 regarding the inspection guidelines.

A Notice of Drafting was published in the *State Register* on June 28, 2019.

Instructions:

Replace regulation as shown below. All other items and sections remain unchanged.

Text:

ARTICLE 9 INSPECTION GUIDELINES

57-15. Inspection guidelines.

Inspection guidelines include the following:

(1) An embalming room of at least 100 square feet. Funeral homes in operation prior to April 23, 2010, are exempt from the 100 square foot requirement;

(2) A preparation room equipped with sanitary floor and necessary drainage, ventilation, necessary approved tables, hot and cold running water and a sink separate from table drainage, an OSHA-approved shower and eye wash station, hydro or electric aspirator (if hydro, it must be equipped with a backflow preventor on the facility's water system), embalming machine, or gravity bottle or bulb or hand pump, at least one scalpel, two aneurysm needles, assorted canulae, suture needles, trocar, antiseptic soap, twelve (12) bottles of arterial fluid, and two bottles of cavity fluid;

(3) Handicapped accessible restrooms, water fountains and accessibility to and throughout the facility; where water fountains are not accessible, alternatives such as bottled water shall be provided;

(4) One working and licensed motor hearse for transporting casketed and non-casketed human remains;

(5) Sanitary waste receptacle and hazardous waste receptacle;

(6) Ventilating system that is screened and has an air exchange of twelve (12) times per hour to the outside;

(7) Six (6) adult caskets on the premises displayed or available for display in conjunction with the display of cut-away caskets, an online kiosk or other means of funeral merchandise display;

(8) Multiple copies of the General Price List, a Casket Price List, an Outer Burial Container Price List, and multiple copies of the Statement of Goods and Services in compliance with federal and state law;

(9) An approved COMPLETED PERMIT APPLICATION or CURRENT FACILITY PERMIT DISPLAYED;

(10) If a chapel or parlor for funeral services is provided, it must be inspected for safety and cleanliness.

Fiscal Impact Statement:

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

Statement of Rationale:

The updated regulations will remove certain restrictions on the size of the embalming room, will ensure that embalming rooms in existence at the time the inspection guidelines regulations were promulgated are grandfathered into compliance with the regulations as they pertain to the size of embalming rooms, and will make additional changes to comply with the Americans with Disabilities Act.

Document No. 4924

**DEPARTMENT OF LABOR, LICENSING AND REGULATION
BOARD OF REGISTRATION FOR GEOLOGISTS
CHAPTER 131**

Statutory Authority: 1976 Code Sections 40-1-50, 40-1-70, and 40-77-70

131-06. Examinations.

131-10. Requirements for Renewal/Reactivation of Expired or Lapsed Registrations.

131-12. Continuing Professional Competency.

Synopsis:

The Board of Registration for Geologists proposes to amend R.131-06 regarding examinations, R.131-10 regarding the requirements for renewal/reactivation of expired or lapsed registrations, and R.131-12 regarding continuing professional competency.

A Notice of Drafting was published in the *State Register* on April 26, 2019.

Instructions:

Replace regulation as shown below. All other items and sections remain unchanged.

Text:

131-06. Examinations.

(A) Examinations shall be held at least annually provided there are qualified applicants.

(B) Applicants must be approved by the Board and notified in writing for authorization to take the examination. Each qualified applicant must provide written authorization from the Board to take the examination and provide picture identification prior to entering the examination room.

(C) Applicants are required to take examinations designed to test the applicant's general geological education and to measure the applicant's practical experience and knowledge in the application of geology and the code of professional ethics.

(D) Applicants taking an examination must receive a scaled score of seventy (70) or higher to pass the examination.

(E) An applicant may apply for re-examination twice without filing a new application and shall be re-examined upon payment of the required fee. An applicant who fails the same examination for a third time shall file a new application before being re-examined. A new application may not be filed sooner than one (1) year following the date of the last re-examination.

131-10. Requirements for Renewal/Reactivation of Expired or Lapsed Registrations.

(A) All applications for renewal shall be filed with the Board prior to June thirtieth (30th) of the biennial renewal year. Renewal applications must be accompanied by the appropriate fee and a statement attesting to the required number of continuing education credits (CEC) per biennium. Registered professional geologists who have not properly renewed their registration for failure to complete the required CEC and/or failure to submit the appropriate renewal fee must apply for late renewal during a six (6) month penalty period following the expiration date. Late renewal applications must be accompanied by documentation, if applicable, indicating completion of the required CEC's as specified in Regulation 131-11 and a fee equal to the biennial renewal fee

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plus fifty percent (50%) penalty fee. Registrants undergoing late renewal are not authorized to conduct the public practice of geology until their renewal is completed and the registrant receives written notice from the Board that their registration is renewed.

(B) A registrant whose registration has been expired or lapsed for six (6) years or less may reactivate the registration upon submission of an application on a form approved by the Board, along with the required fee pursuant to 10-18 and evidence of CEC for each biennium during which the registration was expired, not to exceed the CE hours required for one biennium contained in 131-12(B)(1) and the submission of a notarized statement that the registrant has not engaged in the practice of geology in this State during the time the registration was expired or lapsed.

(C) A registrant whose registration has been expired or lapsed for more than six (6) years may reactivate the registration upon submission of an application on a form approved by the Board, along with the required fee pursuant to 10-18 and evidence of CEC for each biennium during which the registration was expired, not to exceed 1.5 times the CE hours required for one biennium contained in 131-12(B)(1) and the submission of a notarized statement that the registrant has not engaged in the practice of geology in this state during the time the registration was expired or lapsed.

131-12. Continuing Professional Competency.

(A) Professionals licensed to practice geology are required to demonstrate a continuing development of professional competency. Each registrant shall submit a continuing education report on a form approved by the Board as a condition of renewal.

(B) Continuing Education Requirements.

(1) Every registrant is required to obtain twenty-four (24) contact hours for each biennium of registration.

(2) If a registrant exceeds the biennial requirements in any renewal period, a maximum of eight (8) contact hours may be carried forward into the ensuing renewal period.

(C) Determination of Credit.

(1) Continuing education credit shall be in accordance with Continuing Education Guidelines as approved by the Board.

(2) Upon request, the Board may require proof of attendance of successful completion of continuing education credits. Final approval of continuing education credits shall be at the discretion of the Board.

(D) Record Keeping.

(1) The responsibility for maintaining records used to support credits claimed is that of the registrant. Records required to substantiate continuing education activities may include, but are not limited to:

- (a) dates of attendance; and
- (b) number of actual contact hours certified by the registrant; and
- (c) copies of registration receipts attached to continuing education submission form; and/or
- (d) appropriate proof of course completion.

(2) For additional credit as course instructor or trip leader, written proof that the event was conducted as described must be provided. Each continuing education event must have separate documentation.

(E) Exceptions.

(1) A registrant may apply for an exemption from or reduction of the continuing education requirement by submitting a request in writing to the Board, including a statement of the grounds upon which a reduction or exemption should be granted, along with the requested reduction or exemption. The Board may grant exemptions or reductions in the following cases:

- (a) if the registrant is serving on temporary active duty in the armed forces of the United States for a period of time exceeding one hundred twenty (120) consecutive days in a year, in which case the registrant shall be required to present evidence of sixteen (16) hours of continuing education; or
- (b) if the registrant is experiencing illness, physical disability, or other extenuating circumstances.

Fiscal Impact Statement:

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

Statement of Rationale:

The updated regulations will reduce regulatory burdens on registrants. First, the regulations would remove language regarding an appeal of a failed examination and the Board's authority to adjust the scoring based on the outcome of an appeal. The regulations would then increase the number of years a registration may be lapsed before a registrant is required to reactivate from five (5) to six (6) years and would remove the requirement that registrants lapsed over six years cannot reactivate and must, instead, file a new application. The regulations would establish the requirements for reactivation after six years, which include: the same requirements as reactivation within five years; a cap on the number of CE requirements that must be satisfied; and a certification that the registrant has not engaged in unlicensed practice during the pendency of the lapse. Finally, the regulations would reduce the number of continuing education contact hour requirements from 32 to 24 per biennium.

Document No. 4891

**DEPARTMENT OF LABOR, LICENSING AND REGULATION
BOARD OF LANDSCAPE ARCHITECTURAL EXAMINERS
CHAPTER 76**

Statutory Authority: 1976 Code Sections 40-1-70 and 40-28-90

76-6. Continuing Education.

Synopsis:

The South Carolina Board of Landscape Architectural Examiners proposes to amend R.76-6 to clarify continuing education requirements.

A Notice of Drafting was published in the *State Register* on April 26, 2019.

Instructions:

Replace regulation as shown below. All other items and sections remain unchanged.

Text:

76-6. Continuing Education.

A. Basic Requirements

1. Continuing Education Hours

a. A continuing education (CE) hour is defined as one continuous instructional hour (50 to 60 minutes of contact) spent in educational activities intended to increase or update the landscape architect's knowledge and competence. Continuing education shall be earned in the categories as described below.

b. Each licensee shall complete twenty (20) contact hours of continuing education activities during the two (2) year period immediately preceding each biennial renewal date as a condition for license renewal.

2. Continuing Education Topic Categories

a. Category 1 – A minimum of fifteen (15) hours of the required twenty (20) hours shall be earned by completing educational activities that directly address health, safety, and welfare. Health/Safety/Welfare (HSW) educational topics should address the performance of landscape architecture as defined in S.C. Code Section 40-28-20(6).

b. Category 2 – A maximum of five (5) hours of the required twenty (20) hours may be completed in practice related topics that enhance and expand the skills, knowledge, and abilities of practicing landscape architects to remain current and render competent professional service to clients and the public.

B. Approved Methods

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1. Category 1 – Structured educational activities include but are not limited to technical presentations, workshops, or seminars on landscape architectural subjects which are provided by independent sponsors or held in conjunction with colleges, universities, conventions or seminars. Landscape architectural activities such as those organized, sponsored, or approved by ASLA, CLARB, and LA CES are acceptable to the board. Structured educational activities can take place within a traditional classroom style setting, or in an online, interactive presentation. A minimum of fifteen (15) hours of the required twenty (20) hours shall be earned by completing structured educational activities.

2. Category 2 – Self directed study is defined as activities that include:

a. Public service activities that draw upon the Landscape Architect's expertise such as serving on design review boards, planning commissions, building code advisory boards, urban renewal boards, or code study committees.

b. Authoring papers, articles, or books.

c. Individualized seminars, tutorials, or video courses.

d. Teaching landscape architectural courses or seminars. Licensees may not claim credit for teaching the same course more than once per reporting period.

e. A maximum of five (5) of the twenty (20) hours may be earned in self-directed activities.

C. Records

1. Responsibility for documenting the fulfillment of the continuing education requirements rests with the licensee and the licensee must retain for a period of four (4) years evidence to support fulfillment of the requirements. Such evidence shall include certificates of completion, course materials, or sign-in sheets that provide verification of the number of hours of each course or program; or, for other activities which meet the requirements, such documentation as to ascertain their completion.

2. Each licensee shall submit, in a format requested by the board, an affidavit attesting to the fulfillment of continuing education requirements during the preceding period.

3. Each affidavit may be subject to audit for verification of compliance with requirements. Licensees must comply with audit deadlines and requirements.

4. The board has final authority with respect to approval of courses, credit, continuing education hour value of courses, and other value of credit.

5. The board may disallow claimed credit for continuing education hours. The licensee shall have forty-five (45) calendar days after notification of disallowance of credit to substantiate the original claim or earn other continuing education credit which fulfills minimum requirements. These hours will be credited to the delinquent renewal period.

6. Failure to fulfill the continuing education requirements, to file the required report or to comply with audit and verification requests shall be considered a violation of the Landscape Architectural Registration Law.

7. If a licensee exceeds the total continuing education required in any renewal period, the licensee may carry a maximum of ten (10) continuing education (CE) hours of Category 1 structured educational activities into the next renewal period.

D. Exemptions

Continuing education requirements may be waived for the following reasons:

1. New licensees shall be exempt for their initial licensure period.

2. A licensee serving on temporary active duty in the armed forces of the United States for a period of time exceeding one hundred twenty (120) consecutive days in a year shall be exempt from obtaining the continuing education hours required during that year.

3. Licensees experiencing physical disability, illness, or other extenuating circumstances as reviewed and approved by the board may be exempt. Supporting documentation must be furnished with any such exemption request made to the board thirty (30) days in advance of the renewal period.

4. Licensees who are Board approved for Emeritus Status shall be exempt from requirements for Continuing Education Hours.

Fiscal Impact Statement:

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

Statement of Rationale:

The updated regulations will clarify continuing education requirements.

Document No. 4892

**DEPARTMENT OF LABOR, LICENSING AND REGULATION
BOARD OF LONG TERM HEALTH CARE ADMINISTRATORS
CHAPTER 93**

Statutory Authority: 1976 Code Sections 40-1-70 and 40-35-60

93-50. General Definitions.

93-70. Additional combination of education and experience acceptable by the Board; Criminal Background Check; Completion of probation or parole.

Synopsis:

The South Carolina Board of Long Term Health Care Administrators proposes to amend R.93-50 to add a definition for Health Services Executive and R.93-70 to include Health Services Executive certificates as satisfying the education and experience requirements for nursing home administrators and community residential care facility administrators.

A Notice of Drafting was published in the *State Register* on June 28, 2019.

Instructions:

Replace regulation as shown below. All other items and sections remain unchanged.

Text:

93-50. General Definitions.

Whenever used in these regulations, unless expressly stated otherwise, or unless the context or subject matter requires a different meaning, the following terms shall have the respective meanings hereinafter set forth or indicated:

A. "Applicant" means a person who submits all materials necessary for evaluation of credentials including an application form, references, college or university transcripts, fees, and if applicable, a request for a provisional license.

B. "Continuing education credit" is defined as one contact hour of a planned program of teaching-learning that has been approved by an organization empowered by the Board to award credit for continuing education.

C. "Dual licensee" means a person who holds a license as a nursing home administrator and a community residential care facility administrator.

D. "Inactive license" means a license issued to an administrator who is not working as an administrator in a nursing home or as an administrator in a community residential care facility.

E. "Licensee" means an approved applicant who has passed the examination, as prescribed by the Board, has paid all the fees, and has been issued a current license by the Board.

F. "Person" means an individual and does not include the following: a firm, a corporation, an association, a partnership, or any other group of individuals.

G. "Practice of nursing home administration" means the managing, supervising or general administration of a nursing home.

H. "Practice of community residential care facility administration" means the managing, supervising or general administration of a community residential care facility.

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I. "Provisional license" means a temporary license that is issued when substantiated by need when an applicant who meets examination qualifications has been appointed the administrator of a nursing home or a community residential care facility which is without a licensed administrator in charge.

J. "Administrator-in-Training (AIT)" is a person participating in a Board approved training program within a nursing home or a community residential care facility under the supervision of a Board approved preceptor.

K. "Preceptor" is a person who is a licensed nursing home administrator or a licensed community residential care facility administrator and meets the requirements of the Board to supervise an administrator-in-training during the training period as delineated in 93-80.

L. "Health Services Executive" (HSE) is an individual who has completed the qualification requirements through the National Association of Long Term Care Administrator Boards (NAB). It is not a license and does not grant the holder of this qualification any additional privilege.

93-60. Board of Examiners; Officers and Duties.

A. The Board shall elect annually from among its members a chairman and vice-chairman who together shall constitute the executive committee.

B. The chairman shall preside at all meetings of the Board and shall sign all official documents of the Board, unless otherwise assigned to the Executive Director. In the absence of the chairman, the vice chairman shall preside at meetings and perform all duties usually performed by the chairman.

93-65. Operating a Facility Without a License.

A. No nursing home or community residential care facility within the State may operate except under the supervision of a licensed administrator.

B. Violation of the following standards will be considered an unprofessional act that is likely to harm the public.

(1) For combinations of Community Residential Care Facilities and/or other licensed facilities, having the same licensee, on one property, regardless of the number of beds, one full-time licensed administrator must be on site or available during normal business hours.

(2) For one Community Residential Care Facility with more than ten beds on one property, there must be a full-time licensed administrator on site or available during normal business hours.

(3) For one Community Residential Care Facility with ten beds or fewer on one property, there must be an administrator who is on site a minimum of twenty hours per week with time spent in the facility during normal business hours, equitably distributed daily.

(4) When a combination situation exists that does not comply with item (1) above, a second facility must be ten or fewer beds and no further than a forty mile radius of the combination site, and the work hours of the administrator must be equitably distributed daily during normal business hours.

93-70. Additional combination of education and experience acceptable by the Board; Criminal Background Check; Completion of probation or parole.

A. In addition to the requirements in South Carolina Code Ann. Section 40-35-40, the following combination of education and experience shall be acceptable for consideration:

(1) For a nursing home administrator, validation by the NAB as meeting the minimum education and experience requirements to be a qualified HSE.

(2) For a community residential care facility administrator:

(a) a South Carolina licensed nursing home administrator that has been a practicing nursing home administrator for two or more years shall not be required to have on-site work experience at a community residential care facility under the supervision of a licensed community residential care facility administrator; or

(b) validation by NAB as meeting the minimum education and experience requirements to be a qualified HSE.

B. A person applying to become an administrator of a facility licensed under this article including, but not limited to, nursing homes and community residential care facilities shall undergo a state fingerprint review to be conducted by the State Law Enforcement Division to determine state criminal history and a federal fingerprint review to be conducted by the Federal Bureau of Investigation to determine other criminal history. If a fee is charged by the Federal Bureau of Investigation for the fingerprint review, it must be paid by the person applying

for administrator. Where facility licensees are governmental agencies, the criminal background check must be obtained on the individual who is the administrator of the governmental facility. The Board may deny an application for licensure where the results of the check meet the misconduct provisions of these regulations.

C. Any applicant who has been declared ineligible to take the examination shall be given written notification by the Board of disqualification, the reasons, and his right to a hearing.

D. If an applicant has been convicted of a felony or misdemeanor involving moral turpitude by any state or federal court of competent jurisdiction thereof, the applicant may not be permitted to take the examination for licensure. If the applicant submits to the Board a copy of the certificate of pardon granted by the board of parole that indicates, among other things, that the applicant has completed all sentences including all periods of probation or parole, the Board may consider this document in its review of prior criminal convictions. In the case of a conviction in any jurisdiction wherein the laws do not provide for a certificate of pardon, an equivalent written statement or document may be submitted.

Fiscal Impact Statement:

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

Statement of Rationale:

The South Carolina Board of Long Term Health Care Administrators proposes to amend R.93-50 to add a definition for Health Services Executive and R.93-70 to include Health Services Executive certificates as satisfying the education and experience requirements for nursing home administrators and community residential care facility administrators.

Document No. 4893
DEPARTMENT OF LABOR, LICENSING AND REGULATION
OFFICE OF OCCUPATIONAL SAFETY AND HEALTH
 CHAPTER 71
 Statutory Authority: 1976 Code Section 41-15-220

Chapter 71, Article 1, Subarticle 3. Recording and Reporting Occupational Injuries and Illnesses.

Synopsis:

The South Carolina Department of Labor, Licensing and Regulation, Division of Labor, Office of Occupational Safety and Health, proposes to amend Chapter 71, Article 1, Subarticle 3, the Occupational Injury and Illness Recording and Reporting regulation, by rescinding the requirement for establishments with 250 or more employees to electronically submit their OSHA Form 300 (Log of Work-Related Injuries and Illnesses) and Form 301 (Injury and Illness Incident Report) to OSHA on an annual basis. South Carolina OSHA is also amending Chapter 71, Article 1, Subarticle 3, to require covered employers to electronically submit their employer identification number (EIN) with Form 300A to make the data more useful for OSHA and the Bureau of Labor Statistics (BLS) and to potentially reduce duplicative reporting burdens on employers in the future.

A Notice of Drafting was published in the *State Register* on February 22, 2019.

Instructions:

Replace regulation as shown below. All other items and sections remain unchanged.

Text:

SUBARTICLE 3

620 FINAL REGULATIONS

RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES

(Statutory Authority: 1976 Code Section 41-15-210)

Editor's Note

This subarticle became effective on March 9, 1978. Amendments to regulations 71-302, 71-305, 71-313, 71-314, 71-315, and 71-316 became effective on May 11, 1978. Amendments to R. 71-307 became effective on October 17, 1978. Amendments to R. 71-301 which revised paragraph N (3) and new paragraph N (4) became effective on April 14, 1981. Addition of new contents, and amendments to regulations 71-301, 71-316, and 71-317 became effective on March 7, 1983. Amendments to R. 71-313 and R. 71-316 became effective on October 10, 1984.

Subpart A *Purpose*

71-300. Purpose.

The purpose of this rule (Subarticle 3) is to require employers to record and report work-related fatalities, injuries, and illnesses.

Note to 71-300: Recording or reporting a work-related injury, illness, or fatality does not mean that the employer or employee was at fault, that an OSHA rule has been violated, or that the employee is eligible for workers' compensation or other benefits.

(Cross Reference: 1904.0)

Subpart B *Scope*

NOTE

Note to Subpart B: All employers covered by the Occupational Safety and Health Act (OSH Act) are covered by these Subarticle 3 regulations. However, most employers do not have to keep OSHA injury and illness records unless OSHA or the Bureau of Labor Statistics (BLS) informs them in writing that they must keep records. For example, employers with 10 or fewer employees and business establishments in certain industry classifications are partially exempt from keeping OSHA injury and illness records.

71-301. Partial exemption for employers with 10 or fewer employees.

(a) Basic requirement

(1) If your company had ten (10) or fewer employees at all times during the last calendar year, you do not need to keep OSHA injury and illness records unless OSHA or the BLS informs you in writing that you must keep records under 71-341 or 71-342. However, as required by 71-339, all employers covered by the OSH Act must report to OSHA any workplace incident that results in a fatality or the hospitalization of one or more employees.

(2) If your company had more than ten (10) employees at any time during the last calendar year, you must keep OSHA injury and illness records unless your establishment is classified as a partially exempt industry under 71-302.

(b) Implementation.

(1) Is the partial exemption for size based on the size of my entire company or on the size of an individual business establishment? The partial exemption for size is based on the number of employees in the entire company.

(2) How do I determine the size of my company to find out if I qualify for the partial exemption for size? To determine if you are exempt because of size, you need to determine your company's peak employment during the last calendar year. If you had no more than ten (10) employees at any time in the last calendar year, your company qualifies for the partial exemption for size.

(3) Does the partial exemption for size apply to public sector employers [State of South Carolina and any political subdivision thereof]? No, the above exemption of not more than ten (10) employees does not apply to employers in the public sector.
(Cross Reference: 1904.1)

71-302. Partial exemptions for establishments in certain industries.

(a) Basic requirement.

(1) If your business establishment is classified in a specific industry group listed in appendix A to this Subpart B, you do not need to keep OSHA injury and illness records unless the government asks you to keep the records under Sections 71-341 or 71-342. However, all employers must report to OSHA any workplace incident that results in an employee’s fatality, in-patient hospitalization, amputation, or loss of an eye (see Section 71-339).

(2) If one or more of your company’s establishments are classified in a non-exempt industry, you must keep OSHA injury and illness records for all of such establishments unless your company is partially exempted because of size under 71-301.

(b) Implementation:

(1) Is the partial industry classification exemption based on the industry classification of my entire company or on the classification of individual business establishments operated by my company? The partial industry classification exemption applies to individual business establishments. If a company has several business establishments engaged in different classes of business activities, some of the company’s establishments may be required to keep records, while others may be partially exempt.

(2) How do I determine the correct NAICS code for my company or for individual establishments? You can determine your NAICS code by using one of three methods, or you may contact your nearest OSHA office or State agency for help in determining your NAICS code:

(i) You can use the search feature at the U.S. Census Bureau NAICS main Web page: <http://www.census.gov/eos/www/naics/>. In the search box for the most recent NAICS, enter a keyword that describes your kind of business. A list of primary business activities containing that keyword and the corresponding NAICS codes will appear. Choose the one that most closely corresponds to your primary business activity, or refine your search to obtain other choices.

(ii) Rather than searching through a list of primary business activities, you may also view the most recent complete NAICS structure with codes and titles by clicking on the link for the most recent NAICS on the U.S. Census Bureau NAICS main Web page: <http://www.census.gov/eos/www/naics/>. Then click on the two-digit Sector code to see all the NAICS codes under that Sector. Then choose the six-digit code of your interest to see the corresponding definition, as well as cross-references and index items, when available.

(iii) If you know your old SIC code, you can also find the appropriate 2002 NAICS code by using the detailed conversion (concordance) between the 1987 SIC and 2002 NAICS available in Excel format for download at the “Concordances” link at the U.S. Census Bureau NAICS main Web page: <http://www.census.gov/eos/www/naics/>.

(3) Does the partial industry classification exemption apply to public sector employers [State of South Carolina and any political subdivision thereof]? No, the above exemption applies only to establishments in the private sector. The exemption does not apply to the State of South Carolina or any political subdivisions thereof.
(Cross Reference: 1904.2)

71-303. Keeping records for more than one agency.

If you create records to comply with another government agency’s injury and illness recordkeeping requirements, OSHA will consider those records as meeting OSHA’s Subarticle 3 recordkeeping requirements if OSHA accepts the other agency’s records under a memorandum of understanding with that agency, or if the other agency’s records contain the same information as this Subarticle 3 requires you to record. You may contact your nearest OSHA office or State agency for help in determining whether your records meet OSHA’s requirements.

(Cross-reference: 1904.3)

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NON-MANDATORY APPENDIX A TO SUBPART B—PARTIALLY EXEMPT INDUSTRIES

Employers are not required to keep OSHA injury and illness records for any establishment classified in the following North American Industry Classification Systems (NAICS) codes, unless they are asked in writing to do so by OSHA, the Bureau of Labor Statistics (BLS), or a state agency operating under the authority of OSHA or the BLS. All employers, including those partially exempted by reason of company size or industry classification, must report to OSHA any employee's fatality, in-patient hospitalization, amputation, or loss of an eye (see Section 71-339).

NAICS Code	Industry
4412	Other Motor Vehicle Dealers.
4431	Electronics and Appliance Stores.
4461	Health and Personal Care Stores.
4471	Gasoline Stations.
4481	Clothing Stores.
4482	Shoe Stores.
4483	Jewelry, Luggage, and Leather Goods Stores.
4511	Sporting Goods, Hobby, and Musical Instrument Stores.
4512	Book, Periodical, and Music Stores.
4531	Florists.
4532	Office Supplies, Stationery, and Gift Stores.
4812	Nonscheduled Air Transportation.
4861	Pipeline Transportation of Crude Oil.
4862	Pipeline Transportation of Natural Gas.
4869	Other Pipeline Transportation.
4879	Scenic and Sightseeing Transportation, Other.
4885	Freight Transportation Arrangement.
5111	Newspaper, Periodical, Book, and Directory Publishers.
5112	Software Publishers.
5121	Motion Picture and Video Industries.
5122	Sound Recording Industries.
5151	Radio and Television Broadcasting.
5172	Wireless Telecommunications Carriers (except Satellite).
5173	Telecommunications Resellers.
5179	Other Telecommunications.
5181	Internet Service Providers and Web Search Portals.
5182	Data Processing, Hosting, and Related Services.
5191	Other Information Services.
5211	Monetary Authorities-Central Bank.
5221	Depository Credit Intermediation.
5222	Nondepository Credit Intermediation.
5223	Activities Related to Credit Intermediation.
5231	Securities and Commodity Contracts Intermediation and Brokerage.
5232	Securities and Commodity Exchanges.
5239	Other Financial Investment Activities.
5241	Insurance Carriers.
5242	Agencies, Brokerages, and Other Insurance Related Activities.
5251	Insurance and Employee Benefit Funds.
5259	Other Investment Pools and Funds.
5312	Offices of Real Estate Agents and Brokers.
5331	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works).

5411	Legal Services.
5412	Accounting, Tax Preparation, Bookkeeping, and Payroll Services.
5413	Architectural, Engineering, and Related Services.
5414	Specialized Design Services.
5415	Computer Systems Design and Related Services.
5416	Management, Scientific, and Technical Consulting Services.
5417	Scientific Research and Development Services.
5418	Advertising and Related Services.
5511	Management of Companies and Enterprises.
5611	Office Administrative Services.
5614	Business Support Services.
5615	Travel Arrangement and Reservation Services.
5616	Investigation and Security Services.
6111	Elementary and Secondary Schools.
6112	Junior Colleges.
6113	Colleges, Universities, and Professional Schools.
6114	Business Schools and Computer and Management Training.
6115	Technical and Trade Schools.
6116	Other Schools and Instruction.
6117	Educational Support Services.
6211	Offices of Physicians.
6212	Offices of Dentists.
6213	Offices of Other Health Practitioners.
6214	Outpatient Care Centers.
6215	Medical and Diagnostic Laboratories.
6244	Child Day Care Services.
7114	Agents and Managers for Artists, Athletes, Entertainers, and Other Public Figures.
7115	Independent Artists, Writers, and Performers.
7213	Rooming and Boarding Houses.
7221	Full-Service Restaurants.
7222	Limited-Service Eating Places.
7224	Drinking Places (Alcoholic Beverages).
8112	Electronic and Precision Equipment Repair and Maintenance.
8114	Personal and Household Goods Repair and Maintenance.
8121	Personal Care Services.
8122	Death Care Services.
8131	Religious Organizations.
8132	Grantmaking and Giving Services.
8133	Social Advocacy Organizations.
8134	Civic and Social Organizations.
8139	Business, Professional, Labor, Political, and Similar Organizations.

(Cross Reference: Appendix A to Subpart B of Part 1904).

*Subpart C
Recording Criteria*

NOTE

Note to Subpart C: This Subpart describes the work-related injuries and illnesses that an employer must enter into the OSHA records and explains the OSHA forms that employers must use to record work-related fatalities, injuries, and illnesses.

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71-304. Recording criteria.

(a) Basic requirement. Each employer required by this Part to keep records of fatalities, injuries, and illnesses must record each fatality, injury and illness that:

- (1) Is work-related; and
- (2) Is a new case; and
- (3) Meets one or more of the general recording criteria of 71-307 or the application to specific cases of 71-308 through 71-312.

(b) Implementation.

(1) What sections of this rule describe recording criteria for recording work-related injuries and illnesses? The table below indicates which sections of the rule address each topic.

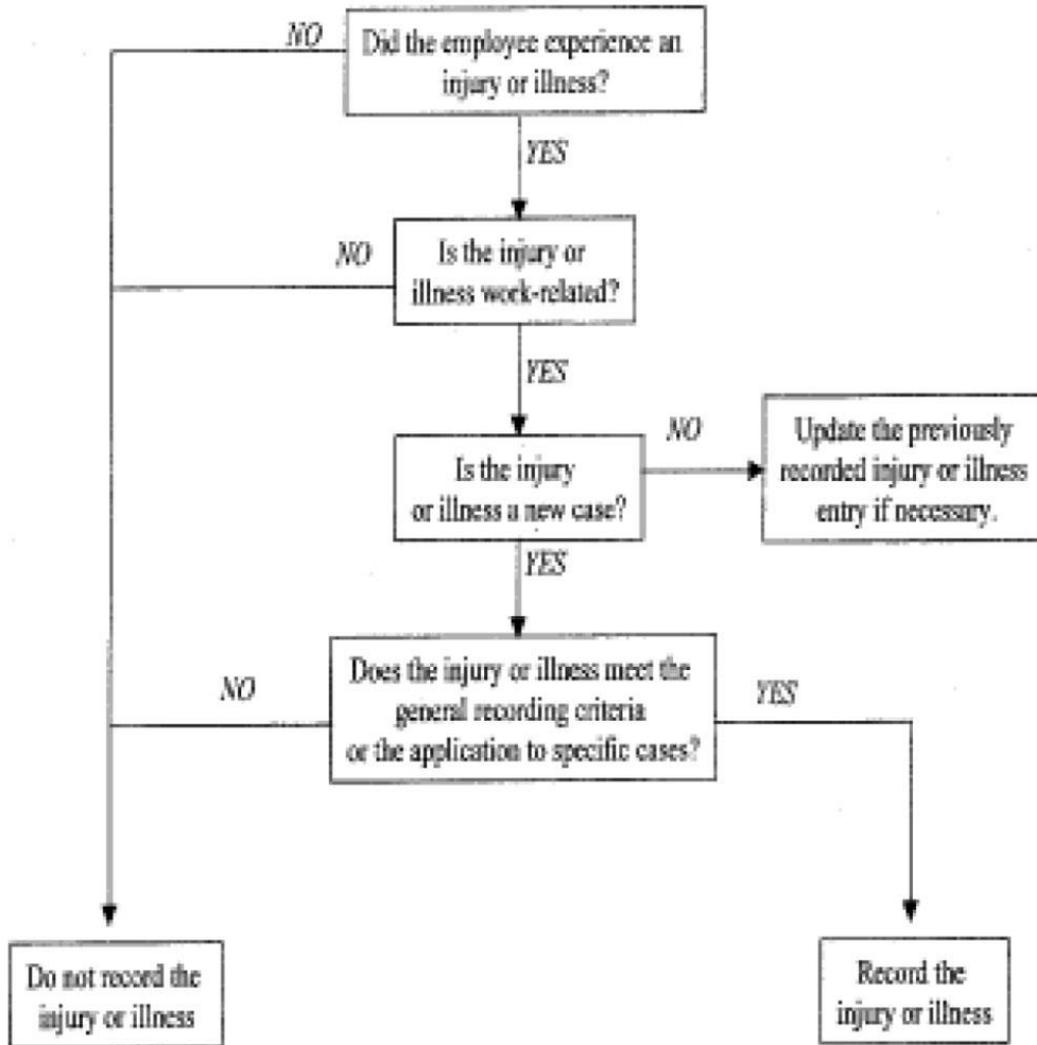
(i) Determination of work-relatedness. See 71-305.

(ii) Determination of a new case. See 71-306.

(iii) General recording criteria. See 71-307.

(iv) Additional criteria. (Needlestick and sharps injury cases, tuberculosis cases, hearing loss cases, medical removal cases, and musculoskeletal disorder cases). See 71-308 through 71-312.

(2) How do I decide whether a particular injury or illness is recordable? The decision tree for recording work-related injuries and illnesses below shows the steps involved in making this determination.



(Cross Reference 1904.4)

71-305. Determination of work-relatedness.

(a) Basic requirement. You must consider an injury or illness to be work-related if an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing injury or illness. Work-relatedness is presumed for injuries and illnesses resulting from events or exposures occurring in the work environment, unless an exception in 71-305(b)(2) specifically applies.

(b) Implementation.

(1) What is the “work environment”? OSHA defines the work environment as “the establishment and other locations where one or more employees are working or are present as a condition of their employment. The work environment includes not only physical location, but also the equipment or materials used by the employee during the course of his or her work.”

(2) Are there situations where an injury or illness occurs in the work environment and is not considered work-related? Yes, an injury or illness occurring in the work environment that falls under one of the following exceptions is not work-related, and therefore is not recordable.

71-305(b)(2)	You are not required to record injuries and illnesses if ...
(i)	At the time of the injury or illness, the employee was present in the work environment as a member of the general public rather than as an employee.
(ii)	The injury or illness involves signs or symptoms that surface at work but result solely from a non-work-related event or exposure that occurs outside the work environment.
(iii)	The injury or illness results solely from voluntary participation in a wellness program or in a medical, fitness, or recreational activity such as blood donation, physical examination, flu shot, exercise class, racquetball, or baseball.
(iv)	The injury or illness is solely the result of an employee eating, drinking, or preparing food or drink for personal consumption (whether bought on the employer’s premises or brought in). For example, if the employee is injured by choking on a sandwich while in the employer’s establishment, the case would not be considered work-related.
	NOTE: If the employee is made ill by ingesting food contaminated by workplace contaminants (such as lead), or gets food poisoning from food supplied by the employer, the case would be considered work-related.
(v)	The injury or illness is solely the result of an employee doing personal tasks (unrelated to their employment) at the establishment outside of the employee’s assigned working hours.
(vi)	The injury or illness is solely the result of personal grooming, self-medication for a non-work-related condition, or is intentionally self-inflicted.
(vii)	The injury or illness is caused by a motor vehicle accident and occurs on a company parking lot or company access road while the employee is commuting to or from work.
(viii)	The illness is the common cold or flu (Note: contagious diseases such as tuberculosis, brucellosis, hepatitis A, or plague are considered work-related if the employee is infected at work).
(ix)	The illness is a mental illness. Mental illness will not be considered work-related unless the employee voluntarily provides the employer with an opinion from a physician or other licensed health care professional with appropriate training and experience (psychiatrist, psychologist, psychiatric nurse practitioner, etc.) stating that the employee has a mental illness that is work-related.

(3) How do I handle a case if it is not obvious whether the precipitating event or exposure occurred in the work environment or occurred away from work? In these situations, you must evaluate the employee’s work

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duties and environment to decide whether or not one or more events or exposures in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing condition.

(4) How do I know if an event or exposure in the work environment “significantly aggravated” a preexisting injury or illness? A preexisting injury or illness has been significantly aggravated, for purposes of OSHA injury and illness recordkeeping, when an event or exposure in the work environment results in any of the following:

(i) Death, provided that the preexisting injury or illness would likely not have resulted in death but for the occupational event or exposure.

(ii) Loss of consciousness, provided that the preexisting injury or illness would likely not have resulted in loss of consciousness but for the occupational event or exposure.

(iii) One or more days away from work, or days of restricted work, or days of job transfer that otherwise would not have occurred but for the occupational event or exposure.

(iv) Medical treatment in a case where no medical treatment was needed for the injury or illness before the workplace event or exposure, or a change in medical treatment was necessitated by the workplace event or exposure.

(5) Which injuries and illness are considered pre-existing conditions? An injury or illness is a preexisting condition if it resulted solely from a non-work-related event or exposure that occurred outside the work environment.

(6) How do I decide whether an injury or illness is work-related if the employee is on travel status at the time the injury or illness occurs? Injuries or illnesses that occur while an employee is on travel status are work-related if, at the time of the injury or illness, the employee was engaged in work activities “in the interest of the employer.” Examples of such activities include travel to and from customer contacts, conducting job tasks, and entertaining or being entertained to transact, discuss, or promote business (work-related entertainment includes only entertainment activities being engaged in at the direction of the employer). Injuries or illnesses that occur when the employee is on travel status do not have to be recorded if they meet one of the exceptions listed below.

71-305(b)(6)	If the employee has...	You may use the following to determine if an injury or illness is work-related
(i)	checked into a hotel or motel for one or more days.	When a traveling employee checks into a hotel, motel or into another temporary residence, he or she establishes a “home away from home.” You must evaluate the employee’s activities after he or she checks into the hotel, motel, or other temporary residence for their work-relatedness in the same manner as you evaluate the activities of a non-traveling employee. When the employee checks into the temporary residence, he or she is considered to have left the work environment. When the employee begins work each day, he or she re-enters the work environment. If the employee has established a “home away from home” and is reporting to a fixed worksite each day, you also do not consider injuries or illnesses work-related if they occur while the employee is commuting between the temporary residence and the job location.
(ii)	taken a detour for personal reasons.	Injuries or illnesses are not considered work-related if they occur while the employee is on a personal detour from a reasonably direct route of travel (e.g., has taken a side trip for personal reasons).

(7) How do I decide if a case is work-related when the employee is working at home? Injuries and illnesses that occur while an employee is working at home, including work in a home office, will be considered work-related if the injury or illness occurs while the employee is performing work for pay or compensation in the home, and the injury or illness is directly related to the performance of work rather than to the general home environment or setting. For example, if an employee drops a box of work documents and injures his or her foot, the case is considered work-related. If an employee’s fingernail is punctured by a needle from a sewing machine used to perform garment work at home, becomes infected and requires medical treatment, the injury is considered work-related. If an employee is injured because he or she trips on the family dog while rushing to

answer a work phone call, the case is not considered work-related. If an employee working at home is electrocuted because of faulty home wiring, the injury is not considered work-related.
(Cross Reference: 1904.5)

71-306. Determination of new cases.

(a) Basic requirement. You must consider an injury or illness to be a “new case” if:

- (1) The employee has not previously experienced a recorded injury or illness of the same type that affects the same part of the body, or
- (2) The employee previously experienced a recorded injury or illness of the same type that affected the same part of the body but had recovered completely (all signs and symptoms had disappeared) from the previous injury or illness and an event or exposure in the work environment caused the signs or symptoms to reappear.

(b) Implementation.

(1) When an employee experiences the signs or symptoms of a chronic work-related illness, do I need to consider each recurrence of signs or symptoms to be a new case? No, for occupational illnesses where the signs or symptoms may recur or continue in the absence of an exposure in the workplace, the case must only be recorded once. Examples may include occupational cancer, asbestosis, byssinosis and silicosis.

(2) When an employee experiences the signs or symptoms of an injury or illness as a result of an event or exposure in the workplace, such as an episode of occupational asthma, must I treat the episode as a new case? Yes, because the episode or recurrence was caused by an event or exposure in the workplace, the incident must be treated as a new case.

(3) May I rely on a physician or other licensed health care professional to determine whether a case is a new case or a recurrence of an old case? You are not required to seek the advice of a physician or other licensed health care professional. However, if you do seek such advice, you must follow the physician or other licensed health care professional’s recommendation about whether the case is a new case or a recurrence. If you receive recommendations from two or more physicians or other licensed health care professionals, you must make a decision as to which recommendation is the most authoritative (best documented, best reasoned, or most authoritative), and record the case based upon that recommendation.

(Cross Reference: 1904.6)

71-307. General recording criteria.

(a) Basic requirement. You must consider an injury or illness to meet the general recording criteria, and therefore to be recordable, if it results in any of the following: death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, or loss of consciousness. You must also consider a case to meet the general recording criteria if it involves a significant injury or illness diagnosed by a physician or other licensed health care professional, even if it does not result in death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness.

(b) Implementation.

(1) How do I decide if a case meets one or more of the general recording criteria? A work-related injury or illness must be recorded if it results in one or more of the following:

- (i) Death. See 71-307(b)(2).
- (ii) Days away from work. See 71-307(b)(3).
- (iii) Restricted work or transfer to another job. See 71-307(b)(4).
- (iv) Medical treatment beyond first aid. See 71-307(b)(5).
- (v) Loss of consciousness. See 71-307(b)(6).
- (vi) A significant injury or illness diagnosed by a physician or other licensed health care professional.

See 71-307(b)(7).

(2) How do I record a work-related injury or illness that results in the employee’s death? You must record an injury or illness that results in death by entering a check mark on the OSHA 300 Log in the space for cases resulting in death. You must also report any work-related fatality to OSHA within eight (8) hours, as required by 71-339.

(3) How do I record a work-related injury or illness that results in days away from work? When an injury or illness involves one or more days away from work, you must record the injury or illness on the OSHA 300 Log with a check mark in the space for cases involving days away and an entry of the number of calendar days

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away from work in the number of days column. If the employee is out for an extended period of time, you must enter an estimate of the days that the employee will be away, and update the day count when the actual number of days is known.

(i) Do I count the day on which the injury occurred or the illness began? No, you begin counting days away on the day after the injury occurred or the illness began.

(ii) How do I record an injury or illness when a physician or other licensed health care professional recommends that the worker stay at home but the employee comes to work anyway? You must record these injuries and illnesses on the OSHA 300 Log using the check box for cases with days away from work and enter the number of calendar days away recommended by the physician or other licensed health care professional. If a physician or other licensed health care professional recommends days away, you should encourage your employee to follow that recommendation. However, the days away must be recorded whether the injured or ill employee follows the physician or licensed health care professional's recommendation or not. If you receive recommendations from two or more physicians or other licensed health care professionals, you may make a decision as to which recommendation is the most authoritative, and record the case based upon that recommendation.

(iii) How do I handle a case when a physician or other licensed health care professional recommends that the worker return to work but the employee stays at home anyway? In this situation, you must end the count of days away from work on the date the physician or other licensed health care professional recommends that the employee return to work.

(iv) How do I count weekends, holidays, or other days the employee would not have worked anyway? You must count the number of calendar days the employee was unable to work as a result of the injury or illness, regardless of whether or not the employee was scheduled to work on those day(s). Weekend days, holidays, vacation days or other days off are included in the total number of days recorded if the employee would not have been able to work on those days because of a work-related injury or illness.

(v) How do I record a case in which a worker is injured or becomes ill on a Friday and reports to work on a Monday, and was not scheduled to work on the weekend? You need to record this case only if you receive information from a physician or other licensed health care professional indicating that the employee should not have worked, or should have performed only restricted work, during the weekend. If so, you must record the injury or illness as a case with days away from work or restricted work, and enter the day counts, as appropriate.

(vi) How do I record a case in which a worker is injured or becomes ill on the day before scheduled time off such as a holiday, a planned vacation or a temporary plant closing? You need to record a case of this type only if you receive information from a physician or other licensed health care professional indicating that the employee should not have worked, or should have performed only restricted work, during the scheduled time off. If so, you must record the injury or illness as a case with days away from work or restricted work, and enter the day counts, as appropriate.

(vii) Is there a limit to the number of days away from work I must count? Yes, you may "cap" the total days away at 180 calendar days. You are not required to keep track of the number of calendar days away from work if the injury or illness resulted in more than 180 calendar days away from work and/or days of job transfer or restriction. In such a case, entering 180 in the total days away column will be considered adequate.

(viii) May I stop counting days if an employee who is away from work because of an injury or illness retires or leaves my company? Yes, if the employee leaves your company for some reason unrelated to the injury or illness, such as retirement, a plant closing, or to take another job, you may stop counting days away from work or days of restriction/job transfer. If the employee leaves your company because of the injury or illness, you must estimate the total number of days away or days of restriction/job transfer and enter the day count on the 300 Log.

(ix) If a case occurs in one year but results in days away during the next calendar year, do I record the case in both years? No, you only record the injury or illness once. You must enter the number of calendar days away for the injury or illness on the OSHA 300 Log for the year in which the injury or illness occurred. If the employee is still away from work because of the injury or illness when you prepare the annual summary, estimate the total number of calendar days you expect the employee to be away from work, use this number to calculate the total for the annual summary, and then update the initial log entry later when the day count is known or reaches the 180-day cap.

(4) How do I record a work-related injury or illness that results in restricted work or job transfer? When an injury or illness involves restricted work or job transfer but does not involve death or days away from work, you must record the injury or illness on the OSHA 300 Log by placing a check mark in the space for job transfer or restriction and an entry of the number of restricted or transferred days in the restricted work days column.

(i) How do I decide if the injury or illness resulted in restricted work? Restricted work occurs when, as the result of a work-related injury or illness:

(A) You keep the employee from performing one or more of the routine functions of his or her job, or from working the full workday that he or she would otherwise have been scheduled to work; or

(B) A physician or other licensed health care professional recommends that the employee not perform one or more of the routine functions of his or her job, or not work the full workday that he or she would otherwise have been scheduled to work.

(ii) What is meant by “routine functions”? For recordkeeping purposes, an employee’s routine functions are those work activities the employee regularly performs at least once per week.

(iii) Do I have to record restricted work or job transfer if it applies only to the day on which the injury occurred or the illness began? No, you do not have to record restricted work or job transfers if you, or the physician or other licensed health care professional, impose the restriction or transfer only for the day on which the injury occurred or the illness began.

(iv) If you or a physician or other licensed health care professional recommends a work restriction, is the injury or illness automatically recordable as a “restricted work” case? No, a recommended work restriction is recordable only if it affects one or more of the employee’s routine job functions. To determine whether this is the case, you must evaluate the restriction in light of the routine functions of the injured or ill employee’s job. If the restriction from you or the physician or other licensed health care professional keeps the employee from performing one or more of his or her routine job functions, or from working the full workday the injured or ill employee would otherwise have worked, the employee’s work has been restricted and you must record the case.

(v) How do I record a case where the worker works only for a partial work shift because of a work-related injury or illness? A partial day of work is recorded as a day of job transfer or restriction for recordkeeping purposes, except for the day on which the injury occurred or the illness began.

(vi) If the injured or ill worker produces fewer goods or services than he or she would have produced prior to the injury or illness but otherwise performs all of the routine functions of his or her work, is the case considered a restricted work case? No, the case is considered restricted work only if the worker does not perform all of the routine functions of his or her job or does not work the full shift that he or she would otherwise have worked.

(vii) How do I handle vague restrictions from a physician or other licensed health care professional, such as that the employee engage only in “light duty” or “take it easy for a week”? If you are not clear about the physician or other licensed health care professional’s recommendation, you may ask that person whether the employee can do all of his or her routine job functions and work all of his or her normally assigned work shift. If the answer to both of these questions is “Yes,” then the case does not involve a work restriction and does not have to be recorded as such. If the answer to one or both of these questions is “No,” the case involves restricted work and must be recorded as a restricted work case. If you are unable to obtain this additional information from the physician or other licensed health care professional who recommended the restriction, record the injury or illness as a case involving restricted work.

(viii) What do I do if a physician or other licensed health care professional recommends a job restriction meeting OSHA’s definition, but the employee does all of his or her routine job functions anyway? You must record the injury or illness on the OSHA 300 Log as a restricted work case. If a physician or other licensed health care professional recommends a job restriction, you should ensure that the employee complies with that restriction. If you receive recommendations from two or more physicians or other licensed health care professionals, you may make a decision as to which recommendation is the most authoritative, and record the case based upon that recommendation.

(ix) How do I decide if an injury or illness involved a transfer to another job? If you assign an injured or ill employee to a job other than his or her regular job for part of the day, the case involves transfer to another job.

Note: This does not include the day on which the injury or illness occurred.

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(x) Are transfers to another job recorded in the same way as restricted work cases? Yes, both job transfer and restricted work cases are recorded in the same box on the OSHA 300 Log. For example, if you assign, or a physician or other licensed health care professional recommends that you assign, an injured or ill worker to his or her routine job duties for part of the day and to another job for the rest of the day, the injury or illness involves a job transfer. You must record an injury or illness that involves a job transfer by placing a check in the box for job transfer.

(xi) How do I count days of job transfer or restriction? You count days of job transfer or restriction in the same way you count days away from work, using 71-307(b)(3)(i) to (viii), above. The only difference is that, if you permanently assign the injured or ill employee to a job that has been modified or permanently changed in a manner that eliminates the routine functions the employee was restricted from performing, you may stop the day count when the modification or change is made permanent. You must count at least one day of restricted work or job transfer for such cases.

(5) How do I record an injury or illness that involves medical treatment beyond first aid? If a work-related injury or illness results in medical treatment beyond first aid, you must record it on the OSHA 300 Log. If the injury or illness did not involve death, one or more days away from work, one or more days of restricted work, or one or more days of job transfer, you enter a check mark in the box for cases where the employee received medical treatment but remained at work and was not transferred or restricted.

(i) What is the definition of medical treatment? "Medical treatment" means the management and care of a patient to combat disease or disorder. For the purposes of Subarticle 3, medical treatment does not include:

(A) Visits to a physician or other licensed health care professional solely for observation or counseling;

(B) The conduct of diagnostic procedures, such as x-rays and blood tests, including the administration of prescription medications used solely for diagnostic purposes (e.g., eye drops to dilate pupils); or

(C) "First aid" as defined in paragraph (b)(5)(ii) of this section.

(ii) What is "first aid"? For the purposes of Subarticle 3, "first aid" means the following:

(A) Using a non-prescription medication at nonprescription strength (for medications available in prescription and non-prescription form, a recommendation by a physician or other licensed health care professional to use a non-prescription medication at prescription strength is considered medical treatment for recordkeeping purposes);

(B) Administering tetanus immunizations (other immunizations, such as Hepatitis B vaccine or rabies vaccine, are considered medical treatment);

(C) Cleaning, flushing or soaking wounds on the surface of the skin;

(D) Using wound coverings such as bandages, Band-Aids™, gauze pads, etc.; or using butterfly bandages or Steri-Strips™ (other wound closing devices such as sutures, staples, etc., are considered medical treatment);

(E) Using hot or cold therapy;

(F) Using any non-rigid means of support, such as elastic bandages, wraps, non-rigid back belts, etc. (devices with rigid stays or other systems designed to immobilize parts of the body are considered medical treatment for recordkeeping purposes);

(G) Using temporary immobilization devices while transporting an accident victim (e.g., splints, slings, neck collars, back boards, etc.);

(H) Drilling of a fingernail or toenail to relieve pressure, or draining fluid from a blister;

(I) Using eye patches;

(J) Removing foreign bodies from the eye using only irrigation or a cotton swab;

(K) Removing splinters or foreign material from areas other than the eye by irrigation, tweezers, cotton swabs or other simple means;

(L) Using finger guards;

(M) Using massages (physical therapy or chiropractic treatment are considered medical treatment for recordkeeping purposes); or

(N) Drinking fluids for relief of heat stress.

(iii) Are any other procedures included in first aid? No, this is a complete list of all treatments considered first aid for Subarticle 3 purposes.

(iv) Does the professional status of the person providing the treatment have any effect on what is considered first aid or medical treatment? No, OSHA considers the treatment listed in 71-307(b)(5)(ii) of this

Part to be first aid regardless of the professional status of the person providing the treatment. Even when these treatments are provided by a physician or other licensed health care professional, they are considered first aid for the purposes of Subarticle 3. Similarly, OSHA considers treatment beyond first aid to be medical treatment even when it is provided by someone other than a physician or other licensed health care professional.

(v) What if a physician or other licensed health care professional recommends medical treatment but the employee does not follow the recommendation? If a physician or other licensed health care professional recommends medical treatment, you should encourage the injured or ill employee to follow that recommendation. However, you must record the case even if the injured or ill employee does not follow the physician or other licensed health care professional's recommendation.

(6) Is every work-related injury or illness case involving a loss of consciousness recordable? Yes, you must record a work-related injury or illness if the worker becomes unconscious, regardless of the length of time the employee remains unconscious.

(7) What is a "significant" diagnosed injury or illness that is recordable under the general criteria even if it does not result in death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness? Work-related cases involving cancer, chronic irreversible disease, a fractured or cracked bone, or a punctured eardrum must always be recorded under the general criteria at the time of diagnosis by a physician or other licensed health care professional.

Note to 71-307: OSHA believes that most significant injuries and illnesses will result in one of the criteria listed in 71-307(a): death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness. However, there are some significant injuries, such as a punctured eardrum or fractured toe or rib, for which neither medical treatment nor work restrictions may be recommended. In addition, there are some significant progressive diseases, such as byssinosis, silicosis, and some types of cancer, for which medical treatment or work restrictions may not be recommended at the time of diagnosis but are likely to be recommended as the disease progresses. OSHA believes that cancer, chronic irreversible diseases, fractured or cracked bones, and punctured eardrums are generally considered significant injuries and illnesses, and must be recorded at the initial diagnosis even if medical treatment or work restrictions are not recommended, or are postponed, in a particular case.

(Cross Reference: 1904.7)

71-308. Recording criteria for needlestick and sharps injuries.

(a) Basic requirement. You must record all work-related needlestick injuries and cuts from sharp objects that are contaminated with another person's blood or other potentially infectious material (as defined by 29 CFR 1910.1030). You must enter the case on the OSHA 300 Log as an injury. To protect the employee's privacy, you may not enter the employee's name on the OSHA 300 Log (see the requirements for privacy cases in paragraphs, 71-329(b)(6) through 71-329(b)(9)).

(b) Implementation.

(1) What does "other potentially infectious material" mean? The term "other potentially infectious materials" is defined in the OSHA Bloodborne Pathogens standard at 1910.1030(b). These materials include:

(i) Human bodily fluids, tissues and organs, and

(ii) Other materials infected with the HIV or hepatitis B (HBV) virus such as laboratory cultures or tissues from experimental animals.

(2) Does this mean that I must record all cuts, lacerations, punctures, and scratches? No, you need to record cuts, lacerations, punctures, and scratches only if they are work-related and involve contamination with another person's blood or other potentially infectious material. If the cut, laceration, or scratch involves a clean object, or a contaminant other than blood or other potentially infectious material, you need to record the case only if it meets one or more of the recording criteria in 71-307.

(3) If I record an injury and the employee is later diagnosed with an infectious bloodborne disease, do I need to update the OSHA 300 Log? Yes, you must update the classification of the case on the OSHA 300 Log if the case results in death, days away from work, restricted work, or job transfer. You must also update the description to identify the infectious disease and change the classification of the case from an injury to an illness.

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(4) What if one of my employees is splashed or exposed to blood or other potentially infectious material without being cut or scratched? Do I need to record this incident? You need to record such an incident on the OSHA 300 Log as an illness if:

- (i) It results in the diagnosis of a bloodborne illness, such as HIV, hepatitis B, or hepatitis C; or
- (ii) It meets one or more of the recording criteria in 71-307.

(Cross Reference: 1904.8)

71-309. Recording criteria for cases involving medical removal under OSHA standards.

(a) Basic requirement. If an employee is medically removed under the medical surveillance requirements of an OSHA standard, you must record the case on the OSHA 300 Log.

(b) Implementation.

(1) How do I classify medical removal cases on the OSHA 300 Log? You must enter each medical removal case on the OSHA 300 Log as either a case involving days away from work or a case involving restricted work activity, depending on how you decide to comply with the medical removal requirement. If the medical removal is the result of a chemical exposure, you must enter the case on the OSHA 300 Log by checking the “poisoning” column.

(2) Do all of OSHA’s standards have medical removal provisions? No, some OSHA standards, such as the standards covering bloodborne pathogens and noise, do not have medical removal provisions. Many OSHA standards that cover specific chemical substances have medical removal provisions. These standards include, but are not limited to lead, cadmium, methylene chloride, formaldehyde, and benzene.

(3) Do I have to record a case where I voluntarily removed the employee from exposure before the medical removal criteria in an OSHA standard is met? No, if the case involves voluntary medical removal before the medical removal levels required by an OSHA standard, you do not need to record the case on the OSHA 300 Log.

(Cross Reference: 1904.9)

71-310. Recording criteria for cases involving occupational hearing loss.

(a) Basic requirement.

If an employee’s hearing test (audiogram) reveals that the employee has experienced a work-related Standard Threshold Shift (STS) in hearing in one or both ears, and the employee’s total hearing level is 25 decibels (dB) or more above audiometric zero (averaged at 2000, 3000, and 4000 Hz) in the same ear(s) as the STS, you must record the case on the OSHA 300 Log.

(b) Implementation.

(1) What is a Standard Threshold Shift? A Standard Threshold Shift, or STS, is defined in the occupational noise exposure standard at 29 CFR 1910.95(g)(10)(i) as a change in hearing threshold, relative to the baseline audiogram for that employee, of an average of 10 decibels (dB) or more at 2000, 3000, and 4000 hertz (Hz) in one or both ears.

(2) How do I evaluate the current audiogram to determine whether an employee has an STS and a 25-dB hearing level?

(i) STS. If the employee has never previously experienced a recordable hearing loss, you must compare the employee’s current audiogram with that employee’s baseline audiogram. If the employee has previously experienced a recordable hearing loss, you must compare the employee’s current audiogram with the employee’s revised baseline audiogram (the audiogram reflecting the employee’s previous recordable hearing loss case).

(ii) 25-dB loss. Audiometric test results reflect the employee’s overall hearing ability in comparison to audiometric zero. Therefore, using the employee/s current audiogram, you must use the average hearing level at 2000, 3000, and 4000 Hz to determine whether or not the employee’s total hearing level is 25 dB or more.

(3) May I adjust the current audiogram to reflect the effects of aging on hearing? Yes. When you are determining whether an STS has occurred, you may age adjust the employee’s current audiogram results by using Tables F-1 or F-2, as appropriate, in Appendix F of 29 CFR 1910.95. You may not use an age adjustment when determining whether the employee’s total hearing level is 25 dB or more above audiometric zero.

(4) Do I have to record the hearing loss if I am going to retest the employee’s hearing? No, if you retest the employee’s hearing within 30 days of the first test, and the first test does not confirm the recordable STS, you are not required to record the hearing loss case on the OSHA 300 Log. If the test confirms the recordable STS,

you must record the hearing loss illness within seven (7) calendar days of the retest. If subsequent audiometric testing performed under the testing requirements of the 1910.95 noise standard indicates that an STS is not persistent, you may erase or line-out the recorded entry.

(5) Are there any special rules for determining whether a hearing loss case is work-related? No. You must use the rules in 71-305 to determine if the hearing loss is work-related. If an event or exposure in the work environment either caused or contributed to the hearing loss, or significantly aggravated a pre-existing hearing loss, you must consider the case to be work related.

(6) If a physician or other licensed health care professional determines the hearing loss is not work-related, do I still need to record the case? If a physician or other licensed health care professional determines, following the rules set out in Section 71-305, that the hearing loss is not work-related or that occupational noise exposure did not significantly aggravate the hearing loss, you do not have to consider the case work-related or to record the case on the OSHA 300 Log.

(7) How do I complete the 300 Log for a hearing loss case? When you enter a recordable hearing loss case on the OSHA 300 Log, you must check the column for hearing loss. (Note: S.C. Code of Regulations Section 71-310(b)(7) is effective beginning January 1, 2004.)

(Cross Reference: 1904.10)

71-311. Recording criteria for work-related tuberculosis cases.

(a) Basic requirement. If any of your employees has been occupationally exposed to anyone with a known case of active tuberculosis (TB), and that employee subsequently develops a tuberculosis infection, as evidenced by a positive skin test or diagnosis by a physician or other licensed health care professional, you must record the case on the OSHA 300 Log by checking the “respiratory condition” column.

(b) Implementation.

(1) Do I have to record, on the Log, a positive TB skin test result obtained at a pre-employment physical? No, you do not have to record it because the employee was not occupationally exposed to a known case of active tuberculosis in your workplace.

(2) May I line-out or erase a recorded TB case if I obtain evidence that the case was not caused by occupational exposure? Yes, you may line-out or erase the case from the Log under the following circumstances:

(i) The worker is living in a household with a person who has been diagnosed with active TB;

(ii) The Public Health Department has identified the worker as a contact of an individual with a case of active TB unrelated to the workplace; or

(iii) A medical investigation shows that the employee’s infection was caused by exposure to TB away from work, or proves that the case was not related to the workplace TB exposure.

(Cross Reference: 1904.11)

71-329. Forms.

(a) Basic requirement. You must use OSHA 300, 300-A, and 301 forms, or equivalent forms, for recordable injuries and illnesses. The OSHA 300 form is called the Log of Work-Related Injuries and Illnesses, the 300-A is the Summary of Work-Related Injuries and Illnesses, and the OSHA 301 form is called the Injury and Illness Incident Report.

(b) Implementation.

(1) What do I need to do to complete the OSHA 300 Log? You must enter information about your business at the top of the OSHA 300 Log, enter a one or two line description for each recordable injury or illness and summarize this information on the OSHA 300-A at the end of the year.

(2) What do I need to do to complete the OSHA 301 Incident Report? You must complete an OSHA 301 Incident Report form, or an equivalent form, for each recordable injury or illness entered on the OSHA 300 Log.

(3) How quickly must each injury or illness be recorded? You must enter each recordable injury or illness on the OSHA 300 Log and 301 Incident Report within seven [7] calendar days of receiving information that a recordable injury or illness has occurred.

(4) What is an equivalent form? An equivalent form is one that has the same information, is as readable and understandable, and is completed using the same instructions as the OSHA form it replaces. Many employers use an insurance form instead of the OSHA 301 Incident Report, or supplement an insurance form by adding any additional information required by OSHA.

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(5) May I keep my records on a computer? Yes, if the computer can produce equivalent forms when they are needed, as described under 71-335 and 71-340; you may keep your records using the computer system.

(6) Are there situations where I do not put the employee's name on the forms for privacy reasons? Yes, if you have a "privacy concern case," you may not enter the employee's name on the OSHA 300 Log. Instead, enter "privacy case" in the space normally used for the employee's name. This will protect the privacy of the injured or ill employee when another employee, a former employee, or an authorized employee representative is provided access to the OSHA 300 Log under 71-335(b)(2). You must keep a separate, confidential list of the case numbers and employee names for your privacy concern cases so you can update the cases and provide the information to the government if asked to do so.

(7) How do I determine if an injury or illness is a privacy concern case? You must consider the following injuries or illnesses to be privacy concern cases:

- (i) An injury or illness to an intimate body part or the reproductive system;
- (ii) An injury or illness resulting from a sexual assault;
- (iii) Mental illnesses;
- (iv) HIV infection, hepatitis, or tuberculosis;
- (v) Needlestick injuries and cuts from sharp objects that are contaminated with another person's blood or other potentially infectious material (see 71-308 for definitions); and
- (vi) Other illnesses, if the employee voluntarily requests that his or her name not be entered on the log.

(8) May I classify any other types of injuries and illnesses as privacy concern cases? No, this is a complete list of all injuries and illnesses considered privacy concern cases for Subarticle 3 purposes.

(9) If I have removed the employee's name, but still believe that the employee may be identified from the information on the forms, is there anything else that I can do further protect the employee's privacy? Yes, if you have a reasonable basis to believe that information describing the privacy concern case may be personally identifiable even though the employee's name has been omitted, you may use discretion in describing the injury or illness on both the OSHA 300 and 301 forms. You must enter enough information to identify the cause of the incident and the general severity of the injury or illness, but you do not need to include details of an intimate or private nature. For example, a sexual assault case could be described as "injury from assault," or an injury to a reproductive organ could be described as "lower abdominal injury."

(10) What must I do to protect employee privacy if I wish to provide access to the OSHA Forms 300 and 301 to persons other than government representatives, employees, former employees or authorized representatives? If you decide to voluntarily disclose the Forms to persons other than government representatives, employees, former employees or authorized representatives (as required by 71-335 and 71-340), you must remove or hide the employees' names and other personally identifying information, except for the following cases. You may disclose the Forms with personally identifying information only:

- (i) to an auditor or consultant hired by the employer to evaluate the safety and health program;
 - (ii) to the extent necessary for processing a claim for workers' compensation or other insurance benefits;
- or
- (iii) to a public health authority or law enforcement agency for uses and disclosures for which consent, an authorization, or opportunity to agree or object is not required under Department of Health and Human Services Standards for Privacy of Individually Identifiable Health Information, 45 CFR 164.512.
- (Cross Reference: 1904.29)

Subpart D

Other OSHA Injury and Illness Recordkeeping Requirements

71-330. Multiple business establishments.

(a) Basic requirement. You must keep a separate OSHA 300 Log for each establishment that is expected to be in operation for one year or longer.

(b) Implementation.

(1) Do I need to keep OSHA injury and illness records for short-term establishments (i.e., establishments that will exist for less than a year)? Yes, however, you do not have to keep a separate OSHA 300 Log for each such establishment. You may keep one OSHA 300 Log that covers all of your short-term establishments. You

may also include the short-term establishments' recordable injuries and illnesses on an OSHA 300 Log that covers short-term establishments for individual company divisions or geographic regions.

(2) May I keep the records for all of my establishments at my headquarters location or at some other central location? Yes, you may keep the records for an establishment at your headquarters or other central location if you can:

(i) Transmit information about the injuries and illnesses from the establishment to the central location within seven (7) calendar days of receiving information that a recordable injury or illness has occurred; and

(ii) Produce and send the records from the central location to the establishment within the time frames required by 71-335 and 71-340 when you are required to provide records to a government representative, employees, former employees or employee representatives.

(3) Some of my employees work at several different locations or do not work at any of my establishments at all. How do I record cases for these employees? You must link each of your employees with one of your establishments, for recordkeeping purposes. You must record the injury and illness on the OSHA 300 Log of the injured or ill employee's establishment or on an OSHA 300 Log that covers that employee's short-term establishment.

(4) How do I record an injury or illness when an employee of one of my establishments is injured or becomes ill while visiting or working at another of my establishments, or while working away from any of my establishments? If the injury or illness occurs at one of your establishments, you must record the injury or illness on the OSHA 300 Log of the establishment at which the injury or illness occurred. If the employee is injured or becomes ill and is not at one of your establishments, you must record the case on the OSHA 300 Log at the establishment at which the employee normally works.

(Cross Reference: 1904.30)

71-331. Covered employees.

(a) Basic requirement. You must record on the OSHA 300 Log the recordable injuries and illnesses of all employees on your payroll, whether they are labor, executive, hourly, salary, part-time, seasonal, or migrant workers. You also must record the recordable injuries and illnesses that occur to employees who are not on your payroll if you supervise these employees on a day-to-day basis. If your business is organized as a sole proprietorship or partnership, the owner or partners are not considered employees for recordkeeping purposes.

(b) Implementation.

(1) If a self-employed person is injured or becomes ill while doing work at my business, do I need to record the injury or illness? No, self-employed individuals are not covered by the OSHA Act or this regulation.

(2) If I obtain employees from a temporary help service, employee leasing service, or personnel supply service; do I have to record an injury or illness occurring to one of those employees? You must record these injuries and illnesses if you supervise these employees on a day-to-day basis.

(3) If an employee in my establishment is a contractor's employee, must I record an injury or illness occurring to that employee? If the contractor's employee is under the day-to-day supervision of the contractor, the contractor is responsible for recording the injury or illness. If you supervise the contractor employee's work on a day-to-day basis, you must record the injury or illness.

(4) Must the personnel supply service, temporary help service, employee leasing service, or contractor also record the injuries or illnesses occurring to temporary, leased or contract employees that I supervise on a day-to-day basis? No, you and the temporary help service, employee leasing service, personnel supply service, or contractor should coordinate your efforts to make sure that each injury and illness is recorded only once; either on your OSHA 300 Log (if you provide day-to-day supervision) or on the other employer's OSHA 300 Log (if that company provides day-to-day supervision).

(Cross Reference: 1904.31)

71-332. Annual summary.

(a) Basic requirement. At the end of each calendar year, you must:

(1) Review the OSHA 300 Log to verify that the entries are complete and accurate, and correct any deficiencies identified;

(2) Create an annual summary of injuries and illnesses recorded on the OSHA 300 Log;

(3) Certify the summary; and

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(4) Post the annual summary.

(b) Implementation.

(1) How extensively do I have to review the OSHA 300 Log entries at the end of the year? You must review the entries as extensively as necessary to make sure that they are complete and correct.

(2) How do I complete the annual summary? You must:

(i) Total the columns on the OSHA 300 Log (if you had no recordable cases, enter zeros for each column total); and

(ii) Enter the calendar year covered, the company's name, establishment name, establishment address, annual average number of employees covered by the OSHA 300 Log, and the total hours worked by all employees covered by the OSHA 300 Log.

(iii) If you are using an equivalent form other than the OSHA 300-A summary form, as permitted under 71-306(b)(4), the summary you use must also include the employee access and employer penalty statements found on the OSHA 300-A Summary form.

(3) How do I certify the annual summary? A company executive must certify that he or she has examined the OSHA 300 Log and that he or she reasonably believes, based on his or her knowledge of the process by which the information was recorded that the annual summary is correct and complete.

(4) Who is considered a company executive? The company executive who certifies the log must be one of the following persons:

(i) An owner of the company (only if the company is a sole proprietorship or partnership);

(ii) An officer of the corporation;

(iii) The highest ranking company official working at the establishment; or

(iv) The immediate supervisor of the highest ranking company official working at the establishment;

(5) How do I post the annual summary? You must post a copy of the annual summary in each establishment in a conspicuous place or places where notices to employees are customarily posted. You must ensure that the posted annual summary is not altered, defaced or covered by other material.

(6) When do I have to post the annual summary? You must post the summary no later than February 1 of the year following the year covered by the records and keep the posting in place until April 30.

(Cross Reference: 1904.32)

71-333. Retention and updating.

(a) Basic requirement. You must save the OSHA 300 Log, the privacy case list (if one exists), the annual summary, and the OSHA 301 Incident Report forms for five (5) years following the end of the calendar year that these records cover.

(b) Implementation.

(1) Do I have to update OSHA 300 Log during the five-year storage period? Yes, during the storage period, you must update your stored OSHA 300 Logs to include newly discovered recordable injuries or illnesses and to show any changes that have occurred in the classification of previously recorded injuries and illnesses. If the description or outcome of a case changes, you must remove or line out the original entry and enter the new information.

(2) Do I have to update the annual summary? No, you are not required to update the annual summary, but you may do so if you wish.

(3) Do I have to update the OSHA 301 Incident Reports? No, you are not required to update the OSHA 301 Incident Reports, but you may do so if you wish.

(Cross Reference: 1904.33)

71-334. Change in business ownership.

If your business changes ownership, you are responsible for recording and reporting work-related injuries and illnesses only for that period of the year during which you owned the establishment. You must transfer the Subarticle 3 records to the new owner. The new owner must save all records of the establishment kept by the prior owner, as required by 71-333 of this Part, but need not update or correct the records of the prior owner.

(Cross Reference: 1904.34).

71-335. Employee involvement.

(a) Basic requirement. Your employees and their representatives must be involved in the recordkeeping system in several ways.

(1) You must inform each employee of how he or she is to report a work-related injury or illness to you.

(2) You must provide employees with the information described in paragraph (b)(1)(iii) of this section.

(3) You must provide access to your injury and illness records for your employees and their representatives as described in paragraph (b)(2) of this section.

(b) Implementation.

(1) What must I do to make sure that employees report work-related injuries and illnesses to me?

(i) You must establish a reasonable procedure for employees to report work-related injuries and illnesses promptly and accurately. A procedure is not reasonable if it would deter or discourage a reasonable employee from accurately reporting a workplace injury or illness;

(ii) You must inform each employee of your procedure for reporting work-related injuries and illnesses;

(iii) You must inform each employee that:

(A) Employees have the right to report work-related injuries and illnesses; and

(B) Employers are prohibited from discharging or in any manner discriminating against employees for reporting work-related injuries or illnesses; and

(iv) You must not discharge or in any manner discriminate against any employee for reporting a work-related injury or illness.

(2) Do I have to give my employees and their representatives access to the OSHA injury and illness records?

Yes, your employees, former employees, their personal representatives, and their authorized employee representatives have the right to access the OSHA injury and illness records, with some limitations, as discussed below.

(i) Who is an authorized employee representative? An authorized employee representative is an authorized collective bargaining agent of employees.

(ii) Who is a “personal representative” of an employee or former employee? A personal representative is:

(A) Any person that the employee or former employee designates as such, in writing; or

(B) The legal representative of a deceased or legally incapacitated employee or former employee.

(iii) If an employee or representative asks for access to the OSHA 300 Log, when do I have to provide it? When an employee, former employee, personal representative, or authorized employee representative asks for copies for your current or stored OSHA 300 Log(s) for an establishment the employee or former employee has worked in, you must give the requester a copy of the relevant OSHA 300 Log(s) by the end of the next business day.

(iv) May I remove the names of the employees or any other information from the OSHA 300 Log before I give copies to an employee, former employee, or employee representative? No, you must leave the names on the 300 Log. However, to protect the privacy of injured and ill employees, you may not record the employee’s name on the OSHA 300 Log for certain “privacy concern cases,” as specified in 71-329(b)(6) through 71-329(b)(9).

(v) If an employee or representative asks for access to the OSHA 301 Incident Report, when do I have to provide it?

(A) When an employee, former employee, or personal representative asks for a copy of the OSHA 301 Incident Report describing an injury or illness to that employee or former employee, you must give the requester a copy of the OSHA 301 Incident Report containing that information by the end of the next business day.

(B) When an authorized employee representative asks for copies of the OSHA 301 Incident Reports for an establishment where the agent represents employees under a collective bargaining agreement, you must give copies of those forms to the authorized employee representative within 7 calendar days. You are only required to give the authorized employee representative information from the OSHA 301 Incident Report section titled “Tell us about the case.” You must remove all other information from the copy of the OSHA 301 Incident Report or the equivalent substitute form that you give to the authorized employee representative.

(vi) May I charge for the copies? No, you may not charge for these copies the first time they are provided. However, if one of the designated persons asks for additional copies, you may assess a reasonable charge for retrieving and copying the records.

(Cross Reference: 1904.35)

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71-336. Prohibition against discrimination.

In addition to Section 71-335, section 11(c) of the OSH Act also prohibits you from discriminating against an employee for reporting a work-related fatality, injury, or illness. That provision of the Act also protects the employee who files a safety and health complaint, asks for access to the Subarticle 3 records, or otherwise exercises any rights afforded by the OSH Act.

(Cross Reference: 1904.36)

71-337. State recordkeeping regulations.

(a) Basic requirement. Some States operate their own OSHA programs, under the authority of a State plan as approved by OSHA. States operating OSHA-approved State plans must have occupational injury and illness recording and reporting requirements that are substantially identical to the requirements in this part (see 29 CFR 1902.3(j), 29 CFR 1902.7, and 29 CFR 1956.10(i)).

(b) Implementation.

(1) State-Plan States must have the same requirements as Federal OSHA for determining which injuries and illnesses are recordable and how they are recorded.

(2) For other Subarticle 3 provisions (for example, industry exemptions, reporting of fatalities and hospitalizations, record retention, or employee involvement), State-Plan State requirements may be more stringent than or supplemental to the Federal requirements, but because of the unique nature of the national recordkeeping program, States must consult with and obtain approval of any such requirements.

(3) Although State and local government employees are not covered Federally, all State-Plan States must provide coverage, and must develop injury and illness statistics, for these workers. State Plan recording and reporting requirements for State and local government entities may differ from those for the private sector but must meet the requirements of paragraphs 71-337(b)(1) and (b)(2).

(4) A State Plan State may not issue a variance to a private sector employer and must recognize all variances issued by Federal OSHA.

(5) A State Plan State may only grant an injury and illness recording and reporting variance to a state or local government employer within the State after obtaining approval to grant the variance from Federal OSHA. (Cross-reference: 1904.37)

SUBPART E

Reporting Fatality, Injury and Illness Information to the Government

71-339. Reporting fatalities, hospitalizations, amputations, and losses of an eye as a result of work-related incidents to OSHA.

(a) Basic requirement.

(1) Within eight (8) hours after the death of any employee as a result of a work-related incident, you must report the fatality to the South Carolina Occupational Safety and Health Administration (SC OSHA), Division of the South Carolina Department of Labor, Licensing and Regulation, Columbia, South Carolina, 29211.

(2) Within twenty-four (24) hours after the in-patient hospitalization of one or more employees or an employee's amputation or an employee's loss of an eye, as a result of a work-related incident, you must report the in-patient hospitalization, amputation, or loss of an eye to SC OSHA.

(3) You must report the fatality, in-patient hospitalization, amputation, or loss of an eye using one of the following methods:

(i) By telephone (1-803-896-7672) or in person to the South Carolina OSHA Office.

(ii) By telephone to the OSHA toll-free central telephone number, 1-800-321-OSHA (1-800-321-6742).

(b) Implementation.

(1) If the Area Office is closed, may I report the fatality, in-patient hospitalization, amputation, or loss of an eye by leaving a message on OSHA's answering machine, faxing the Area office, or sending an e-mail?

No, if the Area Office is closed, you must report the fatality, in-patient hospitalization, amputation, or loss of an eye using either 1-803-896-7672 or 1-800-321-OSHA (1-800-321-6742).

(2) What information do I need to give to OSHA about the in-patient hospitalization, amputation, or loss of an eye? You must give OSHA the following information for each fatality, in-patient hospitalization, amputation, or loss of an eye:

- (i) The establishment name;
- (ii) The location of the work-related incident;
- (iii) The time of the work-related incident;
- (iv) The type of reportable event (i.e. fatality, in-patient hospitalization, amputation, or loss of an eye);
- (v) The number of employees who suffered a fatality, in-patient hospitalization, amputation, or loss of an eye;
- (vi) The names of the employees who suffered a fatality, in-patient hospitalization, amputation, or loss of an eye;
- (vii) Your contact person and his or her phone number; and
- (viii) A brief description of the work-related incident.

(3) Do I have to report the fatality, in-patient hospitalization, amputation, or loss of an eye if it resulted from a motor vehicle accident on a public street or highway? If the motor vehicle accident occurred in a construction work zone, you must report the fatality, in-patient hospitalization, amputation, or loss of an eye. If the motor vehicle accident occurred on a public street or highway, but not in a construction work zone, you do not have to report the fatality, in-patient hospitalization, amputation, or loss of an eye to OSHA. However, the fatality, in-patient hospitalization, amputation, or loss of an eye must be recorded on your OSHA injury and illness records, if you are required to keep such records.

(4) Do I have to report the fatality, in-patient hospitalization, amputation, or loss of an eye if it occurred on a commercial or public transportation system? No, you do not have to report the fatality, in-patient hospitalization, amputation, or loss of an eye to OSHA if it occurred on a commercial or public transportation system (e.g., airplane, train, subway, or bus). However, the fatality, in-patient hospitalization, amputation, or loss of an eye must be recorded on your OSHA injury and illness records, if you are required to keep such records.

(5) Do I have to report a work-related fatality or in-patient hospitalization caused by a heart attack? Yes, your local OSHA Area Office director will decide whether to investigate the event, depending on the circumstances of the heart attack.

(6) What if the fatality, in-patient hospitalization, amputation, or loss of an eye does not occur during or right after the work-related incident? You must only report a fatality to OSHA if the fatality occurs within thirty (30) days of the work-related incident. For an in-patient hospitalization, amputation, or loss of an eye, you must only report the event to OSHA if it occurs within twenty-four (24) hours of the work-related incident. However, the fatality, in-patient hospitalization, amputation, or loss of an eye must be recorded on your OSHA injury and illness records, if you are required to keep such records.

(7) What if I don't learn about a reportable fatality, in-patient hospitalization, amputation, or loss of an eye right away? If you do not learn about a reportable fatality, in-patient hospitalization, amputation, or loss of an eye at the time it takes place, you must make the report to OSHA within the following time period after the fatality, in-patient hospitalization, amputation, or loss of an eye is reported to you or to any of your agent(s): Eight (8) hours for a fatality, and twenty-four (24) hours for an in-patient hospitalization, an amputation, or a loss of an eye.

(8) What if I don't learn right away that the reportable fatality, in-patient hospitalization, amputation, or loss of an eye was the result of a work-related incident? If you do not learn right away that the reportable fatality, in-patient hospitalization, amputation, or loss of an eye was the result of a work-related incident, you must make the report to OSHA within the following time period after you or any of your agent(s) learn that the reportable fatality, in-patient hospitalization, amputation, or loss of an eye was the result of a work-related incident: Eight (8) hours for a fatality, and twenty-four (24) hours for an in-patient hospitalization, an amputation, or a loss of an eye.

(9) How does OSHA define "in-patient hospitalization"? OSHA defines in-patient hospitalization as a formal admission to the in-patient service of a hospital or clinic for care or treatment.

(10) Do I have to report an in-patient hospitalization that involves only observation or diagnostic testing? No, you do not have to report an in-patient hospitalization that involves only observation or diagnostic testing. You must only report to OSHA each in-patient hospitalization that involves care or treatment.

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(11) How does OSHA define “amputation”? An amputation is the traumatic loss of a limb or other external body part. Amputations include a part, such as a limb or appendage, that has been severed, cut off, amputated (either completely or partially); fingertip amputations with or without bone loss; medical amputations resulting from irreparable damage; amputations of body parts that have since been reattached. Amputations do not include avulsions, enucleations, degloving, scalping, severed ears, or broken or chipped teeth.
(Cross Reference: 1904.39)

71-340. Providing records to government representatives.

(a) Basic requirement. When an authorized government representative asks for the records you keep under Subarticle 3, you must provide copies of the records within four (4) business hours.

(b) Implementation.

(1) What government representatives have the right to get copies of my Subarticle 3 records? The government representatives authorized to receive the records are:

(i) A representative of the Secretary of Labor conducting an inspection or investigation under the Act;

(ii) A representative of the Secretary of Health and Human Services (including the National Institute for Occupational Safety and Health-NIOSH) conducting an investigation under section 20(b) of the Act, or

(iii) A representative of a State agency responsible for administering a State plan approved under section 18 of the Act.

(2) Do I have to produce the records within four (4) hours if my records are kept at a location in a different time zone? OSHA will consider your response to be timely if you give the records to the government representative within four (4) business hours of the request. If you maintain the records at a location in a different time zone, you may use the business hours of the establishment at which the records are located when calculating the deadline.

(Cross Reference: 1904.40)

71-341. Electronic submission of Employer Identification Number (EIN) and injury and illness records to OSHA.

(a) Basic requirements

(1) Annual electronic submission of OSHA Form 300A Summary of Work-Related Injuries and Illnesses by establishments with 250 or more employees. If your establishment had 250 or more employees at any time during the previous calendar year, and this part requires your establishment to keep records, then you must electronically submit information from OSHA Form 300A Summary of Work-Related Injuries and Illnesses to OSHA or OSHA’s designee. You must submit the information once a year, no later than the date listed in paragraph (c) of this section of the year after the calendar year covered by the form (for example, 2019 for the 2018 form).

(2) Annual electronic submission of OSHA Form 300A Summary of Work-Related Injuries and Illnesses by establishments with 20 or more employees but fewer than 250 employees in designated industries. If your establishment had 20 or more employees but fewer than 250 employees at any time during the previous calendar year, and your establishment is classified in an industry listed in appendix A to subpart E of this part, then you must electronically submit information from OSHA Form 300A Summary of Work-Related Injuries and Illnesses to OSHA or OSHA’s designee. You must submit the information once a year, no later than the date listed in paragraph (c) of this section of the year after the calendar year covered by the form.

(3) Electronic submission of Subarticle 3 records upon notification. Upon notification, you must electronically submit the requested information from your Subarticle 3 records to OSHA or OSHA’s designee

(b) Implementation

(1) Does every employer have to routinely submit this information to OSHA? No, only two categories of employers must routinely submit this information. First, if your establishment had 250 or more employees at any time during the previous calendar year, and this part requires your establishment to keep records, then you must submit the required information to OSHA once a year. Second, if your establishment had 20 or more employees but fewer than 250 employees at any time during the previous calendar year, and your establishment is classified in an industry listed in appendix A to this subpart, then you must submit the required information to OSHA once a year. Employers in these two categories must submit the required information by the date listed in paragraph (c) of this section of the year after the calendar year covered by the form (for example, 2019 for

the 2018 form). If you are not in either of these two categories, then you must submit the information to OSHA only if OSHA notifies you to do so for an individual data collection.

(2) Do part-time, seasonal, or temporary workers count as employees in the criteria for number of employees in paragraph (a) of this section? Yes, each individual employed in the establishment at any time during the calendar year counts as one employee, including full-time, part-time, seasonal, and temporary workers.

(3) How will OSHA notify me that I must submit information as part of an individual data collection under paragraph (a)(3) of this section? OSHA will notify you by mail if you will have to submit information as part of an individual data collection under paragraph (a)(3). OSHA will also announce individual data collections through publication in the Federal Register and the OSHA newsletter, and announcements on the OSHA website. If you are an employer who must routinely submit the information, then OSHA will not notify you about your routine submittal.

(4) When do I have to submit the information? If you are required to submit information under paragraph (a)(1) or (2) of this section, then you must submit the information once a year, by the date listed in paragraph (c) of this section of the year after the calendar year covered by the form (for example, 2019 for the 2018 form). If you are submitting information because OSHA notified you to submit information as part of an individual data collection under paragraph (a)(3) of this section, then you must submit the information as often as specified in the notification.

(5) How do I submit the information? You must submit the information electronically. OSHA will provide a secure website for the electronic submission of information. For individual data collections under paragraph (a)(3) of this section, OSHA will include the website location in the notification for the data collection.

(6) Do I have to submit information if my establishment is partially exempt from keeping OSHA injury and illness records? If you are partially exempt from keeping injury and illness records under Sections 71-301 and/or 71-302, then you do not have to routinely submit information under paragraphs (a)(1) and (2) of this section. You will have to submit information under paragraph (a)(3) of this section if OSHA informs you in writing that it will collect injury and illness information from you. If you receive such a notification, then you must keep the injury and illness records required by this part and submit information as directed.

(7) Do I have to submit information if I am located in a State Plan State? Yes, the requirements apply to employers located in State Plan States.

(8) May an enterprise or corporate office electronically submit information for its establishment(s)? Yes, if your enterprise or corporate office had ownership of or control over one or more establishments required to submit information under paragraph (a) of this section, then the enterprise or corporate office may collect and electronically submit the information for the establishment(s).

(c) Reporting dates.

In 2017 and 2018, establishments required to submit under paragraph (a)(1) or (2) of this section must submit the required information according to the table in this paragraph (c)(1):

	Establishments submitting under	Establishments submitting under	
Submission year	paragraph (a)(1) of this section must submit the required information from this form/these forms:	paragraph (a)(2) of this section must submit the required information from this form:	Submission deadline
2017	300A	300A	December 15, 2017
2018	300A, 300, 301	300A	July 1, 2018

Beginning in 2019, establishments that are required to submit under paragraph (a)(1) or (2) of this section will have to submit all of the required information by March 2 of the year after the calendar year covered by the form or forms (for example, by March 2, 2019, for the forms covering 2018).

(Cross Reference: 1904.41)

71-342. Requests from the Bureau of Labor Statistics for data.

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(a) Basic requirement. If you receive a Survey of Occupational Injuries and Illnesses Form from the Bureau of Labor Statistics (BLS), or a BLS designee, you must promptly complete the form and return it following the instructions contained on the survey form.

(b) Implementation.

(1) Does every employer have to send data to the BLS? No, each year the BLS sends injury and illness survey forms to randomly selected employers and uses the information to create the Nation’s occupational injury and illness statistics. In any year, some employers will receive a BLS survey form and others will not. You do not have to send injury and illness data to the BLS unless you receive a survey form.

(2) If I get a survey form from the BLS, what do I have to do? If you receive a Survey of Occupational Injuries and Illnesses Form from the Bureau of Labor Statistics (BLS), or a BLS designee, you must promptly complete the form and return it, following the instructions contained on the survey form.

(3) Do I have to respond to a BLS survey form if I am normally exempt from keeping OSHA injury and illness records? Yes, even if you are exempt from keeping injury and illness records under 71-301 to 71-303, the BLS may inform you in writing that it will be collecting injury and illness information from you in the coming year. If you receive such a letter, you must keep the injury and illness records required by 71-305 to 71-315 and make a survey report for the year covered by the survey.

(4) Do I have to answer the BLS survey form if I am located in a State-Plan State? Yes, all employers who receive a survey form must respond to the survey, even those in State-Plan States.

(Cross Reference: 1904.42)

APPENDIX A

**TO SUBPART E OF SUBARTICLE 3—DESIGNATED INDUSTRIES FOR SECTION 71-341(a)(2)
ANNUAL ELECTRONIC SUBMISSION OF OSHA FORM 300A SUMMARY OF WORK-RELATED
INJURIES AND ILLNESSES BY ESTABLISHMENTS WITH 20 OR MORE EMPLOYEES BUT FEWER
THAN 250 EMPLOYEES IN DESIGNATED INDUSTRIES**

NAICS	Industry
11	Agriculture, forestry, fishing and hunting
22	Utilities
23	Construction
31-33	Manufacturing
42	Wholesale trade
4413	Automotive parts, accessories, and tire stores
4421	Furniture stores
4422	Home furnishings stores
4441	Building material and supplies dealers
4442	Lawn and garden equipment and supplies stores
4451	Grocery stores
4452	Specialty food stores
4521	Department stores
4529	Other general merchandise stores
4533	Used merchandise stores
4542	Vending machine operators
4543	Direct selling establishments
4811	Scheduled air transportation
4841	General freight trucking
4842	Specialized freight trucking
4851	Urban transit systems
4852	Interurban and rural bus transportation
4853	Taxi and limousine service
4854	School and employee bus transportation
4855	Charter bus industry

4859	Other transit and ground passenger transportation
4871	Scenic and sightseeing transportation, land
4881	Support activities for air transportation
4882	Support activities for rail transportation
4883	Support activities for water transportation
4884	Support activities for road transportation
4889	Other support activities for transportation
4911	Postal service
4921	Couriers and express delivery services
4922	Local messengers and local delivery
4931	Warehousing and storage
5152	Cable and other subscription programming
5311	Lessors of real estate
5321	Automotive equipment rental and leasing
5322	Consumer goods rental
5323	General rental centers
5617	Services to buildings and dwellings
5621	Waste collection
5622	Waste treatment and disposal
5629	Remediation and other waste management services
6219	Other ambulatory health care services
6221	General medical and surgical hospitals
6222	Psychiatric and substance abuse hospitals
6223	Specialty (except psychiatric and substance abuse) hospitals
6231	Nursing care facilities
6232	Residential mental retardation, mental health and substance abuse facilities
6233	Community care facilities for the elderly
6239	Other residential care facilities
6242	Community food and housing, and emergency and other relief service
6243	Vocational rehabilitation services
7111	Performing arts companies
7112	Spectator sports
7121	Museums, historical sites, and similar institutions
7131	Amusement parks and arcades
7132	Gambling industries
7211	Traveler accommodation
7212	RV (recreational vehicle) parks and recreational camps
7213	Rooming and boarding houses
7223	Special food services
8113	Commercial and industrial machinery and equipment (except automotive and electronic) repair and maintenance
8123	Dry-cleaning and laundry services

(Cross Reference: Appendix A to Subpart E of Part 1904)

*Subpart F
Transition From the Former Rule*

71-343. Summary and posting of the 2001 data.

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(a) Basic requirement. If you were required to keep OSHA 200 Logs in 2001, you must post a 2000 annual summary from the OSHA 200 Log of occupational injuries and illnesses for each establishment.

(b) Implementation.

(1) What do I have to include in the summary?

(i) You must include a copy of the totals from the 2001 OSHA 200 Log and the following information from that form:

- (A) The calendar year covered;
- (B) Your company name;
- (C) The name and address of the establishment; and
- (D) The certification signature, title and date.

(ii) If no injuries or illnesses occurred at your establishment in 2001, you must enter zeros on the total line and post the 2001 summary.

(2) When am I required to summarize and post the 2001 information?

(i) You must complete the summary by February 1, 2002; and

(ii) You must post a copy of the summary in each establishment in a conspicuous place or places where notices to employees are customarily posted. You must ensure that the summary is not altered, defaced or covered by other material.

(3) You must post the 2001 summary from February 1, 2002 to March 1, 2002.

(Cross Reference: 1904.43)

71-344. Retention and updating of old forms.

You must save your copies of the OSHA 200 and 101 forms for five years following the year to which they relate and continue to provide access to the data as though these forms were the OSHA 300 and 301 forms. You are not required to update your old 200 and 101 forms.

(Cross Reference: 1904.44)

Subpart G Definitions

71-346. Definitions.

The Act. The Act means the Occupational Safety and Health Act of Section 41-15-210 et. seq., Code of Laws of South Carolina, 1976. The definitions contained in Regulations Chapter 71, Article 1, Code of Laws of South Carolina and related interpretations apply to such terms when used in this Subarticle 3.

Establishment. An establishment is a single physical location where business is conducted or where services or industrial operations are performed. For activities where employees do not work at a single physical location, such as construction; transportation; communications, electric, gas and sanitary services; and similar operations, the establishment is represented by main or branch offices, terminals, stations, etc. that either supervise such activities or are the base from which personnel carry out these activities.

(1) Can one business location include two or more establishments? Normally, one business location has only one establishment. Under limited conditions, the employer may consider two or more separate businesses that share a single location to be separate establishments. An employer may divide one location into two or more establishments only when:

(i) Each of the establishments represents a distinctly separate business;

(ii) Each business is engaged in a different economic activity;

(iii) No one industry description in the Standard Industrial Classification Manual (1987) applies to the joint activities of the establishments; and

(iv) Separate reports are routinely prepared for each establishment on the number of employees, their wages and salaries, sales or receipts, and other business information. For example, if an employer operates a construction company at the same location as a lumber yard, the employer may consider each business to be a separate establishment.

(2) Can an establishment include more than one physical location? Yes, but only under certain conditions. An employer may combine two or more physical locations into a single establishment only when:

(i) The employer operates the locations as a single business operation under common management;

(ii) The locations are all located in close proximity to each other; and

(iii) The employer keeps one set of business records for the locations, such as records on the number of employees, their wages and salaries, sales or receipts, and other kinds of business information. For example, one manufacturing establishment might include the main plant, a warehouse a few blocks away, and an administrative services building across the street.

(3) If an employee telecommutes from home, is his or her home considered a separated establishment? No, for employees who telecommute from home, the employee’s home is not a business establishment and a separate 300 Log is not required. Employees who telecommute must be linked to one of your establishments under 71-330(b)(3).

(4) Is the definition of establishment any different for the State of South Carolina and any political subdivision thereof [public sector]? Yes, for public sector only, an establishment is either (a) a single location where a specific governmental function is performed; or (b) that location which is the lowest level where attendance or payroll records are kept for a group of employees who perform the same governmental functions or who are in the same specific organizational unit, even though the activities are carried on at more than a single physical location.

Injury or illness. An injury or illness is an abnormal condition or disorder. Injuries include cases such as, but not limited to, a cut, fracture, sprain, or amputation. Illnesses include both acute and chronic illnesses, such as, but not limited to, a skin disease, respiratory disorder, or poisoning. (Note: Injuries and illness are recordable only if they are new, work-related cases that meet one or more of the Subarticle 3 recording criteria.)

Physician or other licensed health care professional. A physician or other licensed health care professional is an individual whose legally permitted scope of practice (i.e., license, registration, or certification) allows him or her to independently perform, or be delegated the responsibility to perform, the activities described by this regulation.

You. “You” means an employer as defined in Regulations Chapter 71, Article 1, Code of Laws of South Carolina, 1976.

(Cross-reference: 1904.46)

Fiscal Impact Statement:

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

Statement of Rationale:

The proposed regulations will eliminate the electronic submission requirement for the log of work-related injuries and illnesses and the Injury and Illness Incident Report to ensure sensitive worker information is not disclosed publicly. The proposed regulation would also require employers to include their employer identification number (EIN) with Form 300A to make the data more useful for OSHA and the Bureau of Labor Statistics (BLS) and to potentially reduce duplicative reporting burdens on employers in the future.

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Document No. 4925
DEPARTMENT OF LABOR, LICENSING AND REGULATION
BOARD OF EXAMINERS IN OPTICIANRY
CHAPTER 96

Statutory Authority: 1976 Code Sections 40-1-70 and 40-38-60

96-105. Examinations.

96-106. Apprenticeship Registration and Program Provisions.

Synopsis:

The South Carolina Board of Examiners in Opticianry proposes to amend R.96-105 regarding examinations and R.96-106 regarding apprenticeships.

A Notice of Drafting was published in the *State Register* on September 27, 2019.

Instructions:

Replace regulation as shown below. All other items and sections remain unchanged.

Text:

96-105. Examinations.

(A) All applicants for initial licensure must take and pass a Board-approved opticianry competency examination and a Board-approved examination in practical areas of opticianry. The opticianry competency examination may be taken while the applicant is a registered apprentice or is attending a two-year opticianry school. The practical examination may be taken after submission of a completed application for licensure as an optician.

(1) The opticianry competency examination may be taken as many times and as often as necessary until the applicant passes it.

(2) If the practical examination is not passed after two attempts, an applicant must obtain Board approval to re-take the examination for the third and any subsequent attempts. The Board shall require additional training, work or study prior to approving the applicant to re-examine.

(B) All applicants for additional licensure as contact lens dispensing opticians must also take and pass a qualifying contact lens examination. The examination may be taken as many times and as often as necessary until the applicant passes it.

96-106. Apprenticeship Registration and Program Provisions.

(A) A South Carolina Registered Apprenticeship commences upon written Board approval, and includes supervised work experience and a formal education program. The Apprentice must:

(1) be registered and approved in writing before the apprenticeship commences; and

(2) complete two (2) continuous years of directly supervised work experience in full-time employment training, which is defined as a minimum of thirty-two (32) hours per week, or three (3) continuous years of directly supervised work experience in part-time employment training, which is defined as a minimum of twenty-one (21) hours per week but less than thirty-two (32) hours per week; and

(3) complete and submit proof of completion of a Board approved formal education program in opticianry; and

(4) serve the apprenticeship under the direct supervision of an approved South Carolina licensed optician, optometrist, or ophthalmologist who does not train more than two (2) registered apprentices at a time; and

(5) timely complete the apprenticeship requirements within two (2) years for a full-time apprentice or three (3) years for a part-time apprentice. The apprentice must submit a final evaluation signed by the primary sponsor within sixty (60) days of the completion of the apprenticeship. The Board may extend the apprenticeship for an

additional year upon request of the apprentice for good cause shown, and payment of a fee as specified by the Board.

(B) Any applicant desiring to be registered in the apprenticeship program must:

(1) submit an application on a form approved by the Board, along with the required fee; and
 (2) submit proof satisfactory to the Board that the applicant is a graduate of an accredited public or private high school or secondary school of an equal grade approved by the Board or completed an equivalent course of study approved by the Board; and

(3) submit an apprenticeship agreement on a form approved by the Board, signed by the apprentice and by the South Carolina licensed optician, optometrist or ophthalmologist to be approved as the sponsor(s), verifying the sponsor's ability to supervise the apprenticeship and to conduct training for the applicant in accordance with the requirements stipulated by the Board, and that the sponsor(s) have facilities and equipment determined by the Board to be adequate for training ; and

(4) submit, upon the request of the Board, proof that the apprenticeship has not been altered or otherwise changed from the Board-approved apprenticeship program; and

(5) submit an evaluation, on a form approved by the Board, of the apprenticeship six (6) months after the date of the commencement of the apprenticeship signed by the apprentice and the approved primary sponsor. Subsequent evaluations must be submitted every six (6) months until completion of the apprenticeship, at which time the final evaluation must be submitted. Failure to timely submit signed evaluations may result in the Board rescinding the approval of the apprenticeship; and

(6) submit to the Board, within six (6) months after the date of the commencement of the apprenticeship, evidence of enrollment in a Board approved formal education program in opticianry. Failure to timely enroll and submit evidence to the Board as required may result in the Board rescinding approval of the apprenticeship. All formal education programs not approved by the Board must be submitted for the Board review and approval prior to the apprenticeship commencement.

(C) The Board shall consider the following criteria when approving an apprenticeship:

(1) documentation of the primary and, if applicable, secondary sponsor's agreement to supervise and to conduct training in accordance with program requirements as stipulated by the Board; and

(2) facilities and equipment of the apprenticeship location(s); and

(3) enrollment in a Board approved formal education program in opticianry.

(D) Any change in the information supplied in the apprenticeship application shall be immediately transmitted to the Board by the approved optician, optometrist or ophthalmologist responsible for the apprentice. If a change in sponsor occurs or the sponsor/apprentice agreement is terminated, the primary sponsor must submit notification to the Board of the change and documentation of apprenticeship time completed. Failure to submit notification may affect the Board's approval of the licensed optician, optometrist, or ophthalmologist's sponsorship of current or future apprentices.

(E) The Board may rescind its approval of any apprenticeship or apprenticeship program when the training requirements are not being met, when it determines that the facilities and equipment available to the apprentice are not adequate, when the apprentice is not being properly trained or supervised by an approved sponsor, or when the apprentice is engaged in conduct which would cause the Board to discipline a licensed optician.

(F) Apprentices who fail to submit a completed application for licensure in opticianry within three (3) years of the apprenticeship completion date may be required to recommence the apprenticeship program and meet all requirements as stated in 96-106(B).

Fiscal Impact Statement:

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

Statement of Rationale:

The updated regulations will clarify the number of times applicants for licensure may take the competency and practical exams and when they may take them. The updated regulations will also establish requirements for apprenticeships. Specifically, they: describe the parameters for full-time and part-time programs; establish requirements and time lines for evaluation forms which must be completed, signed by the apprentice and the

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sponsor, and submitted to the Board to provide sufficient proof of training; and provide the criteria which the Board will consider in approving an apprenticeship, among other things.

Document No. 4926
DEPARTMENT OF LABOR, LICENSING AND REGULATION
BOARD OF PHARMACY
CHAPTER 99

Statutory Authority: 1976 Code Sections 40-1-70, 40-43-60(C), (D)(5) & (D)(8), and 40-43-86(B)

99-47. Compounding of Veterinary Drug Preparations.

Synopsis:

The South Carolina Board of Pharmacy proposes adding a regulation regarding compounding medications for use in veterinary practice.

A Notice of Drafting was published in the *State Register* on June 28, 2019.

Instructions:

Print regulation as shown below. All other items and sections remain unchanged.

Text:

99-47. Compounding of Veterinary Drug Preparations.

A. A licensed pharmacist, practicing in a permitted pharmacy, may compound veterinary drug preparations to be used by veterinarians in their offices for administration to animals.

B. Compounded office use drug preparations may be dispensed by a veterinarian to an owner of an animal for the treatment of a bodily injury or disease of the animal only in an urgent or emergency situation for use in a single course of treatment, not to exceed a 168-hour supply.

C. The compounded veterinary drug preparations may not be distributed by an entity other than the pharmacy that compounded such veterinary drug preparations. This does not prohibit administration of a compounded drug preparation in a veterinary health care setting or dispensing of a compounded drug preparation pursuant to a prescription drug order executed in accordance with federal and state law.

Fiscal Impact Statement:

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

Statement of Rationale:

The updated regulations will clarify that pharmacists may compound office use drug preparations for veterinarians, which may be dispensed by the veterinarian in certain circumstances.

Document No. 4927
DEPARTMENT OF LABOR, LICENSING AND REGULATION
BOARD OF PHARMACY
 CHAPTER 99

Statutory Authority: 1976 Code Sections 40-1-70, 40-43-60(C) and (D)(8), 40-43-86(B), and 40-43-150

99-43. Facility Permit Classifications.

Synopsis:

The South Carolina Board of Pharmacy proposes promulgating a regulation to determine permit classifications of all permits and establish minimum standards for the permits.

A Notice of Drafting was published in the *State Register* on August 23, 2019.

Instructions:

Replace regulation as shown below. All other items and sections remain unchanged.

Text:

99-43. Facility Permit Classifications.

A. Definitions

1. Unless otherwise indicated, "Board" shall mean the South Carolina Board of Pharmacy.
2. "Practice Act" shall mean the South Carolina Pharmacy Practice Act, as set forth in S.C. Code Section 40-43-10, et. seq.
3. Unless otherwise indicated, for purposes of this regulation, all words shall be defined in accordance with the definitions set forth in the Practice Act.
4. For purposes of this regulation, the word "device" is limited to devices dispensed to a patient. "Device" shall not include devices used by practitioners in the normal course of treating patients, such as dental appliances, surgical equipment, etc.

B. Pharmacy Permits

1. Resident Pharmacy Permit.
 - a. A pharmacy located in South Carolina must obtain a Resident Pharmacy Permit issued by the Board to dispense legend drugs and/or devices to a patient or a patient's agent.
 - b. To obtain a Resident Pharmacy Permit, an applicant located in South Carolina must:
 - (1) submit a written application in the form prescribed by the Board along with the appropriate application fee; and
 - (2) undergo an inspection by the Board in which the applicant demonstrates that it is in compliance with the applicable provisions of the Practice Act.
2. Non-Resident Pharmacy Permit
 - a. A pharmacy located outside the geographic boundaries of South Carolina must obtain a Non-Resident Pharmacy Permit issued by the Board to dispense legend drugs and/or devices to a patient, or a patient's agent, located in South Carolina.
 - b. To obtain a Non-Resident Pharmacy Permit, an applicant must submit a written application in the form prescribed by the Board along with the appropriate application fee. The following information must be submitted with the application:
 - (1) A copy of the resident state pharmacy permit and DEA registration (if applicable) and a list of all additional state permits and controlled substance registrations (if applicable);
 - (2) A copy of all reports from operational inspections conducted within the last two years, as well as any current accreditations and/or certifications by any governmental or third-party entity;
 - (3) A copy of the policy and procedure for shipping refrigerated products;

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(4) A copy of a dispensed label;

(5) Photographs of the exterior of the pharmacy building to include identifiable parts of adjacent buildings, the front end of the pharmacy, the consulting area, drop-off/pickup locations, and the compounding work area (if applicable); and

(6) An organizational chart setting forth the applicant's corporate structure, including its parent company, legal name and trade name. This chart must also identify any individual owners with an ownership interest equal to, or greater than, ten percent of the entity.

c. If an applicant for a Non-Resident Pharmacy Permit engages in the compounding of drugs, whether sterile or non-sterile, and regardless of whether the applicant intends to immediately ship compounded drugs into South Carolina at the time of the application, the applicant must submit the following:

(1) documentation of continuing education in the science and art of compounding for pharmacists and technicians involved in compounding. This must include six (6) hours of initial training and four (4) hours of annual training thereafter. The training does not have to be ACPE-approved;

(2) a diagram and photographs of all compounding areas;

(3) environmental control logs, to include (if applicable):

(a) refrigerator/freezer temperature monitoring;

(b) pressure differential monitoring; and

(c) temperature/humidity in compounding area monitoring;

(4) logs documenting cleaning of all areas used in the compounding process;

(5) formulas and completed logs for the applicant's top five compounded products with a copy of the actual prescription and label. Labels and beyond use dates must be submitted for each of the following types of sterile compounds produced (if applicable): minibag; large volume; TPN; syringe; and vial. Documentation must show beyond use dating and reasoning for the date assigned;

(6) compounding policies and procedures, specific to the applicant's facility, as applicable, for the following: quality control; sterile compounding technique; cleaning/maintenance of compounding area and equipment; and general compounding; and

(7) a copy of the report resulting from the last inspection of the applicant's hoods, buffer, clean and ante areas (including ISO classification, particle counts, and microbiology) by a qualified individual.

d. A pharmacist or other individual knowledgeable about all aspects of the applicant's operations must personally appear at a hearing before the Board, or its duly-authorized committee, to answer questions regarding the applicant's operations. This appearance shall be in lieu of an in-person inspection of the applicant's facility and is designed to provide the Board with information that would typically be obtained during an in-person inspection.

C. Non-Resident Non-Dispensing Pharmacy Permit

1. To obtain a Non-Resident Non-Dispensing Pharmacy Permit, an applicant located outside of South Carolina must:

a. submit a written application in the form prescribed by the Board along with the appropriate application fee;

b. submit a copy of all reports resulting from operational inspections conducted within the last two years, as well as photographs of the exterior and working area of the facility; and

c. attend a hearing before the Board, or its duly-authorized committee, in which a pharmacist or other individual knowledgeable about all aspects of the applicant's operations must answer questions regarding the applicant's operations. This appearance shall be in lieu of an in-person inspection of the applicant's facility and is designed to provide the Board with information that would typically be obtained during an in-person inspection.

D. Outsourcing Facility (503B) Permit

1. An Outsourcing Facility Permit is required for a facility engaged in the compounding of sterile drugs which has elected to register with the U.S. Food and Drug Administration as a 503B outsourcing facility. To obtain a permit as an outsourcing facility, a facility must hold, or concurrently apply for, a South Carolina Pharmacy or Manufacturer Permit, whether or not the facility is located in South Carolina.

2. To obtain a Resident Outsourcing Facility Permit, an applicant located in South Carolina must:

a. submit a written application in the form prescribed by the Board along with the appropriate application fee;

b. undergo an inspection by the Board in which the applicant demonstrates that it is in compliance with the applicable provisions of the Practice Act;

3. To obtain a Non-Resident Outsourcing Facility Permit, an applicant located outside of South Carolina must:

a. submit a written application in the form prescribed by the Board along with the appropriate application fee. The following information must be submitted with the application:

(1) a copy of the resident state pharmacy permit and DEA registration (if applicable) and a list of all additional state permits and controlled substance registrations (if applicable);

(2) a copy of the facility's most recent FDA inspection report, including any 483s issued and the applicant's response thereto;

(3) a copy of all reports from operational inspections conducted within the last two years; and

(4) a copy of the policy and procedures for shipping refrigerated products and monitoring the temperature and humidity; and

b. attend a hearing before the Board or its duty-authorized committee in which a pharmacist or other individual knowledgeable about all aspects of the applicant's operations must answer questions regarding the applicant's operations. This appearance shall be in lieu of an in-person inspection of the applicant's facility and is designed to provide the Board with information that would typically be obtained during an in-person inspection.

E. Medical Gas/Legend Device Permit

1. A Medical Gas/Legend Device Permit is required for a facility to dispense medical gases and/or legend devices to a patient or a patient's agent on the order of a licensed practitioner.

2. To obtain a Resident Medical Gas/Legend Device Permit, an applicant located in South Carolina must:

a. submit a written application in the form prescribed by the Board along with the appropriate application fee; and

b. undergo an inspection by the Board in which the applicant demonstrates that it is in compliance with the applicable provisions of the Practice Act.

3. To obtain a Non-Resident Medical Gas/Legend Device Permit, an applicant located outside of South Carolina must submit:

a. a written application in the form prescribed by the Board along with the appropriate application fee;

b. a copy of the applicant's resident state pharmacy permit and a list of all additional state permits (if applicable); and

c. a copy of all reports from operational inspections conducted within the last two years (if applicable).

F. Non-Dispensing Drug Outlet

1. A Non-Dispensing Drug Outlet Permit is required for a facility to store and/or administer legend drugs and/or devices. Facilities requiring a Non-Dispensing Drug Outlet Permit include, but are not limited to, public or private health clinics, infirmaries, correctional institutions, industrial health clinics, and emergency medical service providers. A Non-Dispensing Drug Outlet Permit requires a consultant pharmacist, unless the facility is engaged in manufacturing, wholesaling or distributing.

2. To obtain a Non-Dispensing Drug Outlet Permit, an applicant must:

a. submit a written application in the form prescribed by the Board along with the appropriate application fee;

b. undergo an inspection by the Board in which the applicant demonstrates that it is in compliance with the applicable provisions of the Practice Act.

G. Wholesale Distributor Permit

1. A Wholesale Distributor Permit is required for a facility to engage in the wholesale distribution of prescription drugs and/or devices to permitted facilities and licensed practitioners. Entities requiring a Wholesale Distributor Permit include, but are not limited to: repackagers; own-label distributors; private-label distributors; jobbers; brokers; warehouses including manufacturers' and distributors' warehouses, chain drug warehouses, and wholesale drug warehouses; independent wholesale drug traders; and retail pharmacies that conduct wholesale distributions.

2. To obtain a Resident Wholesale Distributor Permit, an applicant located in South Carolina must:

a. submit a written application in the form prescribed by the Board along with the appropriate application fee;

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b. undergo an inspection by the Board in which the applicant demonstrates that it is in compliance with the applicable provision of the Practice Act.

3. To obtain a Non-Resident Wholesale Distributor Permit, an applicant located outside of South Carolina must:

a. submit a written application in the form prescribed by the Board along with the appropriate application fee. The following information must be submitted with the application:

(1) a copy of the resident state permit and DEA registration (if applicable) and a list of all additional state permits and controlled substance registrations (if applicable);

(2) a copy of the facility's most recent FDA inspection report, including any 483s issued and applicant's response(s) thereto;

(3) a copy of all reports from operational inspections conducted within the last two years;

(4) a copy of the policy and procedures for shipping refrigerated products and monitoring the temperature and humidity;

(5) a copy of the NABP's Verified-Accredited Wholesale Distributors certification (if applicable) or a notarized statement certifying that the applicant meets the standards necessary to obtain this certification; and

(6) a sample Transaction History, Transaction Information, and Transaction Statement ("T3") report.

b. attend a hearing before the Board or its duly-authorized committee in which a pharmacist or other individual knowledgeable about all aspects of the applicant's operations must answer questions regarding the applicant's operations. This appearance shall be in lieu of an in-person inspection of the applicant's facility and is designed to provide the Board with information that would typically be obtained during an in-person inspection.

H. Manufacturer/Repackager

1. A Manufacturer/Repackager Permit is required for a facility to engage in the manufacturing of prescription drugs or devices, including any packaging or repackaging of the drugs and/or devices, and/or labeling or re-labeling of containers.

2. To obtain a Resident Manufacturer/Repackager Permit, an applicant located in South Carolina must:

a. submit a written application in the form prescribed by the Board along with the appropriate application fee; and

b. undergo an inspection by the Board in which the applicant demonstrates that it is in compliance with the applicable provisions of the Practice Act.

3. To obtain a Non-Resident Manufacturer/Repackager, an applicant must:

a. submit a written application in the form prescribed by the Board along with the appropriate application fee. The following information must be submitted with the application:

(1) a copy of the resident state pharmacy permit and DEA registration (if applicable) and a list of all additional state permits and controlled substance registrations (if applicable);

(2) a copy of the facility's most recent FDA inspection report, including any 483s issued and the applicant's response(s) thereto;

(3) a copy of all reports from operational inspections conducted within the last two years;

(4) a copy of the policy and procedures for shipping refrigerated products and monitoring temperature and humidity;

b. attend a hearing before the Board or its duly-authorized committee in which a pharmacist or other individual knowledgeable about all aspects of the applicant's operations must answer questions regarding the applicant's operations. This appearance shall be in lieu of an in-person inspection of the applicant's facility and is designed to provide the Board with information that would typically be obtained during an in-person inspection.

I. Federally Qualified Health Center ("FQHC") Drug Outlet Permit

1. A Federally Qualified Health Center ("FQHC") Drug Outlet Permit is required for an FQHC delivery site to store, administer, and distribute patient-specific, labeled drugs and/or devices received from a permitted FQHC pharmacy or contracted pharmacy.

2. To obtain a Federally Qualified Health Center ("FQHC") Drug Outlet permit, an applicant must:

a. submit a written application in the form prescribed by the Board along with the appropriate application fee; and

b. undergo an inspection by the Board in which the applicant demonstrates that it is in compliance with the applicable provisions of the Practice Act.

J. Third-Party Logistics (“3PL”) Provider

1. A Third-Party Logistics Provider Permit is required for a facility to provide or otherwise coordinate warehousing, or other logistics services, of drugs and/or devices in interstate commerce on behalf of a manufacturer, wholesale distributor or dispenser of drugs and/or devices. A 3PL Provider does not take ownership of the drugs and/or devices and is not responsible for the sale and/or distribution of the drugs and/or devices to permitted facilities and/or licensed practitioners.

2. To obtain a Resident Third-Party Logistics Provider permit, an applicant located in South Carolina must:

a. submit a written application in the form prescribed by the Board along with the appropriate application fee;

b. undergo an inspection by the Board in which the applicant demonstrates that it is in compliance with the applicable provisions of the Practice Act.

3. To obtain a Non-Resident Third-Party Logistics Provider permit, an applicant must:

a. submit a written application in the form prescribed by the Board along with the appropriate application fee. The following information must be submitted with the application:

(1) a copy of the resident state permit and DEA registration (if applicable) and a list of all additional state permits and controlled substance registrations (if applicable) and

(2) a copy of all reports from operational inspections conducted within the last two years; and

b. attend a hearing before the Board or its duly-authorized committee in which a pharmacist or other individual knowledgeable about all aspects of the applicant’s operations must answer questions regarding the applicant’s operations. This appearance shall be in lieu of an in-person inspection of the applicant’s facility and is designed to provide the Board with information that would typically be obtained during an in-person inspection.

Fiscal Impact Statement:

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

Statement of Rationale:

The updated regulations will clarify the classifications of permits issued by the Board and provide the minimum standards required for the issuance of such permits. The purpose of this proposed amendment is to comply with the Board’s obligations under the Practice Act, to update its regulations to reflect changes in the pharmacy industry since the regulations were last amended, and to provide clarity to applicants as to what permits are required and the minimum standards necessary to obtain the permits.

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Document No. 4914
DEPARTMENT OF NATURAL RESOURCES
CHAPTER 123
Statutory Authority: 1976 Code Sections 50-11-2200 and 50-11-2210

123-203. General Regulation
123-204. Additional Regulations Applicable to Specific Properties.

Synopsis:

These regulations amend Chapter 123, Sections 203 and 204 that govern the conduct and activities of visitors to Wildlife Management Areas, Heritage Preserves, shooting ranges and other lands owned or leased by the Department of Natural Resources.

A Notice of Drafting was published in the *State Register* on September 27, 2019, Volume 43, Issue no. 9.

Instructions:

Amend regulations 123-203 and 123-204 as follows. Included are specific changes, deletions and additions. Unless specifically listed as a change, all other existing regulations remain intact.

The following is a section-by-section summary of the proposed changes and additions:

- 123-203. General Regulation
D.(8)(c) Add section and insert new text as indicated.
- 123-204. Additional Regulations Applicable to Specific Properties.
N.(2)(a) Insert new text as indicated.
Z. Delete stricken text and insert new text as indicated.

Text:

ARTICLE 5.5

REGULATION OF REAL PROPERTY OWNED AND LEASED BY THE DEPARTMENT

123-203. General Regulation.

This section shall apply to all Wildlife Management Areas, Heritage Preserves and other lands owned by the Department.

A. Hunting, fishing, and taking game animals, birds, fish, or other wildlife is allowed on Wildlife Management Areas that have been designated as part of the Wildlife Management Area program. Hunting, fishing, and taking shall be subject to all applicable statutes and regulations, specifically including Reg.123-40.

B. All firearms must be unloaded and secured in a weapons case except while legally hunting, unless otherwise legally permitted. Target, skeet, trap, plinking, or any other type of shooting with any firearm or weapon is allowed on designated shooting ranges. Except as otherwise specifically authorized by South Carolina statute or this regulation, weapons and firearms are not allowed on any heritage preserve. Possession of a weapon or firearm is allowed on any heritage preserve designated by the Department as a wildlife management area subject to the regulations.

C. Hiking is allowed subject to the following restrictions or conditions:

- (1) Hiking is allowed. The Department may post or place signs declaring any area closed to hiking;
- (2) The use of all designated hiking trails, except for posted multi-use trails is restricted solely to foot travel and the legitimate activities associated with the pursuit of hiking.

D. Operation of motorized, nonmotorized vehicles, all terrain vehicles, and off road vehicles.

The operation of motorized vehicles is allowed subject to the following restrictions or conditions:

(1) Motorized vehicles, all terrain vehicles, and off road vehicles may be operated only on open maintained roads and parking areas except as otherwise established by posted notice or as approved by the Department. All terrain vehicles are not allowed on any heritage preserve.

(2) Motorized vehicles, all terrain vehicles, and off road vehicles shall not exceed speed limits posted on Department signs.

(3) No person may operate any motorized, all terrain vehicle, off road vehicle or non-motorized vehicle in a reckless or negligent manner. The operation of any vehicle in such a manner as to indicate either a willful or wanton disregard for the safety of persons or property shall be deemed to be operating in a reckless manner.

(4) The operation of motorized vehicles, all terrain vehicles, and off road vehicles must comply with any posting or signs. Obstructing vehicular traffic is not allowed.

(5) All motorized vehicles, all terrain vehicles, and off road vehicles must be equipped with properly working mufflers, brakes, mirrors and spark arresters (if the vehicle was originally factory equipped with spark arresters and/or mirrors).

(6) Charter buses or other vehicles engaged in transporting persons for compensation are only allowed by permit.

(7) The numbers of motorized vehicles, nonmotorized vehicles, horses, or boats allowed on any area at one time may be limited by the Department through a permitting system.

(8) The operation of nonmotorized vehicles are allowed subject to the following restrictions or conditions:

(a) Bicycles may be ridden on roads open to motorized vehicles, established roadbeds and designated bicycle trails unless otherwise posted.

(b) Using roller skates, in-line skates, skateboards, roller skis, coasting vehicles, or similar devices is allowed only in designated areas.

(c) Motorized, self-propelled, unmanned electric cargo carriers (“deer carts”) may be used for the purposes of hauling cargo and harvested game only.

E. Swimming.

Swimming is allowed only in designated areas, which includes any State or federal navigable waterway abutting or flowing through Department land.

F. Camping.

(1) Camping is allowed only within areas designated as campsites by the Department. The Department will designate campsites by placement of signs or by other means such as maps or brochures.

(2) Camping in one location for more than four nights is prohibited except under permit.

(3) All camping supplies must be removed from camping sites.

(4) No organized group of ten or more individuals may camp at a single designated camp site at any time except under permit.

(5) Permanent structures must not be erected.

G. Horse riding.

(1) Horse riding is allowed, except during any open hunting periods.

(2) The riding of horses is allowed on roads open to motorized vehicular traffic, unless posted as closed to horseback riding.

(3) Horse riding is allowed on firebreaks or trails if specifically posted as open to horseback riding.

(4) The Department may restrict the number of horses and horse trailers and may require permits on specific areas. Restrictions shall be posted at the offices and/or entrances to Department lands or in published brochures.

(5) The owner of any horse brought onto Department property is responsible for the payment of any expense for the removal of injured or dead horses.

(6) Horses must be attended.

(7) Only pelletized feed may be used, no hay.

(8) Access to a Department property by horseback is limited to a designated public entrance. A public entrance is a day-use parking area. For ride-on users (without vehicles or trailers) only, entrance is allowed where a road open to motorized vehicular traffic or firebreak designated for horseback riding intersects a public or private road.

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(9) When not being ridden, horses must be led by halter or reins, confined in a trailer, or tied to a trailer tie or hitching rail. Horses may not be confined using portable corrals or electric fences.

(10) Within a day-use parking area, horses must be kept at a flat walk.

(11) The Department may require a person with an unruly horse, which is causing a disturbance or safety hazard, to remove the horse from Department property.

H. Operation of boats.

(1) Boats may be used on Department land only on a watercourse or water body which has been designated by the Department for the use of boats. The Department may restrict the type, size, or number of boats and motors or the use of motors. Any restrictions shall be posted at the entrances to Department land. This restriction shall not apply to any State or federal navigable waterway.

(2) Motorized boats may only be launched at launch sites designated by the Department.

I. Possession of pets or specialty animals.

(1) Pets may enter Department land and accompany an individual on allowed activities if each pet is under the actual control of the owner or possessor.

(2) Neither dangerous pets nor pets with a propensity toward aggressive behavior are allowed.

(3) The requirements of this subsection do not apply to dogs while being used during and as a part of any of the following activities:

(a) Hunting when use of dogs is authorized by statute or regulation.

(b) The training of dogs to hunt is deemed hunting; training of dogs to hunt on lands and waters may be undertaken only during periods when hunting with dogs is authorized by statute or regulation.

(c) Authorized field trial events.

(d) Special events or activities as authorized by the Department.

(4) Raptors are allowed on Department land in compliance with R.123-170.

J. Consumption of alcohol.

Alcoholic beverages may be consumed by a person of lawful age only at a designated campsite, designated facility, residence or other designated location.

K. Gathering, damaging, or destroying rocks, minerals, fossils, artifacts, geological formations or ecofacts.

(1) The Department may authorize the collection of certain material upon issuance of a permit.

L. Gathering, damaging, or destroying plants, fallen vegetation, animals and fungi.

(1) The Department may authorize the collection of certain material upon issuance of a permit.

(2) Shed antlers at ground surface may be collected.

M. Use of fire, fireworks, or explosives.

(1) Open fires may only be started at campsites designated by the Department. Gas grills, gas lanterns, and portable charcoal grills may be operated at designated campsites.

(2) No fire may be left unattended. Prior to leaving the site, any fire must be completely extinguished, leaving neither flames nor embers.

(3) No wood, except from dead and down trees or from supplies as may be furnished by the Department shall be used for fuel.

(4) On any land where camp fires are permitted, the Department may prohibit the use of fires for any purpose by posting a notice at entrances to individual parcels of land.

(5) No person may deposit lighted matches, cigars, cigarettes or other burning tobacco where they will cause fire.

N. Hours of Operation.

(1) The Department may restrict the hours of operation on any Department land by publication in Department brochures and pamphlets or by posting on site specific hours of operation.

(2) Heritage preserves are open for public use from one hour before sunrise to one hour after sunset. On any preserve that is designated as a wildlife management area, the hours of operation shall be the same as are authorized for hunting as stated in R.123-40.

O. Shooting onto or across WMA land closed to hunting.

(1) Shooting onto or across WMA land closed to hunting is allowed provided the shooter and the game being shot at are physically outside the boundary of the WMA. The airspace above the WMA is considered within the boundary of the WMA.

P. Emergency closure of Department properties.

(1) The Department may close all or part of any WMA, state lake, shooting range or any other property for a special event, in cases of emergency or catastrophe, or any time human health and/or safety may be at risk.

123-204. Additional Regulations Applicable to Specific Properties.

A. Aiken County Gopher Tortoise Heritage Preserve.

(1) Bicycles may be ridden on hiking trails. Bicyclists may ride in groups no larger than five (5).

B. Bay Point Heritage Preserve.

(1) No dogs are allowed.

(2) No person may enter any area of the preserve designated as a nesting area for birds.

C. Bear Branch Heritage Preserve.

Public visitation is by permit only. The preserve is closed to use except by permit.

D. Bear Island.

(1) Except when closed for scheduled hunts, the area is open from 1/2 hour before sunrise to 1/2 hour after sunset.

(2) The property is closed to all public access from November 1 through February 8, except for scheduled hunts.

(3) All terrain vehicles are prohibited.

(4) Camping is allowed only at designated sites and only during scheduled big game hunts.

(5) The area is closed to general public access during scheduled hunts.

(6) Fishing is allowed in designated areas from April 1 through September 30.

E. Bird-Key Stono Heritage Preserve.

(1) No dogs are allowed.

(2) No person may enter any area of the preserve designated as a nesting area for birds.

(3) March 15 through October 15 the area is closed to all access including the intertidal zone between low and high tide waterlines.

(4) October 16 through March 14 access is allowed only in the intertidal zone between low and high tide waterlines.

(5) No motorized vehicles, bicycles or horses.

F. Capers Island Heritage Preserve.

(1) Overnight Camping on Capers Island is by permit only. Permit may be obtained from the DNR Charleston office. No more than 80 people will be allowed to camp per night. These 80 people may be divided into no more than 20 different groups.

(2) Permits will be issued on a first come first served basis.

(3) Campsites will be occupied on a first come first served basis.

(4) Permits are not required for day use.

(5) Persons without permits must be off the island by one hour after sunset.

(6) No trash is to be placed in any fire or buried.

(7) Department maintenance facilities on the island are not open to the public.

(8) No crab or fish pots or traps are allowed in impoundments.

(9) No motorized vehicles, non-motorized vehicles, off road vehicles, or all-terrain vehicles are allowed on Capers Island.

(10) No fishing is allowed from the impoundment tide gate.

G. Crab Bank Heritage Preserve.

(1) No dogs are allowed.

(2) No person may enter any area of the preserve designated as a nesting area for birds.

(3) March 15 through October 15 the area is closed to all access including the intertidal zone between low and high tide waterlines.

(4) October 16 through March 14 access is allowed only in the intertidal zone between low and high tide waterlines.

(5) No motorized vehicles, bicycles or horses.

H. Daws Island Heritage Preserve.

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Camping is allowed only by permit issued by the Department. Primitive camping only is allowed. Daws Island camping is limited to two groups of no more than eight people in each group.

I. Deveaux Bank.

- (1) No dogs are allowed.
- (2) No person may enter any area of the preserve designated as a nesting area for birds.
- (3) Closed all year above the high tide line (no seasonal closure) except in the recreation area.
- (4) No motorized vehicles, bicycles or horses.

J. Donnelley WMA.

- (1) Horseback riders must obtain a permit from the Donnelley WMA office prior to riding.
- (2) All terrain vehicles are prohibited.
- (3) Camping is prohibited.

K. Dungannon Plantation Heritage Preserve.

- (1) No person may enter any area of the preserve designated as a nesting area for birds.
- (2) Entrance to the preserve is through a designated parking area. Each person must sign in and out of the preserve at a designated entrance/exit.

L. Gopher Branch Heritage Preserve.

Public visitation is by permit only.

M. Great Pee Dee River Heritage Preserve.

- (1) Primitive camping only is allowed. Camping may occur only along riverbanks and on sandbars, which may be approached only by backpacking or boat.
- (2) Each person entering the preserve other than by boat must sign in and out at a designated entrance/exit.

N. Jim Timmerman Natural Resources Area at Jocassee Gorges.

This subsection shall apply to all Department owned and leased land within the boundaries of the Jim Timmerman Natural Resources Area at Jocassee Gorges (hereinafter referred to as Jocassee Gorges).

(1) Camping.

(a) Backcountry camping by permit will be allowed at any time during the year that the main roads allowing access to the Jocassee Gorges are not opened in connection with big game hunting. Backcountry camping is allowed by permit only at any location within the Jocassee Gorges, except for any area closed for camping by the Department. Backcountry camping is defined as minimal impact camping. No fires are allowed and each permitted camper is responsible for camping in a manner that results in no trace of the camping activity being left after breaking camp. Backcountry campers must apply for camping permits over the Department internet site. No camping is permitted within twenty-five (25) feet of a stream, lake, or as posted by the Department.

(b) The Foothills Trail and the Palmetto Trail pass through portions of the Jocassee Gorges. Use of the Foothills Trail and the Palmetto Trail shall be limited to hiking and primitive camping. Camping is allowed at any point along the trails and within one hundred feet of either side of the trails. Camping along the Foothills Trail and the Palmetto Trail is restricted to hikers while engaged in backpacking.

(2) Operation of motorized, non-motorized vehicles, all-terrain vehicles, and off-road vehicles. Motorized and non-motorized vehicle access to the Jocassee Gorges is limited. Highway 178 and Cleo Chapman Road (county road 143) are the only paved roads that access the property. Access by the general public to the Jocassee Gorges by motorized vehicles will follow a seasonal schedule with the exception of portions of Horsepasture and Camp Adger Roads. Road opening and closing schedules written below are given as general information. The Department may open and close any road at any time and for such duration as deemed necessary by the Department to manage the property.

(a) The operation of a motorized vehicle behind any closed gate is prohibited. Motorized, self-propelled, unmanned electric cargo carriers ("deer carts") may be used for the purposes of hauling cargo and harvested game only.

(b) Roads open to year-round public access include a section of Horsepasture Road to Jumping Off Rock (from Highway 178 only) and a section of Camp Adger Road.

(c) All roads with Green gates are seasonally open. All roads with red gates are closed to vehicular traffic. This information will be posted at all major entrances.

(d) Motorized vehicles, all terrain vehicles, and off road vehicles may be operated only on open maintained roads and parking areas except as otherwise established by posted notice or as approved by the Department.

(e) Motorized vehicles, all terrain vehicles, and off road vehicles shall not exceed speed limits posted on Department signs. On any land where no speed limit signs are posted the speed limit shall be 15 miles per hour.

(f) Subject to the authority in subsection (d) above, the operation of all terrain vehicles is restricted as follows: Operation of all terrain vehicles is restricted to one hour before sunrise to one hour after sunset each day beginning on Monday and continuing through the following Friday. A person may use an all terrain vehicle while actually engaged in hunting at any time hunting is allowed; provided, however, the operation of an all terrain vehicle is restricted to one hour before sunrise to one hour after sunset with the exception of game retrieval, and an all terrain vehicle may be used only on open roads. All terrain vehicles and off-road vehicles may not be operated on Horsepasture Road or Camp Adger Road during the periods January 16 – March 19 and May 11 – September 14 when the main roads are closed.

(g) All terrain vehicles having three (3) wheels and motorcycles constructed or intended primarily for off road use, such as dirt bikes and motocross bikes, are prohibited within the Jim Timmerman Natural Resources Area at all times.

(h) Bicycles may be ridden on any road or area that is not posted as closed to bicycles except that the Foothills Trail and Palmetto Trail are closed to bicycles.

(3) The use of hang gliders, parachutes, or similar devices is not allowed and may be deemed abuse of Department land.

(4) Sassafras Overlook Site. These regulations apply to the portion of Jocassee Gorges designated as the overlook site by the Department.

(a) No camping is allowed on the site.

(b) No fires are allowed on the site.

(c) The hours of operation are one hour before official sunrise to one hour after official sunset, except as permitted by the Department.

(d) No alcohol is allowed on the site.

(e) No motor vehicles are allowed except on public roads and in the designated parking area. Motorized scooters or similar vehicles designed specifically for use by disabled persons may only be used by disabled persons on the site. No ATVs, UTVs or similar vehicles are allowed on the site.

(f) No skateboards, hoverboards or similar devices are allowed on the site.

(g) No exclusive use of the site will be allowed by any party.

(h) No drones may be allowed on the site.

(i) No horses, mules, donkeys or other animals may be allowed on the site except pets as defined below.

(j) No pets will be allowed on the site except for dogs and cats. All pets must be restrained by a leash at all times and may not cause any disruption to other visitors, wildlife or the site. All pet waste must be picked up and removed from the site.

(k) Commercial vending is prohibited on the site.

(l) Special permits may be issued by the Department to allow activities prohibited herein.

(m) All other laws, regulations, and ordinances that apply to the site are also in effect.

(5) Abner Creek Falls Trail

(a) Human foot traffic only is permitted.

(b) No horses, mountain bikes or motor conveyance is permitted, except for motorized scooters or similar vehicles designed specifically for use by disabled persons that may only be used by disabled persons on the site.

(c) No access is allowed from the trail or platform to adjacent areas within 300 feet of the platform.

O. Joiner Bank Heritage Preserve.

(1) No dogs are allowed.

(2) No person may enter any area of the preserve designated as a nesting area for birds.

P. Little Pee Dee Heritage Preserve.

(1) Primitive camping only is allowed. Camping may occur only along riverbanks and on sandbars, which may be approached only by backpacking or boat.

Q. Nipper Creek Heritage Preserve.

Public visitation is by permit only. The preserve is closed to use except by permit.

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R. North Santee Bar Heritage Preserve.

- (1) No dogs are allowed.
- (2) No person may enter any area of the preserve designated as a nesting area for birds.

S. St. Helena Sound Heritage Preserve (Ashe Island, Beet Island, Big Island, Warren Island, and South Williman).

Camping is restricted to primitive camping in designated areas only.

T. St. Helena Sound Heritage Preserve (Otter Island).

- (1) No dogs are allowed.
- (2) Primitive camping only is allowed by permit issued by the Department. Primitive camping is restricted to designated areas and will be allowed only between November 1 and March 31.

U. Samworth WMA.

(1) Managed wetlands will be open for wildlife observation, bird watching, photography or nature study during daylight hours (1/2 hour before sunrise to 1/2 hour after sunset) from February 9 through October 31 each year. Between November 1 and February 8 these activities will be restricted to designated areas on Butler Creek and the Big Pee Dee River. All public use of this type will be by foot travel only after arriving by watercraft.

(2) The mainland nature trail will be open during daylight hours (1/2 hour before sunrise to 1/2 hour after sunset) to foot traffic only.

(3) All terrain vehicles, bicycles, and horses are prohibited.

(4) Temporary primitive camping will be available to organized groups by permit. No camping will be allowed that may conflict with organized hunts.

(5) Dirleton grounds are open to the public from 8:30 a.m. until 5:00 p.m., Monday through Friday.

V. Santee Coastal Reserve.

(1) The Santee Coastal Reserve is open during daylight hours (1/2 hour before sunrise to 1/2 hour after sunset) for limited public use year round except as listed below.

(2) Managed wetlands will be open for wildlife observation, bird watching, photography, or nature study during daylight hours (1/2 hour before sunrise to 1/2 hour after sunset) from February 9 through October 31 each year except during special hunts and events regulated by the Department.

(3) The dikes around the waterfowl impoundments will be closed, except by prior arrangement, during the period of November 1 through February 8 of the next year.

(4) Prior arrangements must be made with the Reserve Manager to use observation blinds for waterfowl.

(5) Upland trails will be available during open periods stated above.

(6) The beaches on Cedar and Murphy Islands will be open year round, seven days a week.

(7) Bicycles may be ridden on upland trails year round and on dikes from February 9 - October 31.

(8) Fishing is permitted from the Santee River dock and the Hog Pen impoundment except during scheduled waterfowl hunts. Fishing will be allowed during daylight hours (1/2 hour before sunrise to 1/2 hour after sunset). Fishing is permitted on Murphy and Cedar Island beaches at any time on a year round basis.

(9) Primitive camping is allowed year round with no registration on the beaches of Murphy and Cedar Islands. Camping on the mainland portion is restricted to the designated campground. Registration is required at the campground self-serve kiosk. Advance registration is required for groups greater than 15 people.

W. Santee-Delta WMA.

(1) Managed wetlands will be open for wildlife observation, bird watching, photography or nature study during daylight hours (1/2 hour before sunrise to 1/2 hour after sunset) from February 9 through October 31 each year except during special hunts and events regulated by the Department. Area closed to all public access from November 1 through February 8 except for special hunts and events regulated by the Department. All public use of this type will be by foot travel only.

(2) All terrain vehicles, bicycles, and horses are prohibited.

(3) Camping is prohibited.

X. Shealy's Pond Heritage Preserve.

Gasoline powered motors on boats are prohibited.

Y. Tillman Sand Ridge Heritage Preserve.

(1) Camping is allowed in designated campsites during designated hunts only.

Z. Tom Yawkey Wildlife Center.

The Center is a wildlife sanctuary. Boating, fishing and wildlife viewing in or upon navigable waters is allowed.

(1) Public visitation is by pre-scheduled educational field trips only. The scheduling of educational field trips is at the discretion of SCDNR.

(2) Primitive camping is allowed by permit only. Requests for permits should be no less than 2 weeks prior to their effective date. Primitive camping is allowed only at Department designated locations along the beach front from September 16 – May 14. Only one permit will be issued for each location at a time. Camping is allowed for a period of not more than 4 consecutive nights per individual permit holder.

AA. Victoria Bluff Heritage Preserve.

(1) No campfires or any other use of fire shall be allowed.

BB. Waccamaw River Heritage Preserve.

Primitive camping only is allowed. Camping is allowed only along riverbanks and on sandbars; campers may approach only by backpacking or boat.

CC. Watson Cooper Heritage Preserve.

Camping is restricted to primitive camping. No live plants may be cut or cleared to improve or expand a campsite. No campsites or campfires within 25 feet of a stream or creek.

DD. Webb WMA.

(1) Webb WMA is closed to the general public from one hour after official sunset to one hour before official sunrise.

(2) Overnight visitors to the Webb Center are not restricted in hours of access.

(3) No camping without a permit except for deer, turkey, and hog hunters on nights before a designated hunt.

(4) Bicycles may be ridden on any area that is not marked or posted as restricted to bicycles. No bicycle may be operated in any manner or place that will damage or degrade any feature or habitat. During scheduled big game hunts, bicycles and all terrain vehicles are prohibited except as used by legal hunters and anglers.

EE. Laurel Fork Heritage Preserve.

(1) All terrain vehicles may be ridden on the portions of Cane Break and Horsepasture roads on the Preserve subject to the same rules as the Jim Timmerman Natural Resources Area at Jocassee Gorges.

FF. Botany Bay Plantation WMA.

(1) No camping is allowed.

(2) All terrain vehicles are prohibited except those permitted by the Department for special management activities.

(3) The Fig Island shell rings are closed to all public access except organized scientific, management or educational activities permitted by the the Department.

(4) Access to the beach is by foot, bicycle or boat; no horses allowed on the beach. No dogs allowed on the beach. No collection, removal or possession of shells, fossils, driftwood or cultural artifacts is permitted.

(5) Sea Cloud Landing on Ocella Creek and all other designated access points are restricted to non-trailerred watercraft.

(6) All hunters, fishermen and visitors must obtain and complete a day use pass upon entering the area and follow instructions on the pass.

(7) Botany Bay Plantation WMA is closed to public access 1/2 hour after sunset until 1/2 hour before sunrise except for special events regulated by the Department.

(8) No person may gather, collect, deface, remove, damage, disturb, destroy, or otherwise injure in any manner whatsoever the plants, animals (except lawful hunting), fungi, rocks, minerals, fossils, artifacts, or ecofacts including but not limited to any tree, flower, shrub, fern, moss, charcoal, plant remains, or animal remains. The Department may authorize the collection of certain material upon issuance of a permit as provided in 123-206.

(9) Shorebased fishing, shrimping, and crabbing, is allowed only on the front beach and in designated areas only.

(10) The Department reserves the right to close specific areas as needed for management purposes.

(11) Alcoholic beverages are prohibited on the area.

GG. McBee WMA.

(1) All terrain vehicles are prohibited.

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HH. Campbells Crossroads and Angelus Tract.

- (1) All terrain vehicles are prohibited.

II. Pee Dee Station WMA.

- (1) All terrain vehicles are prohibited.

JJ. Daily use cards are required for all users of Hamilton Ridge WMA, Palachucola WMA, Webb WMA, Tillman Sand Ridge Heritage Preserve, Bonneau Ferry WMA, Bear Island WMA, Donnelley WMA, Great Pee Dee River Heritage Preserve, Belfast WMA, Congaree Bluffs Heritage Preserve, Marsh WMA, Woodbury WMA, Worth Mountain WMA, Liberty Hill WMA and Santee Cooper WMA. Cards must be in possession while on the property and completed cards must be returned daily upon leaving the property.

KK. Liberty Hill WMA

- (1) All-terrain vehicles are prohibited.

(2) The area is closed to public access 1/2 hour after sunset until 1/2 hour before sunrise except for hunts and special events regulated by the Department.

LL. Wateree River HP WMA

- (1) All-terrain vehicles are prohibited.

(2) The waterfowl impoundments are closed to all public access from November 1 through March 1, except for scheduled hunts.

(3) The area is closed to public access 1/2 hour after sunset until 1/2 hour before sunrise except for special events regulated by the Department.

(4) All users, including hunters and anglers must obtain and possess a day use pass upon entering the area and follow instructions on the pass. The completed form must be deposited in the designated container before leaving the area.

- (5) Special events may be permitted by the Department.

- (6) Horseback riding is prohibited except by special permit.

MM. Lewis Ocean Bay HP WMA

(1) Horseback riding is also allowed during the period January 2 through March 1, subject to the restrictions in Regulation 123-203, Paragraph G, sections (2) through (11).

Fiscal Impact Statement:

These amendments of Regulations 123-203 and 123-204 will potentially result in increased retail sales of outdoor recreation products. Local economies should benefit from sales of food, fuel and other supplies, and sales taxes on these items will also directly benefit government.

Statement of Rationale:

Rationale for the formulation of these regulations is based on over 70 years of experience by SCDNR in establishing public hunting and recreational use areas. New regulations are evaluated based upon impacts to affected user groups and potential impacts to natural resources the Agency is charged with protecting.

Document No. 4915

DEPARTMENT OF NATURAL RESOURCES**CHAPTER 123**

Statutory Authority: 1976 Code Sections 50-1-60 50-1-200, 50-1-220, 50-9-650, 50-11-10, 50-11-105, 50-11-310, 50-11-315, 50-11-320, 50-11-365, 50-11-390, 50-11-410, 50-11-430, 50-11-500, 50-11-520, 50-11-525, 50-11-530, 50-11-580, 50-11-2200 and 50-11-2210

123-40. Wildlife Management Area Regulations.

123-51. Turkey Hunting Rules and Seasons.

123-52. Date Specific Antlerless Deer Tags, Individual Antlerless Deer Tags, and Antlerless Deer Limits for Private Lands in Game Zones 1-4.

Synopsis:

These regulations amend Chapter 123-40 Wildlife Management Area Regulations, 123-51 Turkey Hunting Rules and Seasons, and 123-52 Either-sex Days and Antlerless Deer Limits for Private Lands in Game Zones 1-4 in order to set seasons, bag limits and methods of hunting and taking of wildlife on existing Wildlife Management Areas, revise turkey regulations on properties in the WMA program to conform to statute, provide for electronic harvest reporting for turkeys as required by statute, and revise deer limits and tagging requirements to conform to statute.

A Notice of Drafting for this regulation was published on September 27, 2019 in the *South Carolina State Register*, Volume 43, Issue No. 9.

Instructions:

Amend Regulations 123-40, 123-51, and 123-52 as indicated below. Included are specific changes, deletions and additions. Unless specifically listed as a change, all other existing regulations remain intact.

123-40. Wildlife Management Area Regulations.

- A.3.(a) delete stricken text and insert new text as indicated
- B.6. (e)(i) delete stricken text and insert new text as indicated
 - (e)(ii) delete
- 12. (c)(i) delete stricken text and insert new text as indicated
 - (c)(ii) delete
- C.4.(b)(i) delete stricken text and insert new text as indicated
 - (b)(ii) delete
- 5. add (b) and insert new text as indicated
- 7. (c)(ii)(1) delete stricken text and insert new text as indicated
 - (c)(ii)(2) delete
- 8. (f) insert new text as indicated
 - (f)(i) delete stricken text and insert new text as indicated
 - (f)(ii) delete
- 11. (e)(i) delete stricken text and insert new text as indicated
 - (e)(ii) delete
- 12. insert (b) with new text as indicated
- 14. (d)(i) delete stricken text and insert new text as indicated
 - (d)(ii) delete
- 16. (d)(i) delete stricken text and insert new text as indicated
 - (d)(ii) delete
- 19.(a) delete stricken text
 - (b) insert new text as indicated

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- (c) insert with new text as indicated
 - 20.(b)(i) delete stricken text and insert new text as indicated
 - (b)(ii) delete
 - 23. insert (b) with new text as indicated
 - 25. insert (b) with new text as indicated
 - 27. insert (c) with new text as indicated
 - 28. insert (a) with new text as indicated
- D. Game Zone 4
- 4. Add new (a) with new text as indicated
 - (a) change to (b)
 - (b) change to (c)
 - (c) change to (d)
 - (d)(i) delete stricken text and insert new text as indicated
 - (d) change to (e)
 - 5. (d)(i) delete stricken text and insert new text as indicated
 - (d)(ii) delete
 - 6. delete (h) and (h)(i)
 - (i) change to (h)
 - (i)(i) delete stricken text and insert new text as indicated
 - (i)(ii) delete
 - 7. delete (g) and (g)(i)
 - (h) change to (g)
 - (i) change to (h)
 - (h)(i) delete stricken text and insert new text as indicated
 - (h)(ii) delete
 - 8. delete (g) and (g)(i)
 - (h) to (g)
 - (g)(i) delete stricken text and insert new text as indicated
 - (g)(ii) delete
 - 9. (c)(i) delete stricken text and insert new text as indicated
 - (c)(ii) delete
 - 10. (f)(i) delete stricken text and insert new text as indicated
 - (f)(ii) delete
 - 15. delete(e) and (e)(i)
 - (f) change to (e)
 - (e)(i) Specifies seasons and bag limits for small game
 - (e)(ii) delete
 - (g) change to (f)
 - 16. insert new (c) with new text as indicated
 - 17. insert new (c) with new text as indicated
 - 18. (b)(i) delete stricken text and add new text as indicated
 - (b)(ii) delete
 - 19. (e)(i) delete stricken text and add new text as indicated
 - (e)(ii) delete
 - 20. (f)(i) delete stricken text and add new text as indicated
 - (f)(ii) delete

General Regulations

- 2.12 delete stricken text and add new text as indicated
- 2.16 Insert new text as indicated

Weapons

- 3.1 Insert new text as indicated
- 3.2 Insert new text as indicated

Deer

- 4.4 delete
- 4.5 change to 4.4. Insert text as indicated
- 4.6 change to 4.5. Delete stricken text and add new text as indicated
- 4.7 change to 4.6
- 4.8 change to 4.7
- 4.9 change to 4.8

123-51. Turkey Hunting Rules and Seasons

- 1. insert new text as indicated
 - A.1.(a) Delete stricken text and insert new text as indicated
 - 1.(b) Insert new text as indicated
 - B.1.(a) Delete stricken text and insert new text as indicated
 - 1.(b) Insert new text as indicated
 - 2.(a) Delete stricken text and insert new text as indicated
 - 2.(b) Insert new text as indicated
 - 3.(a) Delete stricken text and insert new text as indicated
 - 3.(b) Insert new text as indicated
 - 4.(a) Delete stricken text and insert new text as indicated
 - 5.(a) Delete stricken text and insert new text as indicated
 - 5.(b) Insert new text as indicated
 - 6.(a) Delete stricken text and insert new text as indicated
 - 6.(b) Insert new text as indicated
 - 7.(a) Delete stricken text and insert new text as indicated
 - 7.(b) Insert new text as indicated
 - 8.(a) Delete stricken text and insert new text as indicated
 - 8.(b) Insert new text as indicated
 - 9.(a) Delete stricken text and insert new text as indicated
 - 10.(a) Delete stricken text and insert new text as indicated
 - 10.(b) Insert new text as indicated
 - C.1.(a) Delete stricken text and insert new text as indicated
 - 1.(b) Insert new text as indicated
 - 2.(a) Delete stricken text and insert new text as indicated
 - 3.(a) Delete stricken text and insert new text as indicated
 - 4.(c)(1) Delete stricken text and insert new text as indicated
 - 5.(a) Delete stricken text and insert new text as indicated
 - 5.(d)(1) Delete stricken text and insert new text as indicated
 - 5.(e)(1) Delete stricken text and insert new text as indicated
 - 6.(a) Delete stricken text and insert new text as indicated
 - 7.(a) Delete stricken text and insert new text as indicated
 - 8.(a) Delete stricken text and insert new text as indicated
 - 9.(a) Delete stricken text and insert new text as indicated
 - 10.(a) Delete stricken text and insert new text as indicated
 - 11.(a) Delete stricken text and insert new text as indicated
 - 12.(a) Delete stricken text and insert new text as indicated
 - 13.(a) Delete stricken text and insert new text as indicated
 - 14.(a) Delete stricken text and insert new text as indicated
 - 15.(a) Delete stricken text and insert new text as indicated
 - D.1.(a) Delete stricken text and insert new text as indicated
 - 1.(b) Insert new text as indicated
 - 2.(a) Delete stricken text and insert new text as indicated
 - 3.(a) Delete stricken text and insert new text as indicated
 - 4.(a) Delete stricken text and insert new text as indicated

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- 5.(a) Delete stricken text and insert new text as indicated
 - 6.(a) Delete stricken text and insert new text as indicated
 - 7.(a) Delete stricken text and insert new text as indicated
 - 8.(a) Delete stricken text and insert new text as indicated
 - 9.(a) Delete stricken text and insert new text as indicated
 - 10.(a) Delete stricken text and insert new text as indicated
 - 11.(a) Delete stricken text and insert new text as indicated
 - 12.(a) Delete stricken text and insert new text as indicated
 - 13.(a) Delete stricken text and insert new text as indicated
 - 14.(a) Delete stricken text and insert new text as indicated
 - 15.(a) Delete stricken text and insert new text as indicated
 - 16.(a) Delete stricken text and insert new text as indicated
 - 17.(a) Delete stricken text and insert new text as indicated
 - 18.(a) Delete stricken text and insert new text as indicated
 - 19.(a) Delete stricken text and insert new text as indicated
 - E.(1)(a) delete stricken text and insert new text as indicated
- Add E. (3), (3)(a), (3)(b), and 3(c)
- 123-52. delete stricken text as indicated
- 1,2,3,4 delete
 - 5. change to 1. Delete stricken text and add new text as indicated
 - 6. change to 2. Delete stricken text and add new text as indicated
 - Add new 3. Insert new text as indicated.
 - 7. change to 4

Text:

ARTICLE 3

WILDLIFE AND FRESH WATER FISHERIES DIVISION—HUNTING REGULATIONS

SUBARTICLE 1

HUNTING IN WILDLIFE MANAGEMENT AREAS

123-40. Wildlife Management Area Regulations.

1.1 The regulations governing hunting including prescribed schedules and seasons, methods of hunting and taking wildlife, and bag limits for Wildlife Management Areas and special restrictions for use of WMA lands are as follows:

A. Game Zone 1

1. Other WMAs

- (a) Archery Hunts for Deer
 - (i) Oct. 17 – Oct. 30
- (b) Primitive Weapons for Deer
 - (i) Oct. 1 through Oct. 10
- (c) Still Gun Hunts for Deer
 - (i) Oct. 11 through Oct. 16; Oct. 31 – Jan. 1
- (d) Still Gun Hunts for Bear
 - (i) Game Zone 1 seasons and bag limits apply
- (e) Special Party Dog Hunt for Bear
 - (i) Game Zone 1 seasons and bag limits apply
- (f) Small Game

- (i) Game Zone 1 seasons and bag limits apply
- (g) Hog Hunts with Dogs
 - (i) Jan. 2 – Jan. 10, Mar. 20 - Mar. 28
- 2. Glassy Mountain Archery Only Area – Chestnut Ridge Heritage Preserve**
 - (a) Archery Hunts for Deer.
 - (i) Oct. 1 – Jan. 1
 - (b) Small Game
 - (i) Game Zone 1 seasons and bag limits apply
- 3. Long Creek Tract**
 - (a) Game Zone 1 seasons and bag limits, except no deer hunting on or after Thanksgiving Day

B. Game Zone 2

1. Other WMAs

- (a) Archery Hunts for Deer
 - (i) Sept. 15 – Sept. 30
- (b) Primitive Weapons for Deer
 - (i) Oct. 1 through Oct. 10
- (c) Still Gun Hunts for Deer
 - (i) Oct. 11 through Jan. 1
- (d) Small Game
 - (i) Game Zone 2 seasons and bag limits apply
- (e) Hog Hunts with Dogs
 - (i) Jan. 2 - 10, Mar. 20 - 28

2. Keowee WMA

- (a) Designated as a Quality Deer Management Area. No hunting is allowed in research and teaching areas of Keowee WMA posted with white signs except those special hunts for youth or mobility-impaired as conducted by the Department.
- (b) North of Hwy 123 and west of the Keowee arm of Lake Hartwell, and west of Hwy 291, small game hunting with shotguns only. All other areas are archery only for small game.
- (c) Archery Hunts for Deer
 - (i) Oct. 15- Dec. 22
- (d) Raccoon and Opossum
 - (i) Game Zone 2 seasons and bag limits
- (e) Other Small Game
 - (i) Game Zone 2 seasons and bag limits apply.
 - (ii) No small game hunting during archery deer hunts except for waterfowl, designated dove field hunting, or raccoon and opossum hunting at night.

3. Draper WMA

- (a) Data cards required for hunter access, except draw dove hunts. Completed data cards must be returned daily before leaving the WMA.
- (b) Archery Hunts for Deer
 - (i) Sept. 15 - Sept. 30
- (c) Primitive Weapons for Deer
 - (i) Oct. 1 - Oct. 10
- (d) Still Gun Hunts for Deer
 - (i) Oct. 11 - Jan. 1
- (e) Quail Hunts
 - (i) 1st and 2nd Sat. in Dec., 3rd and 4th Wed. in Dec., 1st and 2nd Wed. and Sat. in Jan.
 - (ii) Game Zone 2 bag limit
 - (iii) PM Shooting hours end 30 minutes prior to official sunset.
- (f) Rabbit Hunts
 - (i) Wed. and Sat. in Jan. and Feb. following the last scheduled quail hunt until Mar. 1
 - (ii) Game Zone 2 bag limit

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- (g) Other Small Game (no fox squirrels)
- (i) Zone 2 seasons and bag limits apply

4. Fant's Grove WMA

- (a) Designated as a Quality Deer Management Area
- (b) Archery Deer Hunts
 - (i) Oct. 15- Dec. 22
- (c) Special Gun Hunts for Deer
 - (i) Hunters selected by drawing
 - (ii) Total 1 deer, either-sex.
- (d) Raccoon and Opossum
 - (i) Game Zone 2 seasons and bag limits
- (e) Other Small Game
 - (i) Game Zone 2 seasons and bag limits apply
 - (ii) No small game hunting during archery deer hunts except for waterfowl, designated dove field hunting, or raccoon and opossum hunting at night.
 - (iii) Waterfowl may be hunted Wed. and Sat. AM only.

5. Rock Hill Blackjacks HP WMA

- (a) Archery Deer Hunts
 - (i) Sept. 15 – Jan. 1
- (b) Small Game
 - (i) No small game hunting

6. Belfast WMA

(a) All terrain vehicles are prohibited. All harvested deer and turkeys must be checked in at the Belfast Check Station. Belfast WMA is open to public access during daylight hours (1/2 hour before sunrise to 1/2 hour after sunset) except during special hunts and events regulated by DNR. Hunters may not enter the WMA prior to 5:00 AM on designated hunts. Public visitation is not allowed during scheduled deer and turkey hunts. Data cards required for hunter access. Completed data cards must be returned daily upon leaving Belfast WMA.

- (b) Designated as a Quality Deer Management Area.
- (c) Archery Hunts for Deer
 - (i) Sept. 15 - Sept. 30
- (d) Still Gun Hunts for Deer
 - (i) Hunters selected by drawing
- (e) Small Game (no fox squirrels)
 - (i) Game Zone 2 seasons and bag limits

7. Broad River Waterfowl Management Area

- (a) Archery Deer Hunts
 - (i) Sept. 15 – Oct. 31
- (b) Small Game
 - (i) Feb. 8 – Mar. 1
 - (ii) Game Zone 2 bag limits

8. McCalla WMA

- (a) Designated as a Quality Deer Management Area.
- (b) Deer Hunts
 - (i) Game Zone 2 seasons
- (c) Small Game
 - (i) Game Zone 2 seasons and bag limits apply
- (d) Hog Hunts with Dogs
 - (i) Jan. 2 - 10, Mar. 20 - 28
- (e) Special Hunt Area for Youth and Mobility Impaired Hunters
 - (i) No open season except for hunters selected by drawing
 - (ii) 1 deer per day, either-sex

9. Worth Mountain WMA

- (a) Designated as a Quality Deer Management Area

- (b) Deer Hunts
 - (i) Game Zone 2 seasons
- (c) Small Game
 - (i) Game Zone 2 seasons and bag limits apply.

10. Liberty Hill WMA

- (a) Designated as a Quality Deer Management Area.
- (b) Archery Hunts for Deer
 - (i) Sept. 15 - Sept. 30
- (c) Primitive Weapons for Deer
 - (i) Oct. 1 - Oct. 10
- (d) Still Gun Hunts for Deer
 - (i) Oct. 11 - Jan. 1
- (e) Small Game (no fox squirrels)
 - (i) Zone 2 seasons and bag limits apply.

11. Delta North WMA

- (a) Deer Hunts
 - (i) Game Zone 2 seasons
- (b) Small Game (no fox squirrels)
 - (i) Game Zone 2 seasons and bag limits apply

12. Delta South WMA

- (a) Archery Hunts for Deer
 - (i) Sept. 15 - Sept. 30
- (b) Still Gun Hunts for Deer
 - (i) Nov. 1-Nov. 21, Wednesdays and Saturdays Only.
 - (ii) Special hunts for youth or mobility impaired hunters as published by SCDNR.
- (c) Small Game (no fox squirrels)
 - (i) Game Zone 2 seasons and bag limits

13. Forty Acre Rock HP WMA

- (a) Archery Hunts for Deer
 - (i) Sept. 15 - Sept. 30
- (b) Primitive Weapons for Deer
 - (i) Oct. 1 - Oct. 10
- (c) Still Gun Hunts for Deer
 - (i) Oct. 11 - Jan. 1
- (d) Small Game (no fox squirrels)
 - (i) Game Zone 2 seasons and bag limits apply

C. Game Zone 3

1. Other WMAs

- (a) Archery Deer Hunts
 - (i) Sept. 15 - Sept. 30
- (b) Still Gun Hunts for Deer
 - (i) Oct. 1 - Jan. 1
- (c) Small Game
 - (i) Game Zone 3 seasons and bag limits apply

2. Crackerneck WMA and Ecological Reserve

(a) All individuals must sign in and out at main gate. Designated as a Quality Deer Management Area. Scouting seasons (no weapons), will be Saturdays only during September, March, and May. The gate opens at 6:00am and closes at 8:00pm. On deer hunt days, gates will open as follows: Oct., 4:30am-8:30pm; Nov. - Dec., 4:30am-7:30pm. For special hog hunts in Jan. and Feb., gate will be open from 5:30am-7:00pm. On all raccoon hunts, raccoon hunters must cease hunting by midnight and exit the gate by 1:00am. All reptiles and amphibians are protected. No turtles, snakes, frogs, toads, salamanders etc. can be captured, removed, killed or harassed.

- (b) Archery Deer Hunts

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- (i) 1st Fri. and Sat. in Oct
- (c) Primitive Weapons Deer Hunts (no buckshot).
 - (i) 2nd Fri. and Sat. in Oct.
- (d) Still Gun Hunts for Deer
 - (i) 3rd Fri. in Oct. – Jan. 1, Fri., Sat. and Thanksgiving Day only except closed Dec. 25.
- (e) Raccoon and Opossum
 - (i) 3rd Sat. night in Oct. – Jan. 1, Sat. nights only, except closed Dec. 25, 1st Fri. night in Jan. to last Fri. or Sat. night in Feb., Fri. and Sat. nights only.
 - (ii) 3 raccoons per party per night
- (f) Hog Hunts with Dogs (handguns only)
 - (i) 1st Fri. after Jan. 1 – last Fri. in Feb. Fridays only
 - (ii) No limit.
- (g) Other Small Game (except no open season on bobcats, foxes, otters or fox squirrels).
 - (i) 3rd Fri. in Oct. – last Fri. or Sat. in Feb. Fri., Sat. and Thanksgiving Day only except closed Dec.25.
 - (ii) Game Zone 3 bag limits

3. Aiken Gopher Tortoise Heritage Preserve WMA

- (a) Archery Deer Hunts
 - (i) Sept. 15 - Sept. 30
- (b) Still Gun Hunts for Deer
 - (i) Oct. 1 – Jan. 1.
- (c) Small Game (no fox squirrels).
 - (i) Thanksgiving day – Mar. 1.
 - (ii) Game Zone 3 bag limits.

4. Ditch Pond Heritage Preserve WMA

- (a) Archery Deer Hunts.
 - (i) Sept. 15 – Jan. 1
- (b) Small Game (no fox squirrels).
 - (i) Game Zone 3 seasons and bag limits

5. Henderson Heritage Preserve WMA

- (a) Archery Deer Hunts.
 - (i) Sept. 15 – Jan. 1
- (b) No small game hunting allowed

6. Francis Marion National Forest

(a) During deer hunts when dogs are used, buckshot only is permitted. On hunts with dogs, all deer must be checked in by one hour after legal sunset. Individual antlerless deer tags are not valid during dog hunts for deer. Tibwin Special Use Area (in Wambaw) is closed to hunting except for Special hunts. On youth deer hunts, only youths 17 and younger may carry a gun and must be accompanied by an adult 21 years old or older. No fox or coyote hunting with dogs on the Francis Marion.

- (b) Hog Hunts with Dogs
 - (i) 3rd full week in Mar., 3rd full week in May
- (c) Still Hog Hunts
 - (i) First full week in Mar.

(d) Hellhole WMA

- (i) Archery Deer Hunts
 - (1) Sept. 15 - Oct. 10
- (ii) Still Gun Hunts for Deer
 - (1) Oct. 11 – Jan. 1 except during scheduled dog drive hunts
- (iii) Deer Hunts with Dogs (shotguns only)
 - (1) 1st Sat. in Nov., 1st Sat. in Dec.
 - (a) 2 deer per day, buck only
- (iv) Youth Only Deer Hunt with Dogs
 - (1) Sat. following the 2-day Wambaw buck only hunt in Nov.
 - (2) Requirements and bag limits for youth are the same as the statewide youth deer hunt day.

- (v) Small Game (no open season for fox hunting)
 - (1) Game Zone 3 seasons and bag limits apply.
 - (2) Dogs allowed during small game gun season only. Closed during scheduled periods using dogs to hunt deer.

(e) Waterhorn WMA

- (i) Archery Deer Hunts
 - (1) Sept. 15 - Oct. 10
- (ii) Muzzleloader Hunts for Deer
 - (1) Oct. 11 - Oct. 20
- (iii) Still Gun Hunts for Deer
 - (1) Every Friday and Saturday beginning Nov. 1.
- (iv) Small Game (no open season for fox hunting)
 - (1) Game Zone 3 seasons and bag limits apply.
 - (2) Dogs allowed during small game gun season only. Closed to small game and waterfowl hunting during scheduled deer hunt periods.

(f) Wambaw WMA

- (i) Archery Deer Hunts
 - (1) Sept. 15 - Oct. 10
- (ii) Still Gun Hunts for Deer
 - (1) Oct. 11 – Jan. 1 except during scheduled dog drive hunts west of Hwy 17.
 - (2) Still gun hunts only East of Hwy 17. No buckshot.
- (iii) Deer Hunts with Dogs (shotguns only)
 - (1) Fri. in Sept. before the last Sat. Northampton dog hunt, Wed. and Thurs. before the 3rd Sat. in Nov. and 2nd Sat. in Oct., first 2 days excluding Sunday after Dec. 25
 - (a) 2 deer per day, buck only
 - (2) 2nd Sat. in Dec.
 - (a) 1 deer per day
 - (b) All deer must be checked in at designated check stations.
- (iv) Youth Only Deer Hunt with Dogs
 - (1) 1st date specific either-sex day in November.
 - (2) Requirements and bag limits for youth are the same as the statewide youth deer hunt day.
- (v) Seewee Special Use Area
 - (1) Archery Deer Hunts
 - (2) Sept. 15 – Jan. 1
- (vi) Small Game (no open season for fox hunting)
 - (1) Game Zone 3 seasons and bag limits apply.
 - (2) Dogs allowed during small game gun season only. Closed during scheduled periods using dogs to hunt deer.

(g) Northampton WMA

- (i) Archery Deer Hunts
 - (1) Sept. 15 - Oct. 10
- (ii) Still Gun Hunts for Deer
 - (1) Oct. 11 – Jan. 1 except during scheduled dog drive hunts.
- (iii) Deer Hunts with Dogs (shotguns only)
 - (1) Last Sat. in Sept., Wed. and Thurs. before the 2nd Sat. in Oct., Fri. before the 4th Sat. in Nov., 3rd day excluding Sunday after Dec. 25
 - (a) 2 deer per day, buck only
 - (2) 2nd Sat. in Dec.
 - (a) 1 deer per day
 - (b) All deer must be checked in at designated check stations.
- (iv) Youth Only Deer Hunt with Dogs
 - (1) Last Saturday in Nov.
 - (2) Requirements and bag limits for youth are the same as the statewide youth deer hunt day.

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(v) Small Game (no open season for fox hunting)

(1) Game Zone 3 seasons and bag limits apply.

(2) Dogs allowed during small game gun season only. Closed during scheduled periods using dogs to hunt deer.

(h) Santee WMA

(i) Archery Deer Hunts

(1) Sept. 15 - Oct. 10

(ii) Still Gun Hunts for Deer

(1) Oct. 11 – Jan. 1 except during scheduled dog drive hunts

(iii) Deer Hunts with Dogs (shotguns only)

(1) 2nd Fri. and Sat. in Sept., Wed. and Thurs. before the 4th Sat. in Oct., 1st Fri. in Dec.

(a) 2 deer per day, buck only

(2) 2nd Sat. in Dec.

(a) 1 deer per day

(b) All deer must be checked in at designated check stations.

(iv) Youth Only Deer Hunt with Dogs

(1) 3rd Sat. in Oct.

(2) Requirements and bag limits for youth are the same as the statewide youth deer hunt day.

(v) Small Game (no open season for fox hunting)

(1) Game Zone 3 seasons and bag limits apply.

(2) Dogs allowed during small game gun season only. Closed during scheduled periods using dogs to hunt deer.

7. Moultrie

(a) No hunting or shooting within fifty feet of the center of any road during gun hunts for deer except for SCDNR draw youth hunts.

(b) Bluefield WMA

(i) Open only to youth 17 years of age or younger who must be accompanied by an adult at least 21 years of age. Youth hunters must carry a firearm and hunt. Adults with youth are allowed to carry a weapon and hunt.

(ii) Still Gun Hunts for Deer

(1) Sept. 15 – Jan. 1, Wed. and Sat. only

(iii) Small Game (no fox squirrels)

(1) Game Zone 3 seasons and bag limits apply.

(2) No small game hunting during scheduled deer hunts.

(c) Greenfield WMA

(i) Still Gun Hunts for Deer

(1) Sept. 15 – Jan. 1

(ii) Small Game (no fox squirrels)

(1) Game Zone 3 seasons and bag limits

(d) North Dike WMA

(i) Still Gun Hunts for Deer

(1) Sept. 15 - Oct. 15.

(ii) Special Gun Hunts for youth and women

(1) Hunters selected by drawing.

(2) 1 deer per day

(iii) Small Game (no fox squirrels)

(1) Jan. 2 - Mar. 1

(2) Game Zone 3 bag limits.

(3) Sandy Beach Waterfowl Area open for raccoon hunting Feb. 1 – Mar. 1

(e) Porcher and Hall WMAs

(i) Archery Deer Hunts

(1) Sept. 15 – Jan. 1

(ii) Small Game (no fox squirrels) shotguns only

(1) Jan. 2 – Mar. 1

(2) Game Zone 3 bag limits

(f) Cross Station Site

- (i) Special Gun Hunts for youth and women
 - (1) No open season except hunters selected by drawing
 - (2) 1 deer per day

8. Santee Cooper WMA

(a) Data cards required for hunter access. Completed data cards must be returned daily upon leaving. Hunters limited to two deer/tree stands which must contain a label with the hunter's name and address. No stands may be placed on Santee Cooper WMA prior to Sept. 1. Campground is open during scheduled deer hunts only. All impoundments and posted buffers are closed to all public access Nov. 1 – Feb. 8 except during hunts as prescribed by the Department.

- (b) Designated as a Quality Deer Management Area
- (c) Archery Deer Hunts
 - (i) Sept. 15 - Oct. 31
- (d) Primitive Weapons Deer Hunts
 - (i) Nov. 1 - Monday before Thanksgiving Day
- (e) Special Gun Hunts for youth
 - (i) Hunters selected by drawing.
 - (ii) 1 deer per day
- (f) Small Game (no fox squirrels)
 - (i) Game Zone 3 seasons and bag limits

9. Webb WMA

(a) Data cards are required for hunter access. Completed data cards must be returned daily upon leaving. Designated as a Quality Deer Management Area.

- (b) Still Hunts for Deer
 - (i) Hunters selected by drawing
 - (ii) 2 deer, either-sex but only 1 buck
- (c) Hog Hunts with Dogs
 - (i) 1st Thurs. – Sat. in Mar., 2nd Thurs. – Sat. in May, 4th Thurs. – Sat. in June, 4th Thurs. – Sat. in July, and last Thurs. - Sat. in August
- (d) Quail Hunts
 - (i) 2nd and 4th Wed. in Jan., 2nd and 4th Sat. in Jan., 1st and 3rd Sat. in Feb., 1st and 3rd Wed. in Feb.
 - (ii) Game Zone 3 bag limit
 - (iii) Shooting hours end 30 minutes prior to official sunset
- (e) Raccoon and Opossum
 - (i) Tues. nights and Sat. nights between Oct. 11 – Sat. before Thanksgiving; The full week of Thanksgiving; Tues. nights and Sat. nights from the Tues. after Thanksgiving until Dec. 15.; Dec. 15- Mar. 1
 - (ii) On Saturdays prior to Dec. 15, no entry onto WMA until 1 hour after official sunset.
 - (iii) Game Zone 3 bag limits
- (f) Other Small Game (no fox squirrels)
 - (i) The full week of Thanksgiving, Dec. 15 - Mar. 1
 - (ii) Game Zone 3 bag limits
- (g) Dove Hunting
 - (i) Designated public dove field only on specified days.

10. Bear Island WMA

- (a) All hunters must sign in and out at the Bear Island Office. Hunting in designated areas only.
- (b) Archery Deer Hunts
 - (i) Oct. 1 - Oct. 10
- (c) Still Gun Hunts for Deer
 - (i) Hunters selected by drawing
 - (ii) 3 deer, either-sex but only 1 buck
- (d) Hog Hunts with Dogs
 - (i) 1st Thurs. – Sat. in March

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- (e) Alligator Hunts (Bear Island East and West Units only)
 - (i) Hunters selected by drawing only. Limited season with restricted access.
 - (ii) Limit and size restrictions as prescribed.
- (f) Small Game
 - (i) Feb. 8 - Mar. 1
 - (ii) Game Zone 3 bag limits

11. Donnelley WMA

- (a) All hunters must sign in and out at the check station. Hunting in designated areas only.
- (b) Archery Deer Hunts
 - (i) Sept. 15 - Sept. 30
- (c) Still Gun Hunts for Deer
 - (i) Hunters selected by drawing
 - (ii) 3 deer, either-sex but only 1 buck
- (d) Hog Hunts with Dogs
 - (i) 1st Thurs. – Sat. in March
- (e) Small Game (no fox squirrels)
 - (i) Game Zone 3 seasons and bag limits

12. Hatchery WMA

- (a) Archery Deer Hunts
 - (i) Sept. 15 - Jan. 1
- (b) No small game hunting

13. Bonneau Ferry WMA

(a) All terrain vehicles prohibited. Hunting access by boat is prohibited. For hunting, the Adult/youth side is open only to youth 17 years old or younger who must be accompanied by only one adult 21 years of age or older. Youth hunters must carry a firearm and hunt. Adults with youth hunters may also carry a firearm and hunt. For deer and small game, regulations for the adult/youth and general use sides of the property will alternate each year as prescribed by the Department. All hunters must sign in and sign out upon entering or leaving. All deer must be checked out at the main entrance. Closed to public access one hour after sunset until one hour before sunrise except for special hunts regulated by DNR. Hunters may not enter WMA prior to 5:00 AM on designated hunts. All impoundments and adjacent posted buffers are closed to all public access Nov. 1 – Feb. 8 except for special draw deer hunts and waterfowl hunts regulated by DNR during the regular waterfowl season. Hunted areas are closed to general public access during scheduled deer, turkey and waterfowl hunts. No fox hunting.

- (b) Adult/Youth Side
 - (i) Still Gun Hunts for Deer
 - (1) Sept. 15 – Jan. 1, Wed., Fri. and Sat., entire week of Thanksgiving and 5 days before Christmas until Jan. 1
- (c) General Use Side
 - (i) Archery Deer Hunts
 - (1) Sept. 15 - Sept. 30
 - (ii) Still Gun Hunts for Deer
 - (1) Hunters selected by drawing
 - (2) Total 3 deer, either-sex except only 1 buck.
 - (3) Hunters are required to have permit in possession and must sign in and out (Name, permit # and deer killed each day).
- (d) Small Game (no fox squirrels or fox)
 - (i) Jan. 2 – Mar. 1
 - (ii) Game Zone 3 bag limits
 - (iii) Dogs allowed during gun seasons only
- (e) Bonneau Ferry Fishing Regulations
 - (i) Open to fishing on Thurs. through Sun. from Mar. 2 – Oct. 31 during daylight hours only
 - (ii) Adult/youth fishing only. Each youth (17 years and under) must be accompanied by no more than two adults 18 years of age or older.
 - (iii) The youth must actively fish.

- (iv) Fishing is not allowed during scheduled deer and turkey hunts.
- (v) Only electric motors may be used.
- (vi) Creel limits per person per day are: largemouth bass – 2, panfish (bluegill, redear, crappie, pumpkinseed, redbreast) – 10, catfish – 5, species not listed – no limit. Grass carp must be released alive immediately.

14. Santee Coastal Reserve WMA

- (a) Archery Deer Hunts
 - (i) Sept. 15 - Jan. 1
 - (ii) Hunting on mainland only
- (b) Hog Hunts with Dogs
 - (i) 2nd full week in March
- (c) Alligator Hunts
 - (i) Hunters selected by drawing only. Limited season with restricted access.
 - (ii) Limit and size restrictions as prescribed
- (d) Small Game (no fox squirrels)
 - (i) Game Zone 3 seasons and bag limits

15. Dungannon Heritage Preserve WMA

- (a) Archery Deer Hunts
 - (i) Sept. 15 - Jan. 1
- (b) Small Game (no fox squirrels)
 - (i) Thanksgiving Day - Jan. 31
 - (ii) Game Zone 3 bag limits

16. Edisto River WMA

- (a) Archery Deer Hunts
 - (i) Sept. 15 – Oct. 10
- (b) Still Gun Hunts for Deer
 - (i) Oct. 11 – Jan. 1
- (c) Raccoon and Opossum
 - (i) Game Zone 3 seasons and bag limits
- (d) Other Small Game
 - (i) Game Zone 3 seasons and bag limits

17. Canal WMA

- (a) Quail Hunts
 - (i) Game Zone 3 season and bag limit

18. Palachucola WMA

- (a) Data cards are required for hunter access. Completed data cards must be returned daily upon leaving WMA. Designated as a Quality Deer Management Area.
- (b) Archery Deer Hunts
 - (i) Sept. 15 - Oct. 10
- (c) Still Gun Hunts for Deer
 - (i) Hunters selected by drawing
 - (ii) 3 deer, either-sex but only 1 buck
- (d) Hog Hunts with Dogs
 - (i) 1st Thurs. – Sat. in Mar., 2nd Thurs. – Sat. in May, 4th Thurs. – Sat. in June, 4th Thurs. – Sat. in July, and last Thurs. - Sat. in August
- (e) Quail Hunts
 - (i) 2nd and 4th Wed. in Jan., 2nd and 4th Sat. in Jan., 1st and 3rd Sat. in Feb., 1st and 3rd Wed. in Feb.
 - (ii) Game Zone 3 bag limit
 - (iii) Shooting hours end 30 minutes prior to official sunset.
- (f) Raccoon and Opossum
 - (i) Tues. nights and Sat. nights between Oct. 11 – Sat. before Thanksgiving; The full week of Thanksgiving; Tues. nights and Sat. nights from the Tues. after Thanksgiving until Dec. 15.; Dec. 15- Mar. 1
 - (ii) On Saturdays prior to Dec. 15, no entry onto WMA until 1 hour after official sunset.

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- (iii) Game Zone 3 bag limits
- (g) Other Small Game (no fox squirrels)
 - (i) The full week of Thanksgiving, Dec. 15 - Mar. 1
 - (ii) Game Zone 3 bag limits

19. St. Helena Sound Heritage Preserve WMA

(a) Deer hunting by permit only obtained at McKenzie Field Station. Camping by special permit only and on Otter Island only.

(b) Ashe, Beet, Warren, Otter, Big, South Williman, North Williman and Buzzard Islands Archery Deer Hunts

- (i) Sept. 15 – Jan. 1
- (c) No small game hunting

20. Tillman Sand Ridge Heritage Preserve WMA

- (a) Archery Deer Hunts
 - (i) Sept. 15 - Jan. 1
- (b) Small Game (no fox squirrels)
 - (i) Game Zone 3 seasons and bag limits

21. Victoria Bluff Heritage Preserve WMA

- (a) Archery Deer Hunts
 - (i) Sept. 15 - Jan. 1
- (b) Small Game (no fox squirrels)
 - (i) Jan. 2 - Mar. 1
 - (ii) Game Zone 3 bag limits
 - (iii) Shotguns only

22. Hamilton Ridge WMA

(a) Designated as a Quality Deer Management Area. Horseback riding by permit only. No ATVs allowed. Data cards are required for hunter access. Completed data cards must be returned daily upon leaving the WMA.

- (b) Archery Deer Hunts
 - (i) Sept. 15 - Oct. 10
- (c) Still Gun Hunts for Deer
 - (i) Hunters selected by drawing
 - (ii) 3 deer, either-sex but only 1 buck
- (d) Hog Hunts with Dogs

(i) 1st Thurs. – Sat. in Mar., 2nd Thurs. – Sat. in May, 4th Thurs. – Sat. in June, 4th Thurs. – Sat. in July, and last Thurs. - Sat. in August.

- (e) Quail Hunts
 - (i) 2nd and 4th Wed. in Jan., 2nd and 4th Sat. in Jan., 1st and 3rd Sat. in Feb., 1st and 3rd Wed. in Feb.
 - (ii) Game Zone 3 bag limit
 - (iii) Shooting hours end 30 minutes prior to official sunset.
- (f) Raccoon and Opossum

(i) Tues. nights and Sat. nights between Oct. 11 – Sat. before Thanksgiving; The full week of Thanksgiving; Tues. nights and Sat. nights from the Tues. after Thanksgiving until Dec. 15.; Dec. 15- Mar. 1

- (ii) On Saturdays prior to Dec. 15, no entry onto WMA until 1 hour after official sunset.
- (iii) Game Zone 3 bag limits
- (g) Other Small Game (no fox squirrels)
 - (i) The full week of Thanksgiving, Dec. 15 - Mar. 1.
 - (ii) Game Zone 3 bag limits
 - (iii) Dove hunting on designated public dove field only

23. Old Island Heritage Preserve WMA

- (a) Archery Deer Hunts
 - (i) Sept. 15 – Jan. 1
- (b) No small game hunting

24. Botany Bay Plantation Heritage Preserve WMA

(a) Designated as a Quality Deer Management Area. All hunters, fishermen and visitors must obtain and complete a day use pass upon entering the area and follow all instructions on the pass. Botany Bay Plantation WMA is open to public access during daylight hours (1/2 hour before sunrise to 1/2 hour after sunset) except during special hunts and events regulated by DNR. Area is closed to general public access during special scheduled hunts. Hunting in designated areas only. Hunting access by boat is prohibited. Fishing in the Jason's Lake complex and all other ponds is adult/youth catch and release only on designated days. For adult/youth fishing, youth must be accompanied by no more than two adults 18 years old or older. Adult may also fish.

(b) Archery Deer Hunts

(i) Sept. 15 - Oct. 10, Mon. – Sat. during the week of Thanksgiving, Mon. – Sat. during the week of Christmas.

(c) Still Gun Hunts for Deer

(i) Hunters selected by drawing

(ii) Total 3 deer, either-sex but only 1 buck

(iii) Hunters are required to have permit in possession and must sign in and sign out (Name, permit # and deer killed each day) at the designated check station. All harvested deer must be checked in at the designated check station.

(d) Small Game (no fox squirrels or foxes)

(i) Jan. 2 – Mar. 1 (Wed. through Sat. only)

(ii) Game Zone 3 bag limits

(iii) Dogs allowed during gun seasons only

25. Congaree Bluffs Heritage Preserve WMA

(a) Still Gun Hunts for Deer

(i) Hunters selected by drawing.

(ii) Total 1 deer per day, either-sex

(b) No small game hunting

26. Wateree River Heritage Preserve WMA

(a) Data cards are required for hunter access. Completed data cards must be returned daily upon leaving WMA. Designated as a Quality Deer Management Area.

(b) Archery Deer Hunts

(i) Sept. 15 - Oct. 10

(c) Still Gun Hunts for Deer

(i) Hunters selected by drawing

(ii) 3 deer, either-sex but only 1 buck

(d) Small Game (no fox squirrels)

(i) Jan. 2 - Mar. 1

(ii) Game Zone 3 bag limits.

27. South Fenwick Island

(a) Deer hunting by permit only. Primitive camping is allowed by permit within designated areas. Permits available from DNR through the McKenzie Field Station. Property is closed to other users during scheduled deer hunts.

(b) Archery Deer Hunts

(i) October 1-10

(c) No small game hunting

28. Turtle Island

(a) No hunting except waterfowl and marsh hens

D. Game Zone 4

1. Other WMAs

(a) Archery Deer Hunts.

(i) Sept. 15 - Oct. 10

(b) Still Gun Hunts for Deer

(i) Oct. 11 – Jan. 1

(c) Small Game

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- (i) Game Zone 4 seasons and bag limits apply

2. Marsh WMA

- (a) All visitors to Marsh WMA are required to sign in upon entry to the WMA and sign out upon exit from the WMA and provide any additional information requested. No ATVs allowed.
- (b) Special Hunt Area for Youth and Mobility Impaired Hunters
 - (i) No open season except for hunters selected by drawing
 - (ii) 1 deer per day, either-sex
- (c) Archery Deer Hunts
 - (i) Sept. 15 - Oct. 31
- (d) Still Gun Hunts for Deer
 - (i) Nov. 1 - Nov. 30
- (e) Still Hog Hunts
 - (i) First full week in Mar.
- (f) Hog Hunts with Dogs
 - (i) 3rd full week in Mar. and 3rd full week in May
- (g) Raccoon and Opossum Hunts
 - (i) Game Zone 4 seasons and bag limits
- (h) Other Small Game (no fox squirrels)
 - (i) Thanksgiving – Mar. 1
 - (ii) Game Zone 4 bag limits
- (i) Quail Hunts
 - (i) Monday before Thanksgiving, Thanksgiving Day, 1st & 3rd Wed. in December, 1st & 3rd Sat. in December, 2nd Wed. & Sat. in January.
 - (ii) Game Zone 4 bag limit.
 - (iii) Shooting hours end 30 minutes prior to official sunset.

3. Sand Hills State Forest WMA

- (a) Hunting by the general public closed during scheduled field trials on the Sand Hills State Forest Special Field Trial Area. Hunting allowed during permitted field trials on the Sand Hills State Forest Special Field Trial Area in compliance with R.123-96. No man-drives allowed.
- (b) Archery Deer Hunts
 - (i) Sept. 15 – Oct. 10
- (c) Still Gun Hunts for Deer
 - (i) Oct. 11 – Jan. 1
- (d) Small Game
 - (i) Game Zones 4 seasons and bag limits apply. No daytime fox hunting from Sept. 15 – Jan. 1

4. McBee WMA

- (a) All visitors are required to sign in upon entry to the WMA and sign out upon exit and provide any additional information requested on sign-in sheets at the kiosk. No ATVs allowed.
- (b) Archery Deer Hunts
 - (i) Sept. 15 – Oct. 10
- (c) Still Gun Hunts for Deer.
 - (i) Oct. 11 - Saturday before Thanksgiving
- (d) Quail
 - (i) no open season except hunters selected by drawing. Bag limit 10 birds per hunt party.
- (e) Other Small Game (no fox squirrels)
 - (i) Jan. 15 - Mar. 1
 - (ii) Game Zone 4 bag limits

5. Pee Dee Station Site WMA

- (a) All visitors are required to sign in upon entry to the WMA and sign out upon exit and provide any additional information requested on sign in sheets at the kiosk. No ATVs allowed.
- (b) Archery Deer Hunts
 - (i) Sept. 15 - Oct. 31
- (c) Primitive Weapons Deer Hunts

- (i) Nov. 1 - Nov. 30
- (d) Small Game (no fox squirrels)
- (i) Game Zone 4 seasons and bag limits

6. Woodbury WMA

(a) All visitors are required to sign in upon entry and sign out upon exit and provide any additional information requested on sign in sheets at the kiosk. No ATVs allowed.

- (b) Designated as a Quality Deer Management Area
- (c) Archery Deer Hunts
 - (i) Sept. 15 – Oct. 10
- (d) Primitive Weapons Deer Hunts
 - (i) Oct. 11 - Oct. 20
- (e) Still Gun Hunts for Deer
 - (i) Oct. 21 - Jan. 1
- (f) Still Hog Hunts
 - (i) First full week in Mar.
- (g) Hog Hunts with Dogs
 - (i) 3rd full week in Mar. and 3rd full week in May
- (h) Small Game (no fox squirrels)
- (i) Game Zone 4 seasons and bag limits

7. Little Pee Dee Complex WMA

(a) Includes Little Pee Dee River HP, Tilghman HP, Dargan HP and Ward HP in Horry and Marion Counties. This also includes the Upper Gunters Island and Huggins tracts in Horry Co. which are part of Dargan HP.

- (b) Archery Deer Hunts
 - (i) Sept. 15 – Oct. 10
- (c) Primitive Weapons Deer Hunts
 - (i) Oct. 11 – Oct. 20.
- (d) Still Gun Hunts for Deer
 - (i) Oct. 21 - Jan. 1.
- (e) Still Hog Hunts
 - (i) First full week in Mar.
- (f) Hog Hunts with Dogs
 - (i) 2nd full week in Mar.
- (g) Small Game (no fox squirrels)
- (i) Game Zone 4 seasons and bag limits
- (h) Bear Season
 - (i) October 17 – October 30

8. Great Pee Dee Heritage Preserve WMA

(a) All visitors are required to sign in upon entry and sign out upon exit and provide any additional information requested on sign in sheets at the kiosk. No ATVs allowed.

(b) For big game hunting, access is restricted from two hours before sunrise to two hours after official sunset.

- (c) Archery Deer Hunts
 - (i) Sept. 15 - Oct. 31
- (d) Still Gun Hunts for Deer
 - (i) Nov. 1 - Nov. 30
- (e) Still Hog Hunts
 - (i) First full week in March
- (f) Hog Hunts with Dogs
 - (i) 3rd full week in Mar. and 3rd full week in May
- (g) Other Small Game (no fox squirrels)
- (i) Game Zone 4 seasons and bag limits

9. Longleaf Pine Heritage Preserve WMA

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- (a) Archery Deer Hunts
 - (i) Sept. 15 - Oct. 10
- (b) Still Gun Hunts for Deer
 - (i) Oct. 11 - Jan. 1
- (c) Small Game (no fox squirrels)
 - (i) Game Zone 4 seasons and bag limits

10. Manchester State Forest WMA

(a) Deer must be checked at designated check stations. Individual antlerless deer tags are not valid during dog hunts for deer.

- (b) Archery Deer Hunts
 - (i) 3rd Mon. in Sept. – the following Sat.
- (c) Primitive Weapons Deer Hunts
 - (i) 4th Mon. in Sept. – following Sat.
- (d) Deer Hunts with Dogs
 - (i) Clubs selected by drawing.
 - (ii) 10 antlered deer per day per club, 5 antlerless deer per day per club, 1 deer per person.
- (e) Still Gun Hunts for Deer
 - (i) 5th Mon. in Sept. – following Sat., 1st Mon. in Oct. – following Sat., 2nd Mon. in Oct. – following Sat., 3rd Tues. in Oct. – following Fri., 4th Tues. in Oct. – following Fri., 5th Tues. in Oct. – following Thurs., 1st Tues. in Nov. – following Fri., 2nd Tues. in Nov. – following Sat., 3rd Tues. in Nov. – following Fri., Mon. – Sat. the week of Thanksgiving, 4th Mon. in Nov. – following Fri., 1st Tues. in Dec. – following Fri., 1st full week following the 1st Tues. in Dec. – following Fri., 2nd full week following the 1st Tues. in Dec. – following Fri., 3rd full week following 1st Tues. in Dec. – following Sat.
 - (ii) In years when there is a fifth Tues. in Oct., additional deer hunts may be scheduled on Fri. and Sat. during Oct. and Nov.
 - (iii) In years when there is a fifth Mon. in Dec., additional hunts may be scheduled that week.

- (f) Small Game
 - (i) Game Zone 4 seasons and bag limits
- (g) Hog Hunts with Dogs
 - (i) 2nd full week in Mar.

11. Lynchburg Savanna Heritage Preserve WMA

- (a) Small Game Only (no fox squirrels)
 - (i) Game Zone 4 seasons and bag limits

12. Hickory Top WMA

(a) Data cards required for hunter access. Completed data cards must be returned daily upon leaving. The Greentree Reservoir is open to hunting during the regular Hickory Top seasons during years when the Greentree Reservoir remains unflooded.

- (b) Archery Deer Hunts
 - (i) Sept. 15 - Oct. 31
- (c) Primitive Weapons Deer Hunts
 - (i) Nov. 1 – Jan. 1
- (d) Hog Hunts with Dogs
 - (i) 2nd full week in Mar.
- (e) Small Game (no fox squirrels)
 - (i) Game Zone 4 seasons and bag limits apply.

13. Oak Lea WMA

(a) Data cards required for hunter access during archery deer hunts, turkey hunts and small game hunts. Completed data cards must be returned daily upon leaving the WMA.

- (b) Archery Deer Hunts
 - (i) Sept. 15 - 30
- (c) Still Gun Hunts for Deer
 - (i) Hunters selected by drawing
 - (ii) Total 20 deer per hunt party, either-sex

- (d) Small Game (except quail)
 - (i) Jan. 2 – Mar. 1 except no small game hunting during scheduled quail hunts
 - (ii) Game Zone 4 bag limits
- (e) Quail
 - (i) Designated dates within Game Zone 5 season
 - (ii) Game Zone 4 bag limit

14. Santee Dam WMA

- (a) Archery Deer Hunts
 - (i) Sept. 15 - Oct. 31
- (b) Primitive Weapons Deer Hunts
 - (i) Nov. 1 – Jan. 1
- (c) Hog Hunts with Dogs
 - (i) 2nd full week in March
- (d) Small Game (no fox squirrels)
 - (i) Jan. 2 – Mar. 1
 - (ii) Game Zone 4 bag limits

15. Wee Tee WMA

- (a) Archery Deer Hunts
 - (i) Sept. 15 – Oct. 10
- (b) Still Gun Hunts for Deer
 - (i) Oct. 11 – Jan. 1
- (c) Still Hog Hunts
 - (i) First full week in March
- (d) Hog Hunts with Dogs
 - (i) 2nd full week in March
- (e) Small Game (no fox squirrels, no fox hunting)
 - (i) Game Zone 4 seasons and bag limits
 - (ii) Dogs allowed during small game gun season only
- (f) Bear Season
 - (i) October 17 – October 30

16. Santee Delta WMA

- (a) Archery Deer Hunts (impoundments only)
 - (i) Sept. 15 - Oct. 10
- (b) Hog Hunts with Dogs
 - (i) 2nd full week in Mar. (impoundments only)
- (c) No small game hunting

17. Samworth WMA

- (a) Archery Deer Hunts (impoundments only)
 - (i) Sept. 15 - Oct. 10
- (b) Hog Hunts with Dogs
 - (i) 2nd full week of Mar. (impoundments only)
- (c) No small game hunting except dove hunting during scheduled dove hunts

18. Cartwheel Bay Heritage Preserve WMA

- (a) Archery Deer Hunts
 - (i) Sept. 15 – Jan. 1
- (b) Small Game (no fox squirrels)
 - (i) Game Zone 4 seasons and bag limits
- (c) Bear Season
 - (i) October 17 – October 30

19. Lewis Ocean Bay Heritage Preserve WMA

- (a) All deer hunters must sign in and sign out daily and record harvest at the kiosk.
- (b) Archery Deer Hunts
 - (i) Sept. 15 - Oct. 10

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- (c) Primitive Weapons Deer Hunts
 - (i) Oct. 11 - Oct. 20
- (d) Still Gun Hunts for Deer
 - (i) Oct. 21 - Jan. 1.
- (e) Small Game (no fox squirrels).
 - (i) Game Zone 4 seasons and bag limits
- (f) Bear Season
 - (i) October 17 – October 30

20. Waccamaw River Heritage Preserve WMA

- (a) Archery Deer Hunts
 - (i) Sept. 15 - Oct. 10
- (b) Primitive Weapons Deer Hunts
 - (i) Oct. 11 - Oct. 20
- (c) Still Gun Hunts for Deer
 - (i) Oct. 21 - Jan. 1
- (d) Still Hog Hunts
 - (i) First full week in March
- (e) Hog Hunts with Dogs
 - (i) 2nd full week in Mar.
- (f) Small Game (no fox squirrels)
 - (i) Game Zone 4 seasons and bag limits
- (g) Bear Season
 - (i) October 17 – October 30

21. Liberty Hill WMA

- (a) Designated as a Quality Deer Management Area
- (b) Archery Hunts for Deer
 - (i) Sept. 15 - Sept. 30
- (c) Primitive Weapons for Deer
 - (i) Oct. 1 - Oct. 10
- (d) Still Gun Hunts for Deer
 - (i) Oct. 11 - Jan. 1
- (e) Small Game (No fox squirrels)
 - (i) Zone 4 seasons and bag limits apply.

GENERAL REGULATIONS

2.1 Except as provided in these regulations, no person may hunt or take wildlife on areas designated by the South Carolina Department of Natural Resources (SCDNR) as Wildlife Management Area (WMA) lands.

2.2 Entry onto WMA land is done wholly and completely at the risk of the individual. Neither the landowners nor the State of South Carolina nor the South Carolina Department of Natural Resources accepts any responsibility for acts, omissions, or activities or conditions on these lands which cause personal injury or property damage.

2.3 Entry onto WMA land constitutes consent to an inspection and search of the person, game bag or creel.

2.4 No person may hunt or take wildlife on WMA land unless an individual is in possession of a valid South Carolina license, a valid WMA permit, and other applicable federal or state permits, stamps or licenses.

2.5 No Sunday hunting is permitted on any WMA lands.

2.6 On all WMA lands, baiting or hunting over a baited area is prohibited. As used in this section, “bait” or “baiting” means the placing, depositing, exposing, distributing, or scattering of shelled, shucked, or unshucked corn, wheat, or other grain or other food stuffs to constitute an attraction, lure, or enticement to, on, or over any area. “Baited area” means an area where bait is directly or indirectly placed, deposited, exposed, distributed, or scattered and the area remains a baited area for ten (10) days following the complete removal of all bait. Salt/minerals are not considered bait.

2.7 On WMA lands, construction or use of tree stands is prohibited if the tree stand is constructed by driving nails or other devices into trees or if wire is wrapped around trees. Other tree stands are permitted provided they are not permanently affixed or embedded in the tree. All stands and temporary climbing devices must be removed by the end of the deer hunting season.

2.8 On WMA lands, any hunter younger than sixteen (16) years of age must be accompanied by an adult (21 years or older). Sight and voice contact must be maintained.

2.9 Notwithstanding any other provision of these regulations, the Department may permit special hunts on any day during the regular hunting season.

2.10 No person may release or attempt to release any animal onto WMA lands without approval from the Department. This regulation does not apply on designated Public Bird Dog Training Areas where pen raised quail and pigeons may be released.

2.11 While participating in a hunt on WMAs, no person may possess, consume or be under the influence of intoxicants, including beer, wine, liquor or drugs.

2.12 On WMA lands, during the designated statewide youth deer hunt day, only still hunting is allowed. The limit is two deer total, either sex. Tags are not required

2.13 Taking or destroying timber, other forest products or cutting firewood on WMA lands without written permission from the landowner or his agent is prohibited. Users of WMA lands are prohibited from planting, attempting to plant, burning or otherwise attempting to manipulate crops, natural vegetation or openings without written permission from the landowner or his agent.

2.14 On WMA lands, hunting armadillos and coyotes at night is prohibited. Armadillos and coyotes may be hunted during any open season for game during daylight hours with no bag limit. Weapon(s) used to hunt armadillos and coyotes are limited to the weapon(s) that are allowed for the current open season on WMA.

2.15 On WMA lands during special designated hunts, a WMA may be closed to other public access.

2.16 Still hunting for hogs is permitted on WMAs during any open season for game during daylight hours with only the weapons allowed during the hunting season in progress unless otherwise prohibited. No hog may be transported alive from a WMA. Hogs may not be hunted at night. There is no bag limit on hogs. Hunters must wear a hat, coat, or vest of solid international orange while hog hunting. Buckshot is prohibited. During hog hunts with dogs, no still or stalk hunting is allowed and only handguns are permitted. No hog hunting with dogs is allowed except during special designated seasons. During firearms seasons for deer, hog hunters possessing big game weapons must possess licenses, permits, and tags applicable to deer hunting. Big game weapons include centerfire weapons, archery equipment with broad heads, shot larger than No. 2, and muzzle-loading shotguns (larger than 20 gauge) and rifles/muskets (.36 caliber or greater).

2.17 Unless otherwise specified, small game hunting seasons and bag limits on WMA lands are the same as Game Zone seasons and bag limits except no hunting before Sept. 1 or after Mar. 1. The season for hunting beavers on WMA lands shall be October 1 through March 1.

WEAPONS

3.1 On WMA lands hunters may use any shotgun, rifle, bow and arrow, crossbow or hand gun except that specific weapons may be prohibited on certain hunts. Blow guns, dart guns, drugged arrows or arrows with exploding tips are not permitted. Small game hunters may possess or use shotguns with shot no larger than No. 2 or .22 rimfire or smaller rifles/handguns or primitive muzzle-loading rifles/muskets of .40 caliber or smaller. Small game hunters may not possess or use buckshot, slugs or shot larger than No. 2. Small game hunters using archery equipment must use small game tips on the arrows (judo points, bludgeon points, etc.).

3.2 For Special Primitive Weapons Seasons, primitive weapons include bow and arrow, crossbow and muzzle-loading shotguns (20 gauge or larger) and rifles/muskets (.36 caliber or larger) with open or peep sights or scopes, which use black powder or a black powder substitute that does not contain nitro-cellulose or nitro-glycerin components as the propellant charge. There are no restrictions on ignition systems (e.g. flintstone, percussion cap, shotgun primer, disk, electronic, etc.). During primitive weapons season, no revolving rifles are permitted.

3.3 On WMA lands big game hunters are not allowed to use armor-piercing, tracer, incendiary, or full metal jacket bullets or .22 or smaller rimfire. Buckshot is prohibited during still gun hunts for deer on WMA lands in Game Zones 3 & 4.

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3.4 On WMAs all firearms transported in vehicles must be unloaded and secured in a weapons case, or in the trunk of a vehicle or in a locked toolbox. On the Francis Marion Hunt Unit during deer hunts with dogs, loaded shotguns may be transported in vehicles. Any shotgun, centerfire rifle, rimfire rifle or pistol with a shell in the chamber or magazine, or a muzzleloader with a cap on the nipple or a flintlock with powder in the flash pan is considered loaded.

3.5 No target practice is permitted on WMA lands except in specifically designated areas.

3.6 On WMA lands during still gun hunts for deer or hogs there shall be no hunting or shooting from, on or across any road open to vehicle traffic. During any deer or hog hunt there shall be no open season for hunting on any designated recreational trail on U.S Forest Service or S.C. Public Service Authority property.

DEER

4.1 On WMA lands with designated check stations, all deer bagged must be checked at a check station. Deer bagged too late for reporting one day must be reported the following day.

4.2 Unless otherwise specified by the Department, only antlered deer may be taken on all WMA lands. Deer with visible antlers of less than two (2) inches above the hairline are considered antlerless deer and must be tagged with an antlerless deer tag issued by the Department. A point is any projection at least one inch long and longer than wide at some location at least one inch from the tip of the projection.

4.3 On WMA lands, man drives for deer are permitted between 10:00 a.m. and 2:00 p.m. only. A man drive is defined as an organized hunting technique involving two (2) or more individuals whereby an attempt is made to drive game animals from cover or habitat for the purpose of shooting, killing, or moving such animals toward other hunters. On WMA lands, drivers participating in man drives are prohibited from carrying or using weapons.

4.4 For all WMAs combined statewide, the limit for all seasons and methods combined is two deer per day, 5 deer total, no more than two antlered bucks, unless otherwise specified. For WMAs in Game Zone 1, the limit for antlerless deer for all seasons and methods combined is 3. Antlerless deer limit is two deer per day, unless otherwise specified. On special mobility impaired and youth deer hunts sanctioned by the Department and during the statewide youth deer hunt day prescribed by the Department, participants may take two deer total, either sex.

4.5 Individual Antlerless Deer Tags are valid in Game Zone 1 beginning Oct. 1 and in Game Zones 2, 3 & 4 beginning Sept. 15. For all WMAs combined, a maximum of 5 individual antlerless deer tags may be used during primitive weapons or still gun deer seasons in all Game Zones except three individual antlerless deer tags may be used in Game Zone 1. Tags do not alter the daily (2 per day) or seasonal limit or change the type of weapons that can be used during special weapons seasons.

4.6 All deer must be tagged immediately after harvest as prescribed by the Department and before being moved from the point of kill and the tag must be validated as prescribed by the Department. A valid tag must remain attached until the deer or carcass is quartered or received by a processor.

4.7 For WMAs designated as Quality Deer Management Areas, all antlered bucks must have a minimum 4 points on one side or a minimum 12-inch inside antler spread except during designated special youth hunts. Inside antler spread is measured at a right angle to centerline of the skull at its widest point between the main beams.

4.8 On WMA lands, deer, hogs, or bear may not be hunted with a firearm within 300 yards of a residence.

DOGS

5.1 On all WMA lands, dogs may be used for small game hunting unless otherwise specified.

5.2 Dogs may be trained for quail, rabbit and squirrel hunting from Sept. 1 - 14 (no guns), except on designated Public Bird Dog Training Areas where bird dog training is allowed from September 15 to March 15 (Sundays excluded).

5.3 On WMA lands, dogs may be used for hunting foxes, raccoons, bobcats or opossums only between thirty (30) minutes after official sunset and 30 minutes before official sunrise.

5.4 Unless otherwise specified, deer hunting with dogs on WMA lands is prohibited. The Department may permit deer hunting with dogs on WMA lands not located in Game Zones 1 and 2. For the purposes of tracking a wounded deer, a hunter may use one dog which is kept on a leash.

- 5.5 Dogs may be used to hunt bear on WMA lands in Game Zone 1 during the special party dog bear season.
5.6 On WMA lands, dogs may be used to hunt hogs only during special designated hog hunts with dogs.

VEHICLES

- 6.1 On all WMA lands, no hunter may shoot from a vehicle unless permitted by the Department.
6.2 On WMA lands, motor driven land conveyances must be operated only on designated roads or trails. Unless otherwise specified, roads or trails which are closed by barricades and/or signs, either permanently or temporarily, are off limits to motor-driven land conveyances.
6.3 A person may not obstruct or cause to be obstructed travel routes on WMA lands.

VISIBLE COLOR CLOTHING

- 7.1 On all WMA lands during any gun and muzzleloader hunting seasons for deer, bear and hogs, all hunters including small game hunters must wear either a hat, coat, or vest of solid visible international orange. Archery hunters during archery only deer seasons and hunters for dove, turkey, ducks, geese and other hunted migratory birds including crows are exempt from this requirement while hunting for those species.

CAMPING

- 8.1 Camping is not permitted on WMA lands except in designated camp sites.

TRAPPING

- 9.1 Trapping on WMA lands is not permitted.

WATERFOWL & DOVE REGULATIONS

10.1 Unless specially designated by the Department as a Wildlife Management Area for Waterfowl or a Wildlife Management Area for Dove, all Wildlife Management Areas are open during the regular season for hunting and taking of migratory birds except where restricted.

10.2 The Department may designate sections of Wildlife Management Areas and other lands and waters under the control of the Department as Designated Waterfowl Management Areas or Designated Dove Management Areas. All laws and regulations governing Wildlife Management Areas apply to these special areas. In addition, the Department may set special shooting hours, bag limits, and methods of hunting and taking waterfowl and doves on those areas. All State and Federal migratory bird laws and regulations apply. Regulations pertaining to the use of Dove Management Areas will be filed annually.

10.3 On areas where blinds are not provided, only portable blinds which are removed at the conclusion of the hunt or temporary blinds of native vegetation may be used. Temporary blinds once vacated may be used by other hunters.

10.4 On Designated Waterfowl Areas, no species other than waterfowl may be taken during waterfowl hunts. On Designated Dove Management Areas no species other than doves may be taken during dove hunts. Only dove hunting is allowed at Lake Wallace.

10.5 No fishing is permitted in any Category I Designated Waterfowl Area during scheduled waterfowl hunts.

10.6 The Bordeaux Work Center Area is closed to hunting except for special hunts as designated by the SCDNR.

10.7 Impoundments on Bear Island, Bonneau Ferry, Broad River, Donnelley, Samworth, Sandy Beach, Santee Coastal Reserve, Santee Cooper, Wateree River, and Santee Delta WMAs are closed to all public access during the period Nov. 1 - Feb. 8 except during special hunts designated by the Department. All public access during the period Feb. 9 - Oct. 31 is limited to designated areas. On Bear Island WMA, Mathews' Canal is closed to all hunting from Nov. 1 - Feb. 15 beyond a point 0.8 mile from the confluence of Mathews' Canal with the South Edisto River.

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10.8 Potato Creek Hatchery Waterfowl Area is closed to hunting access and fishing during the period one week prior to and two weeks after the Federal waterfowl season except for scheduled waterfowl hunts. All hunters must enter and leave the Potato Creek Hatchery Waterfowl Area through the designated public landing on secondary road 260 and complete a data card and deposit card in receptacle prior to leaving the area. No airboats are allowed for hunting or fishing and no hunting from secondary road 260.

10.9 On Hatchery WMA, hunters must leave the area by 1 PM, except on the last Saturday of the waterfowl season when hunters may hunt until sunset. Each hunter is limited to twenty-five Federally-approved nontoxic shot shells per hunt. No airboats are allowed in the Hatchery WMA for hunting or fishing during the period Nov. 15 - Jan. 31. No fishing allowed during scheduled waterfowl hunts.

10.10 On Crackerneck WMA, waterfowl may be hunted only on Fri., Sat. and Thanksgiving Day within the regular migratory bird seasons and no hunting on Dec. 25; Fant's Grove WMA is open AM only on Wednesdays and Saturdays during the regular migratory bird seasons; Palachucola WMA, Tillman Sand Ridge WMA, Hamilton Ridge WMA and Webb WMA are open AM only for waterfowl hunting during the regular migratory bird seasons only on days when small game hunting is allowed.

10.11 Category I Designated Waterfowl Areas include Beaverdam, Bonneau Ferry, Broad River, Clemson, Sandy Beach, Samworth, Santee Coastal Reserve, Santee-Delta, Tibwin, Bear Island, Wateree River Heritage Preserve and portions of Donnelley Wildlife Management Areas. Hunting in Category I Designated Waterfowl Areas is by special permit obtained through annual computer drawing.

10.12 Category II Designated Waterfowl Areas include Biedler Impoundment, Carr Creek (bounded by Samworth WMA), Little Carr Creek (bounded by Samworth WMA), Lake Cunningham, Russell Creek, Monticello Reservoir, Parr Reservoir, Duncan Creek, Dunaway, Dungannon, Enoree River, Moultrie, Hatchery, Hickory Top, Hickory Top Greentree Reservoir, Lancaster Reservoir, Turtle Island, Little Pee Dee River Complex (including Ervin Dargan, Horace Tilghman), Great Pee Dee River, Potato Creek Hatchery, Sampson Island Unit (Bear Island), Tyger River, Marsh, Wee Tee, Woodbury, Ditch Pond, Waccamaw River Heritage Preserve, Santee Cooper, portions of Donnelley, and 40 Acre Rock Waterfowl Management Areas. Hunting on Category II Designated Waterfowl Areas is in accordance with scheduled dates and times.

1. Biedler Impoundment

- (a) Sat. AM only during regular season
- (b) State bag limits

2. Bear Island

- (a) Hunters selected by drawing during regular season
- (b) State bag limits

3. Beaverdam

- (a) Hunters selected by drawing during regular season
- (b) State bag limits

4. Bonneau Ferry

- (a) Hunters selected by drawing during regular season
- (b) State bag limits

5. Broad River

- (a) Hunters selected by drawing during regular season
- (b) State bag limits

6 Carr Creek (bounded by Samworth WMA, no hunting in impoundments)

- (a) Wed. and Sat. AM only during regular season
- (b) State bag limits

7. Little Carr Creek (bounded by Samworth WMA, no hunting in impoundments)

- (a) Wed. and Sat. AM only during regular season
- (b) State bag limits

8. Clemson

- (a) Hunters selected by drawing during regular season
- (b) State bag limits

9. Ditch Pond

- (a) Wed. AM only during regular season
- (b) State bag limits

10. Donnelley
 - (a) Category I Area - Hunters selected by drawing during regular season
 - (b) Category II Area – Wed. AM only during specified dates.
 - (c) State bag limits
11. Dunaway
 - (a) Sat. AM only during regular season
 - (b) State bag limits
12. Duncan Creek
 - (a) Sat. AM only during regular season
 - (b) State bag limits
13. Dungannon
 - (a) Wed. AM only during regular season
 - (b) State bag limits
 - (c) No hunting from the Boardwalk
14. Enoree River
 - (a) Sat. AM only during regular season
 - (b) State bag limits
15. Hatchery
 - (a) Sat. AM only and until sunset on the last Sat. of the regular waterfowl season
 - (b) State bag limits
16. Hickory Top
 - (a) Mon. through Sat. during regular season
 - (b) State bag limits
17. Hickory Top Greentree Reservoir
 - (a) Sat. AM only during regular season
 - (b) State bag limits
 - (c) No hunting from roads and dikes
18. Lake Cunningham
 - (a) Wed. AM only during the regular season
 - (b) State bag limits
19. Lancaster Reservoir
 - (a) Mon. and Fri. AM only during the regular season
 - (b) State bag limits
20. Marsh
 - (a) Fri. and Sat. AM only during regular season
 - (b) State bag limits
21. Monticello Reservoir
 - (a) Mon. through Sat. AM only during regular season
 - (b) State bag limits
22. Moultrie
 - (a) Mon. through Sat. during regular season.
 - (b) State bag limits
23. Parr Reservoir
 - (a) Mon. through Sat. during regular season.
 - (b) State bag limits
24. Potato Creek Hatchery
 - (a) Fri. and Sat. only during regular season
 - (b) State bag limits
25. Russell Creek
 - (a) Wed. and Sat. AM only during regular season
 - (b) State bag limits
26. Sampson Island Unit (Bear Island)
 - (a) Thurs. and Sat. AM only during the regular season

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- (b) State bag limits
- 27. Samworth
 - (a) Hunters selected by drawing during regular season
 - (b) State bag limits
- 28. Sandy Beach
 - (a) Hunters selected by drawing during regular season
 - (b) State bag limits
- 29. Santee Coastal Reserve
 - (a) Hunters selected by drawing during regular season
 - (b) State bag limits
- 30. Santee Cooper
 - (a) Sat. AM only during regular season
 - (b) State bag limits
- 31. Santee-Delta
 - (a) Hunters selected by drawing during regular season
 - (b) State bag limits
- 32. Tibwin
 - (a) Special hunts by drawing during regular season
 - (b) State bag limits
- 33. Turtle Island
 - (a) Fri. and Sat. AM only during regular season
 - (b) State bag limits
- 34. Tyger River
 - (a) Sat. AM only during regular season
 - (b) State bag limits
- 35. Wee Tee
 - (a) Fri. and Sat. AM only during regular season
 - (b) State bag limits
- 36. Woodbury
 - (a) Fri. and Sat. AM only during regular season
 - (b) State bag limits
- 37. Great Pee Dee
 - (a) Sat. AM only during regular season
 - (b) State bag limits
- 38. Little Pee Dee River Complex
 - (a) Fri. and Sat. AM only during regular season
 - (b) State bag limits
- 39. Waccamaw River HP
 - (a) Fri. and Sat. AM only during regular season
 - (b) State bag limits
- 40. 40-acre Rock
 - (a) Sat. AM only during regular season
 - (b) State bag limits
- 41. Wateree River HP
 - (a) Hunters selected by drawing during regular season
 - (b) State bag limits

10.13 On Hickory Top WMA public waterfowl hunting without a Wildlife Management Area (WMA) permit is allowed on all land and water below 76.8'. Waterfowl hunting at or above elevation 76.8' requires a WMA permit. A WMA permit is required for waterfowl hunting in the Hickory Top Greentree Reservoir.

10.14 Designated Dove Management Areas include all dove management areas as published by the Department in the annual listing of WMA public dove fields and are subject to regulations filed annually.

10.15 Hickory Top Greentree Reservoir is closed to hunting access November 1 until March 1, except for special hunts designated by SCDNR. All hunters must accurately complete a data card and deposit card in receptacle prior to leaving the area. Hunting hours are from 30 minutes before legal sunrise until 11:00 am. Hunters may not enter the area prior to 5:00 am on hunt days. No open season on roads and dikes. Hunters may only use electric motors on boats.

10.16 On all State-owned, US Forest Service and other Federally-owned Category I and II Waterfowl Management Areas each hunter is limited to 25 Federally-approved non-toxic shells per hunt.

10.17 On Enoree River, Dunaway, Duncan Creek, Russell Creek and Tyger River Waterfowl Areas data cards are required for hunter access during scheduled waterfowl hunts. Completed data cards must be returned daily upon leaving each of these areas.

10.18 Woodbury Waterfowl Management Area includes all SCDNR-owned property south of US Hwy 378 and bounded on the west by the Great Pee Dee River and Bluff Road and to the east by the Little Pee Dee River except no waterfowl hunting allowed in the area known as Hass Pond that is bounded on all sides by Hass Pond Road.

10.19 Donnelley Wildlife Management Area Category II Waterfowl Area is open Wednesday mornings only during the November thru January regular waterfowl season. The Category II area is defined as all wetlands east of Donnelley Drive and Blocker Run Road except those areas south of Blocker Run Road between Stocks Creek Road and the intersection of Mary's Island Road and the property boundary. No trailered boats and no electric or gas motors allowed. No entry before 5:00 AM and all users must sign in and sign out at designated check stations. No hunting is allowed from the dikes.

AMPHIBIANS AND REPTILES

11.1 Taking of any amphibian or reptile, except the bullfrog, is prohibited on any Department-owned Wildlife Management Areas without written permission of the Department.

PUBLIC BIRD DOG TRAINING AREAS

12.1 The Department may establish Public Bird Dog Training Areas on designated portions of the Cliff Pitts WMA in Laurens County, the Campbell's Crossroads and Angelus Tract WMAs in Chesterfield County, the Landsford Canal WMA in Chester County, and the Edisto River WMA in Dorchester County. A valid hunting license and WMA permit is required to train bird dogs on these lands.

12.2 It shall be unlawful to take game by any means while training bird dogs, except during the lawful open seasons for such game; provided, however, that pen raised quail or pigeons may be taken at any time for training bird dogs. The dog trainer must possess proof of purchase of pen raised quail.

12.3 It shall be unlawful for any person to have in his or her possession any firearms or other equipment for taking game while training bird dogs, provided that handguns with blank ammunition or shot cartridges may be used for training bird dogs, and shotguns with number eight shot or smaller shot may be used while training bird dogs using pen raised quail and pigeons.

12.4 All participants in bird dog training must wear either a hat, coat, or vest of solid visible international orange.

SUBARTICLE 3

OTHER BIG GAME

123-51. Turkey Hunting Rules and Seasons.

1. Total limit of 3 turkeys statewide per person for resident hunters and 2 turkeys statewide per person for nonresident hunters, 1 per day, gobblers (male turkeys) only, unless otherwise specified. Total statewide limit includes turkeys harvested on Wildlife Management Areas (WMAs). Small unnamed WMAs in counties indicated are open for turkey hunting. Turkey seasons and bag limits for Wildlife Management Area lands are as follows:

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A. Game Zone 1

1. Other WMAs
 - (a) Apr. 1 – April 30
 - (b) Bag limit 3 for residents and 2 for nonresidents, no more than one may be taken April 1 – 10.

B. Game Zone 2

1. Other WMAs
 - (a) Apr. 1 – April 30
 - (b) Bag limit 3 for residents and 2 for nonresidents, no more than one may be taken April 1 – 10.
2. Keowee WMA
 - (a) Apr. 1 – April 30
 - (b) Bag limit 2, no more than one may be taken April 1 – 10.
 - (c) Shotguns only –north of Hwy 123 and west of the Keowee Arm of Lake Hartwell and west of Hwy
291. Archery only on other sections.
 3. Draper WMA
 - (a) Apr. 1 – April 30
 - (b) Bag limit 2, no more than one may be taken April 1 – 10.
 - (c) Thurs through Sat. only
 4. Belfast WMA
 - (a) Apr. 1 – April 30
 - (b) Bag limit 1
 - (c) Hunters by drawing only
 5. Worth Mountain WMA
 - (a) Apr. 1 – April 30
 - (b) Bag limit 2, no more than one may be taken April 1 – 10.
 - (c) Thurs through Sat. only
 6. McCalla WMA
 - (a) April 1 – April 30
 - (b) Bag Limit 2, no more than one may be taken April 1 – 10.
 7. Fants Grove WMA
 - (a) April 1 - April 30
 - (b) Bag Limit 2, no more than one may be taken April 1 – 10.
 8. Liberty Hill WMA
 - (a) April 1 - April 30
 - (b) Bag Limit 2, no more than one may be taken April 1 – 10.
 9. Delta South WMA
 - (a) Apr. 1 – April 30
 - (b) Hunters by drawing only
 10. Forty Acre Rock HP WMA
 - (a) April 1 - April 30
 - (b) Bag Limit 2, no more than one may be taken April 1 – 10.

C. Game Zone 3

1. Other WMAs
 - (a) Apr. 1 – April 30
 - (b) Bag limit 3 for residents and 2 for nonresidents.
2. Crackerneck WMA
 - (a) Apr. 1 – April 30
 - (b) Bag limit 2
 - (c) Fri. and Sat. only
 - (d) Sign in and out at the gate required.
 - (e) Main gate opens at 4:30 am and closes at 1:00 pm.
3. Aiken Gopher Tortoise HP WMA

- (a) Apr. 1 – April 30
- (b) Bag limit 2
- 4. Francis Marion National Forest
 - (a) Apr. 1 – April 30
 - (b) Bag limit 2
 - (c) Tibwin Special Use Area
 - (1) Apr. 1 – April 30
 - (2) Bag limit 2
 - (3) Special hunts for youth or mobility impaired hunters as published by SCDNR.
- 5. Moultrie
 - (a) Apr. 1 – April 30
 - (b) Bag limit 2
 - (c) Thurs through Sat. only
 - (d) Bluefield WMA
 - (1) Apr. 1 – April 30
 - (2) Bag limit 2
 - (3) Adult/Youth only
 - (e) Hall WMA
 - (1) Apr. 1 – April 30
 - (2) Bag limit 2
- 6. Santee Cooper WMA
 - (a) Apr. 1 – April 30
 - (b) Bag limit 1
 - (c) Hunting by public draw only
- 7. Webb, Palachucola and Hamilton Ridge WMAs
 - (a) Apr. 1 – April 30
 - (b) Bag limit 2
 - (c) All hunters must pick up and return data cards at kiosk and display hangtags on vehicles.
- 8. Donnelley WMA
 - (a) Apr. 1 – April 30
 - (b) Bag limit 1
 - (c) Hunting by public draw only
- 9. Bonneau Ferry WMA
 - (a) Apr. 1 – April 30
 - (b) Bag limit 1
 - (c) Hunting by public draw only
 - (d) Closed to public access during hunts.
- 10. Santee Coastal Reserve WMA
 - (a) Apr. 1 – April 30
 - (b) Bag limit 1
 - (c) Youth or mobility impaired hunting by draw only.
- 11. Edisto River WMA
 - (a) Apr. 1 – April 30
 - (b) Bag limit 2
 - (c) Thurs through Sat. only
- 12. Tillman Sand Ridge Heritage Preserve WMA
 - (a) Apr. 1 – April 30
 - (b) Bag limit 2
 - (c) Thurs through Sat. only
- 13. Victoria Bluff Heritage Preserve WMA
 - (a) Apr. 1 – April 30
 - (b) Bag limit 2
 - (c) Thurs through Sat. only

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14. Botany Bay Plantation WMA
 - (a) Apr. 1 – April 30
 - (b) Bag limit 1
 - (c) Youth hunting by draw only.
15. Wateree River HP WMA
 - (a) Apr. 1 – April 30
 - (b) Bag limit 1
 - (c) Hunting by public draw only

D. Game Zone 4

1. Other WMAs
 - (a) Apr. 1 – April 30
 - (b) Bag limit 3 for residents and 2 for nonresidents.
2. Marsh WMA
 - (a) Apr. 1 – April 30
 - (b) Bag limit 2
 - (c) Thurs through Sat. only
 - (d) Sign in and out at the kiosk required.
3. Sand Hills State Forest WMA
 - (a) Apr. 1 – April 30
 - (b) Bag limit 2
4. McBee WMA
 - (a) Apr. 1 – April 30
 - (b) Bag limit 2
 - (c) Thurs through Sat. only
5. Little Pee Dee Complex WMA
 - (a) Apr. 1 – April 30
 - (b) Bag limit 2
 - (c) Thurs through Sat. only
6. Pee Dee Station Site WMA
 - (a) Apr. 1 – April 30
 - (b) Bag limit 2
 - (c) Thurs through Sat. only
 - (d) All hunters must sign in and sign out at kiosk.
7. Woodbury WMA
 - (a) Apr. 1 – April 30
 - (b) Bag limit 2
 - (c) Thurs through Sat. only
 - (d) All hunters must sign in and sign out at kiosk.
8. Great Pee Dee Heritage Preserve WMA
 - (a) Apr. 1 – April 30
 - (b) Bag limit 2
 - (c) Thurs through Sat. only
 - (d) All hunters must sign in and sign out at kiosk.
9. Longleaf Pine Heritage Preserve WMA
 - (a) Apr. 1 – April 30
 - (b) Bag limit 2
 - (c) Thurs through Sat. only
10. Manchester State Forest WMA
 - (a) Apr. 1 – April 30
 - (b) Bag limit 2
 - (c) Thurs through Sat. only
11. Hickory Top WMA

- (a) Apr. 1 – April 30
- (b) Bag limit 2
- 12. Oak Lea WMA
 - (a) Apr. 1 – April 30
 - (b) Bag limit 2
 - (c) Thurs through Sat.
- 13. Santee Dam WMA
 - (a) Apr. 1 – April 30
 - (b) Bag limit 2
- 14. Wee Tee WMA
 - (a) Apr. 1 – April 30
 - (b) Bag limit 2
 - (c) Thurs through Sat. only
- 15. Cartwheel Bay Heritage Preserve WMA
 - (a) Apr. 1 – April 30
 - (b) Bag limit 2
 - (c) Thurs through Sat. only
- 16. Lewis Ocean Bay Heritage Preserve WMA
 - (a) Apr. 1 – April 30
 - (b) Bag limit 2
 - (c) Thurs through Sat. only
- 17. Waccamaw River Heritage Preserve WMA
 - (a) Apr. 1 – April 30
 - (b) Bag limit 2
 - (c) Thurs through Sat. only
- 18. Samworth WMA
 - (a) Apr. 1 – April 30
 - (b) Bag limit 1
 - (c) Youth hunting by draw only.
- 19. Liberty Hill WMA
 - (a) April 1 - April 30
 - (b) Bag Limit 2

E. Statewide Turkey Hunting Regulations and Youth Turkey Hunting Day on WMAs

1. The statewide youth turkey hunting day on designated WMA lands shall be the Saturday immediately preceding April 1
 - (a) The daily bag limit during the statewide youth turkey hunting day on WMAs is one (1) which counts toward the season limit.
 - (b) A person less than 18 years of age is considered a youth turkey hunter.
 - (c) Only includes WMAs designated by the Department.
2. The following regulations apply statewide. No turkey hunting permitted on Turkey Restoration Sites which have not been formally opened by the Department.
 - (a) During the spring turkey hunting season, only turkey gobblers (male birds) may be taken.
 - (b) Shotguns, muzzleloader shotguns, or archery equipment are permitted. All other weapons and methods of taking are prohibited including rifles, pistols, buckshot and slugs.
 - (c) Turkeys may not be hunted with dogs.
 - (d) Live decoys are prohibited.
 - (e) A tag issued by the Department must be placed around a harvested bird's leg before the bird is moved from the point of kill and the tag must be validated by the hunter as prescribed by the Department. A valid tag must remain on the carcass until it is processed (cut up).
 - (f) On all WMA lands, it is prohibited to hunt or stalk wild turkeys while holding or using for hunter concealment any of the following items: a tail fan, a partial or full decoy with a tail fan, or a tail fan mounted to

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a firearm. Tail fans include those made of real or synthetic feathers or an image or likeness of a tail fan applied to any material.

3. Electronic Harvest Reporting of Turkeys on Private and WMA Lands.

(a) Methods of electronic harvest reporting include telephone, internet, and mobile device application. Applicable telephone numbers and internet addresses are as posted on the Department's website and in the annual Hunting and Fishing Regulations Guide.

(b) Hunters must provide their Department issued Customer Identification Number to access the reporting system and provide the county of kill, whether the property on which the turkey was taken was private or WMA land including the name of the WMA, whether the turkey was an adult gobbler or juvenile (jake), and whether the turkey was taken in the morning or afternoon.

(c) As part of the reporting process a Department issued confirmation number will be generated. Hunters must document and maintain this confirmation number as prescribed.

123-52. Individual Antlerless Deer Tags, Antlerless Deer Limits for Private Lands in Game Zones 1-4, and Youth Deer Hunting Day.

1. Individual Antlerless Deer Tags are valid in Game Zones 2 - 4 beginning September 15 and in Game Zone 1 beginning October 1. Individual Antlerless Deer Tags are not valid on properties enrolled in the Deer Quota Program. Individual Antlerless Deer Tags do not alter the daily (2 per day) or seasonal limit or change the type of weapons that can be used during special weapons seasons. The 2 free bonus Individual Antlerless Deer Tags that are issued to hunters who purchase 4 individual Antlerless Deer Tags are valid only on private land in Game Zones 3 and 4.

2. Antlerless Deer Limits: Game Zone 1 - Three (3) total for all seasons and weapons combined, no more than 2 per day. Game Zone 2 - Five (5) total for all seasons and weapons combined, no more than 2 per day. Game Zones 3 - 4, eight (8) for all seasons and weapons combined, no more than 2 per day. Game Zone season and daily limits do not apply on properties enrolled in the Deer Quota Program.

3. On special mobility impaired and youth deer hunts sanctioned by the Department and during the statewide youth deer hunt day prescribed by the Department, participants may take 2 deer total, either sex. The Statewide Youth Deer Hunt Day on private land and designated Wildlife Management Areas shall be the Saturday immediately following January 1

4. All antlerless deer must be tagged as prescribed by the Department immediately after harvest and before being moved from the point of kill and the tag must be validated as prescribed by the Department. A valid tag must remain attached until the deer or carcass is quartered or received by a processor.

Fiscal Impact Statement:

The amendment of Regulations 123-40, 123-51, and 123-52 will result in increased public hunting and fishing opportunities which should generate additional State revenue through license sales. In addition, local economies should benefit from sales of hunting supplies, food and overnight accommodations. Sales taxes on these items will also directly benefit government.

Statement of Rationale:

Rationale for the formulation of these regulations is based on over 70 years of experience by SCDNR in managing wildlife populations and establishing public hunting areas. Changes to WMA regulations are often required in order to conform to changes in statewide statutes. Management objectives for specific properties are continually evaluated for needed changes. Contractual agreements with the landowners provide guidelines for the use and management of the properties. Wildlife Management Area agreements are on file with the Wildlife Management Section of the Department of Natural Resources, Room 267, Dennis Building, 1000 Assembly Street, Columbia.

Document No. 4879
PUBLIC SERVICE COMMISSION
CHAPTER 103
Statutory Authority: 1976 Code Section 58-3-140

103-817.1. E-Filing and E-Service.

Synopsis:

The Public Service Commission of South Carolina proposes to add a regulation which provides a process for the Commission to electronically serve documents that are electronically filed with the Commission. The regulation is necessary to provide a documented procedure for parties who utilize the Commission's Docket Management System's (DMS) Electronic Filing (EFile) System. By way of background, in 2012, S.C. Code Ann. Section 58-3-250 was amended for the Commission to serve its final orders or decisions by electronic service, registered or certified mail, upon all parties to a proceeding or their attorneys. Thereafter, Regulation 103-817 was amended so that the Commission can serve certain procedural documents, such as Prefile Testimony Letters and Notices, by electronic service or by U.S. Mail. The proposed Regulation 103-817.1. provides the Commission with the authority to configure the DMS to electronically serve all the representatives of parties in a docket upon the E-Filing of any motion, pleading, or other paper subsequent to the summons and complaint or other filing initiating a case. Upon the E-Filing of a document, other than a paper initiating a docket, the DMS will generate and transmit a Notice of Electronic Filing to the parties' representatives. The purpose of the proposed Regulation is to provide real-time service of filings made at the Commission and more efficient use of resources for the Commission and its external stakeholders. The Commission utilized the South Carolina Supreme Court's Electronic Filing Policies and Guidelines, Guideline 4. E-Filing and E-Service, as a reference in drafting Regulation 103-817.1. The Notice of Drafting regarding this regulation was published on February 22, 2019, in the *State Register, Volume 43, Issue 2*.

Instructions:

103-817.1. Add the new regulation text listed below.

Text:

103-817.1. E-Filing and E-Service.

A. Electronic Filing. The electronic transmission of a document to the E-Filing System in accordance with this Regulation constitutes the filing of that document in accordance with Title 58 of the South Carolina Code and the Commission's Regulations in Chapter 103 of the South Carolina Code of State Regulations.

B. Official Record. Where a document is E-Filed, the electronic version of that filing constitutes the official record. E-Filed documents have the same force and effect as documents filed by Traditional Means. Documents filed by Traditional Means may be converted to electronic format and made part of the docket by the Clerk's Office. Once converted, the electronic version constitutes the official record.

C. Timeliness. A document transmitted and received by the E-Filing System on or before 11:59:59 p.m., Eastern Standard Time, shall be considered filed with the Commission on that date, provided it is subsequently accepted by the Commission. Nothing in this Regulation should be construed to reduce or extend any filing or service deadlines set by statute, the South Carolina Rules of Civil Procedure, or orders of the Commission, except requests for extensions of time to file documents. Such requests must be filed with and approved by the Commission.

D. "Notice of Electronic Filing" or "Notification of Electronic Filing" ("NEF") is a notice generated by the E-Filing System at the time of a filing or other Commission action. An NEF is transmitted by email to all Authorized E-Filers who have filed a Notice of Appearance and are counsel of record in the case and includes a description of the filing and a list of parties to whom the NEF was transmitted.

E. Electronic Service.

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(1) **Electronic Service of Process Not Authorized.** Service of process or service of any pleadings initiating cases cannot be accomplished through the E-Filing System. The E-Filing System may not be used for service of process of a summons and complaint, subpoena, or any other pleading or document required to be personally served under Rule 4, SCRCP (South Carolina Rules of Civil Procedure).

(2) **Service of Other Papers on Authorized E-Filers by the E-Filing System.** Except as provided in sub-paragraphs (A) and (B) below, upon the E-Filing of any pleading, motion, or other paper subsequent to the summons and complaint or other filing initiating a case, the E-Filing System will generate and transmit an NEF to all Authorized E-Filers associated with that case after the filing has been accepted for processing by the Commission. Where the parties are proceeding in the E-Filing System and a pleading, motion, or other paper must be filed, made, or served under the Commission's statutes or regulations or the SCRCP, upon the filer's receipt of a confirmation email stating that the filing has been accepted for processing by the Commission, the E-Filing of that pleading, motion, or other paper, together with the transmission of an NEF, constitutes proper service under Rule 5, SCRCP, Title 58 of the South Carolina Code and Chapter 103 of the South Carolina Code of State Regulations, as to all other parties who are E-Filers in that case. It is the responsibility of an E-Filer to review the content of the E-Filed document in the E-Filing System to determine its force and effect.

(a) No NEF will be created at case initiation; however, the E-Filing System will transmit confirmations of receipt and acceptance of the filing.

(b) NEFs are only transmitted via email to representatives of parties of record. E-Filers should comply with Commission Regulation 103-805 (Representation) for entering an electronic notice of appearance when making an initial responsive filing in a case that was initiated via the E-Filing System.

(3) **Service Complete upon E-Filing.** Service of a pleading, motion, or other paper by NEF subsequent to the summons and complaint or other filing initiating a case is complete at the time of the submission and the Clerk's Office acceptance of the pleading, motion, or other paper for E-Filing, provided an NEF is transmitted by the E-Filing System in accordance with paragraph (e)(2) of this Section. The act of E-Filing the pleading, motion or other paper is the equivalent of depositing it in the United States Mail under Rule 5(b)(1), SCRCP, Title 58 of the South Carolina Code and Chapter 103 of the South Carolina Code of State Regulations. The NEF constitutes proof of service under Rule 5(b), SCRCP, Title 58 of the South Carolina Code and Chapter 103 of the South Carolina Code of State Regulations, and the date of service shall be the date stated in the NEF as the "Official File Stamp." Where notice of the filing of a pleading, motion, or other paper is served by an NEF, the E-Filer need not file proof of service, but the E-Filer must retain a copy of the NEF as proof of service.

(4) **Time to Respond Following Electronic Service.** Computation of the time for a response after service by NEF is governed by Title 58 of the South Carolina Code and Chapter 103 of the South Carolina Code of State Regulations.

(5) **Service by or upon a Party Who is Not an E-Filer in a Case.**

(a) E-Filed motions, pleadings, or other papers that must be served upon a party who is not represented by an Authorized E-Filer in the case or who is a Traditional Filer must be served by a Traditional Service method in accordance with Rule 5, SCRCP, Title 58 of the South Carolina Code and Chapter 103 of the South Carolina Code of State Regulations. An Authorized E-Filer who has E-Filed a motion, pleading, or other paper prior to service of the motion, pleading, or other paper shall serve a paper copy of the corresponding NEF on the Traditional Filer(s). The Authorized E-Filer must also file proof of Traditional Service as to all other parties who are Traditional Filers.

(b) Traditional Filers must continue to serve all parties with a paper copy of the motion, pleading, or other paper by a Traditional Service method in accordance with Rule 5, SCRCP, Title 58 of the South Carolina Code and Chapter 103 of the South Carolina Code of State Regulations, and file a copy of the motion, pleading, or other paper with the Commission, together with proof of service, as required by Rule 5(d), SCRCP, Title 58 of the South Carolina Code and Chapter 103 of the South Carolina Code of State Regulations.

(6) **Failed Transmission of NEF.** If an Authorized E-Filer becomes aware that the NEF was not transmitted successfully to other Authorized E-Filers in the case, or that the NEF is deficient, the Authorized E-Filer shall, upon learning of the failure or deficiency, serve the E-Filed document by email, hand delivery, facsimile, or first class mail. Proof of such service shall be E-Filed with the Commission within one business day of service.

Fiscal Impact Statement:

Although the Commission anticipates incurring some costs to configure its Docket Management System (DMS) to electronically serve the documents referenced herein, the Agency expects postage and other related costs to decrease for its internal and external stakeholders when the proposed regulation is implemented. The Commission has obtained a preliminary quote from a computer programmer related to the tasks necessary to configure DMS for successful implementation of this project. At this time, the Commission anticipates that this configuration will cost less than \$20,000.

Statement of Rationale:

The purpose for Regulation 103-817.1. is to add a process for the Commission to electronically serve documents which are E-Filed with the Commission. The proposed Regulation promotes an improved and more efficient process to serve parties with E-Filed Commission documents. There was no scientific or technical basis relied upon in the development of this regulation.

Document No. 4901

DEPARTMENT OF SOCIAL SERVICES
CHAPTER 114

Statutory Authority: 1976 Code Sections 43-1-80 and 63-7-2320

114-550. Licensure for Foster Care.

Synopsis:

To expedite placement of children who need foster care into licensed kinship placement, the Department of Social Services proposes to add 114-550(D)(5) to authorize provisional licensure for kinship caregivers who meet certain requirements, pending issuance of a standard license to provide kinship foster care.

The Notice of Drafting was published in the *State Register* on July 26, 2019.

Instructions:

Print regulation as shown below.

Text:

114-550. Licensure for Foster Care.

A. Definitions.

(1) Foster Care—This is care for children in the custody of the South Carolina Department of Social Services who must be separated from their parents or guardians. It is a temporary living arrangement within the structure and atmosphere of a private family home (kin and non relative), or a group home, emergency shelter, residential facility, child care institution, or pre adoptive home, and is utilized while permanent placement plans are being formulated for the involved children.

(2) Board Payments—These are monthly funds appropriated for daily care and maintenance for eligible children in foster care.

(3) The Foster Family—A family that is generally composed of a father and mother, but may be widowed, divorced or single adults, who are licensed by SCDSS, and who are mutually interested in and evidence a capability to care for foster children.

(4) Kinship Care Foster Family—This is a relative family that has been identified and licensed to provide foster care for a specified child or children. Unless otherwise stated, the term foster parent or foster family includes kinship foster care parents and families.

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(5) **Assessment Study**—This is the actual documentation of the assessment study of a family or related family applying to provide foster care services, completed by designated agency staff of the South Carolina Department of Social Services or designated staff of a child placing agency.

(6) **Child Placing Agency**—For the purposes of these regulations, any person or entity who holds legal or physical custody of a child for the purpose of placement for foster care or adoption or a private placement, or a person or entity who facilitates the placement of children for the purpose of foster care or adoption or a private placement and, which for the purpose of these regulations, retain their own system of foster homes, is a child placing agency. Homes assessed by child placing agencies are licensed in accordance with the Department of Social Services licensing regulations and issued a license by SCDSS.

(7) **Agency**—South Carolina Department of Social Services.

(8) **Foster child**—for the purposes of these regulations, a child in the custody of SCDSS.

(9) **Household member**—for the purposes of licensing interviews and assessment, an individual who spends significant amounts of time (as defined by SCDSS or the child placing agency) in an applicant's household, can be considered a household member.

B. Applications.

(1) An application form shall be completed by all foster families desiring to be licensed and relicensed.

(2) Applicants must supply thorough, complete and accurate information. Incomplete or erroneous information or violation of regulations can be grounds for denial of an application, revocation of a current license or denial of a renewal.

(3) SCDSS or a licensed child placing agency reserves the right to request and consider additional information if needed during the licensing or renewal process. This additional information may be considered during the licensing or renewal decision-making process.

C. Licensing Procedure.

(1) Any application for licensure pursuant to these regulations shall be studied by SCDSS or a licensed child placing agency.

(2) A decision regarding each application for a license shall be made within 120 days subsequent to the date the standard application is completed by the applicant(s) and is received by SCDSS or the child placing agency. If SCDSS or the child placing agency has requested information that has not been received within 120 days, then the decision is stayed pending receipt of all information.

(3) An initial Standard license shall be issued or denied by the director of SCDSS or his/her designee based on the result of the assessment study and recommendation of SCDSS or child placing agency.

D. Licenses.

(1) The issued license shall not be transferable from either the address or foster family specified on the license.

(2) A Standard license shall be issued when all requirements of these regulations are met. A Standard license is valid for two years from the date of issuance.

(3) A Standard with Temporary Waiver license may be issued for up to 90 days. The utilization of this type of license is warranted when SCDSS or the child placing agency is acting in the best interest of children already in placement and for whom stability is necessary. The Standard with Temporary Waiver license shall include language that reflects the expiration period and the reason for the temporary waiver. No additional children may be placed during temporary waiver periods. Standard with Temporary Waiver licenses can be issued under the following circumstances:

(a) A standard licensed foster parent moves to a new home and SCDSS or child placing agency is waiting to receive written documentation that the fire and health inspections have been completed and any noted deficiencies have been corrected; or

(b) A standard license has previously been issued to a foster family and subsequently a household member reaches the age of eighteen years, or a new adult household member has entered the home since licensure, and SCDSS or child placing agency is waiting to receive written clearance on all background checks for that individual.

(4) A Standard-Exceeds Maximum Number Allowed license may be issued when a standard licensed foster parent receives placement of more children than allowed under requirements due to SCDSS or child placing agency trying to preserve unity of a sibling group or making an adoptive placement. This license can continue until the number of children again satisfies licensing requirements.

(5) A Provisional License for Kinship Foster Care may be issued for up to ninety (90) days. Except in extenuating circumstances as defined by the department's policies and procedures, a provisional license should remain in effect for no more than ninety (90) days. The department shall provide a monthly stipend to the kinship foster parent during the period of provisional licensure. A Provisional License for Kinship Foster Care may be issued under the following circumstances:

- (a) The child is in the legal and physical custody of the department;
- (b) A relative has indicated in writing that the relative wants to become a licensed kinship foster parent;
- (c) The relative is eighteen (18) years of age or older; and
- (d) The department has completed an Assessment Study, a child abuse and neglect history check, a

Sex offender registry check, a criminal history check pursuant to R.114-550(G)(1)(a), and other investigations as deemed necessary by the department to determine the suitability of placement. The relative must consent to a check of records necessary for the department to determine suitability of placement.

(6) No license issued shall be effective for more than two years from the date of issuance. Subsequent relicensure studies must be completed prior to the expiration of the last license.

(7) A foster home shall not be licensed for more than five (5) children, including the foster parents' own children and/or other children who are household members unless SCDSS or child placing agency is keeping siblings together or the placement has been court ordered.

(8) Foster Home licensure by more than one agency, or by more than one division within an agency, is not permitted.

E. Assessment Study.

(1) Each prospective foster family shall be assessed by designated staff of SCDSS or by designated staff of a licensed child placing agency.

(2) Such assessment shall be conducted in order to determine:

- (a) Whether the applicant(s) complies with licensing requirements and standards;
- (b) For which gender and age range of children the home can be licensed;
- (c) Whether the prospective foster parents fully understand the purpose of foster care; and
- (d) Applicant(s) and other household members ability to provide quality foster care.

(3) All members of the household over six years of age shall be assessed and interviewed in order to determine their willingness to accept a child and to evaluate the stability of the family unit.

(a) A minimum of one family interview, and one interview per individual, shall be conducted in the home with the prospective applicant, spouse, their children and other household members.

(b) The applicant and spouse shall provide information to SCDSS or the child placing agency staff that enables the licensing staff to interview adult children of the applicant and spouse.

(4) Documentation for the assessment summary at a minimum includes the following issues:

- (a) motivations to foster parent;
- (b) preferences related to placements;
- (c) family history, relationships, parenting experiences, and coping ability;
- (d) educational, health, and work history of family members;
- (e) information on other household members, adult children, and related children not in the physical custody of the applicant or spouse;
- (f) home environment and community resources;
- (g) completion of preparation training;
- (h) results of CPS/Sex Offender/SLED and FBI background checks;
- (i) compliance with all requirements;
- (j) income is reasonably secure and not dependent on board payments;
- (k) appropriateness of day care arrangements for foster children; and
- (l) family's overall understanding of the purpose of foster care and ability to provide quality foster care.

(5) The assessment summary and the SCDSS or child placing agency's recommendation shall be explained to the applicant. If SCDSS or the child placing agency is not recommending licensure, the applicant family should be offered the opportunity to elect to withdraw their application. If the applicant elects to continue their request to be licensed and if the application is denied, the reason(s) for the denial shall be provided in writing. The applicant shall be advised regarding the right to appeal.

F. Working Foster Parents.

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(1) If foster parents are employed outside the home, a written statement outlining a total plan of care, including plans for any necessary emergency care for the child, shall be submitted by the foster family.

(2) Individuals who are to provide child care on behalf of employed foster parents must be interviewed by SCDSS or child placing agency staff prior to the issuance of a Standard license to a foster home.

G. The Requirements for Licensing of a Foster Family.

(1) The following requirements shall be met prior to the issuance of a Standard license to provide foster care:

(a) Background checks shall be documented including a review of abuse and neglect history, criminal history found with SLED and the FBI, and the Sex Offender Registry.

(i) The applicant(s) cannot be considered for licensure if an applicant and/or any household member over age eighteen has a substantiated history of child abuse and/or neglect and/or convictions of those crimes listed in SC Code 20-7-1642 and/or is listed on the SC Sex Offender Registry.

(ii) The applicant(s) may be considered for licensure if an applicant and/or any household member over age eighteen has a conviction, or has been pardoned for a conviction of an offense other than those offenses listed in SC Code 20-7-1642. The Director of SCDSS or his/her designee shall review the conviction or pardoned conviction taking into account the nature of the offense(s), any implications of the offense which have bearing on the individual having access to foster children; the length of time that has elapsed since the conviction(s); the applicant's life experiences indicating reform or rehabilitation during the ensuing period of time; and the fitness and ability to perform as a caregiver or the degree of risk which an individual may pose to children placed in the home. The Director of SCDSS or his/her designee shall document the basis of the decision to approve applicant in light of applicant's and/or household member's criminal record.

(2) The applicant(s) shall be able to access community services and activities.

(3) The applicant's home and property shall be inspected by licensing or child placing agency staff, State Fire Marshal authorities, and health authorities.

(a) A fire inspection by State Fire Marshal authorities who are required or permitted to inspect and enforce fire regulations must be conducted prior to the initial standard licensure.

(b) Annual fire inspections are required thereafter.

(c) A health inspection by such health authorities who are required or permitted to inspect and enforce health and sanitation regulations must be conducted prior to the initial licensure and as needed thereafter.

(d) Additional fire and health inspections are required if there is a change in residence.

(e) Additional fire and health inspections may be required if there are structural changes made to a residence or if such an inspection is deemed necessary by SCDSS or the licensed child placing agency.

(f) Any deficiencies must be corrected prior to initial licensure and/or relicensure.

(4) The applicants/foster parents shall:

(a) Be at least twenty one years of age or older. Age of foster parents should be considered only as it affects their ability to care for children within the age group applicant has expressed an interest in, and in relation to the probable duration of placement of a particular child.

(b) Have knowledge of the needs of children, be capable of meeting the needs of foster children and provide adequate foster care services;

(c) Be capable of handling an emergency situation;

(d) Be cooperative with SCDSS or child placing agency staff in furthering the best interest of the child; and

(e) Provide all relevant and factual information to SCDSS or the child placing agency.

(5) Foster parents must each have a minimum of fourteen (14) hours of appropriate foster care pre service training and which includes training on licensing requirements and expected standards of care prior to licensure commencing January 1, 2003.

(a) The foster parents will each subsequently be required to complete a minimum of fourteen (14) hours training each year, or twenty (28) hours prior to each subsequent relicensure commencing January 1, 2003.

(b) Viewing standard television programs or reading popular news or magazine articles will not be accepted for training hours and the training shall be provided by SCDSS or via another source which is approved by SCDSS.

(6) The applicant's or current foster family's income shall be reasonably secure and not dependent upon foster care boarding payments. The family shall supply verifiable information on family income and expenditures whenever requested to do so by SCDSS or the child placing agency.

(7) All applicants and household members shall submit an initial medical report by a duly licensed physician or licensed nurse practitioner verifying that such individuals are in reasonably good health, including an evaluation as to any communicable or contagious diseases. If deemed necessary by SCDSS or the child placing agency, additional medical reports may be required.

(a) If applicant/household member has sought treatment for issues related to mental health or drug or alcohol abuse, such information must be disclosed to SCDSS or the child placing agency during the assessment. Applicants shall only be licensed after consultation between SCDSS or the child placing agency staff and appropriate therapist, counselor or physician, if applicable, of the applicant/household member to obtain a history of rehabilitation and to assess the potential effects on their ability to care for children placed in the home.

(b) SCDSS or the child placing agency has the authority to request a psychological report on an applicant or household member, at the expense of the applicant, pursuant to securing information during the assessment study process that could indicate a need for professional consultation.

(c) Applicants/household members will execute the necessary releases to allow SCDSS or the child placing agency to access this information.

(8) A minimum of three written letters of reference shall be initially obtained in regard to foster parent applicants.

(a) If deemed necessary by SCDSS or the child placing agency, additional references may be required.

(b) References should have known the applicants three years prior to the application and, unless specifically requested, should not be related to the applicants.

H. The following standards of care shall be maintained by foster families. Failure to comply with one or more of these standards of care may result in removal of foster children from the home and revocation of the foster home license:

(1) The child's daily routine shall be planned to promote the development of good health habits.

(2) Each child shall be provided with adequate health and hygiene aids.

(3) Space for a child's possessions shall be provided.

(4) The foster family home shall be able to comfortably accommodate a foster child as well as their own family.

(a) Each child in care shall be provided with his or her own bed and storage space, however same sex siblings may be allowed to share a bed or storage.

(b) No child may routinely share a bed or a bedroom with an adult and except for a child under one year of age, a child must not share a bedroom with an adult unless SCDSS or the child placing agency staff document extenuating circumstances exist.

(c) Children of opposite sex sleeping in the same bed must be limited to siblings under the age of four years. Children of opposite sex sleeping in the same room must be limited to children under the age of four years.

(d) Children shall sleep within calling distance of an adult member of the family, with no child sleeping in a detached building, unfinished attic or basement, stairway, hall, or room commonly used for other than bedroom purposes.

(e) No biological children of the foster family shall be displaced and made to occupy sleeping quarters prohibited in (b), (c) and (d) above because of a foster child being placed in the home.

(f) The top level of bunk beds shall not be used for children under the age of six years.

(5) If deemed appropriate by SCDSS or the child placing agency, the foster family will cooperate in assuring that foster children are able to maintain regular contact with their birth parents, siblings, and other significant relatives.

(6) Unless advised otherwise by the responsible agency, each foster child shall be prepared by foster parents to eventually leave the home.

(7) Foster parents shall follow instructions and suggestions of providers of medical and health related services. If receiving medication, a child's prescription shall be filled on a timely basis and medications will be administered as prescribed, and otherwise be kept secured.

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(8) Foster parents shall obtain emergency medical treatment immediately as need arises, and shall notify SCDSS and child placing agency staff, no later than 24 hours of receiving such care.

(a) If the primary source of payment for medical care is medicaid, foster parents must insure that the child's card is accessible at all times.

(b) Foster parents should contact SCDSS for coordination of any elective or non-emergency surgical procedures as far in advance of the procedure(s) as possible.

(c) Any injuries sustained by a foster child must be reported as they occur and no later than 24 hours of incident.

(9) Foster parents are responsible for notifying SCDSS and child placing agency staff as soon as possible when a critical incident has occurred such as:

(a) Death of any child in the home;

(b) Attempted suicide by the child;

(c) Child is caught with a weapon or illegal substance;

(d) Child is charged with a juvenile or adult offense;

(e) Child is placed on homebound schooling or is suspended or expelled from school;

(f) Child has left the home without permission and has not returned.

(10) School attendance shall be in accordance with State law requirements and be in accordance with the ability and in the best interest of the child.

(a) The foster parents will assure that each foster child has access to education, educational opportunities and related services. Foster parents must emphasize the value of education and encourage and support children in their care to fully participate in educational activities;

(b) SCDSS will choose school foster child attends.

(c) SCDSS will not pay for costs associated with private tuition.

(d) Unless extenuating circumstances exist, foster parents shall not home school foster children. SCDSS must approve any such plan.

(11) Religious education shall be in accordance with the expressed wishes of the natural parents, if such wishes are expressed.

(12) All discipline must be reasonable in manner, moderate in degree and responsibly related to the child's understanding and need.

(a) Discipline should be constructive or educational in nature (e.g. withdrawal of privileges).

(b) Cruel, inhumane and inappropriate discipline is prohibited. This would include but not necessarily be limited to the following: head shaving or any other dehumanizing or degrading act; prolonged/frequent deprivation of food or serving foster children meals which are not as nutritionally adequate as those served to other family members or requiring children to be isolated from other family members when eating, deprivation of mail, slapping or shaking; a pattern of threats of removal from the home as punishment; disciplining a child for a medical or psychological problem over which he/she has no control (e.g. bedwetting, stuttering, etc.).

(c) All foster homes are subject to South Carolina laws relating to child abuse and neglect.

(d) The use of corporal punishment as a form of discipline is prohibited.

(13) Tasks which are assigned to foster children shall be appropriate to the ability of the child, similar to responsibilities assigned to other children, and geared toward teaching personal responsibility.

(14) Foster parents must assist older foster adolescents in their care in learning skills that are necessary for successful independent living.

(15) Varied recreational activities shall be available to each child.

(16) Infants and children shall not be left without competent supervision.

(17) Foster parents, in conjunction with SCDSS, shall keep a life book/scrapbook on each foster child placed in their home. Children's records and reports shall be kept confidential and shall be returned to SCDSS when a foster child leaves the foster home.

(18) Firearms and any ammunition shall be kept in a locked storage container except when being legally carried upon the foster parent's person; being used for educational, recreational, or defense of self or property purposes by the foster parent; or being cleaned by the foster parent.

(19) Applicant must be able to secure/supervise access to in ground or above ground swimming pools and maintain adequate supervision during periods of swimming.

(20) Fire escape plans must be developed, posted and routine drills conducted.

(21) A plan for how the family will respond and travel in the event of a disaster (e.g., a hurricane evacuation) must be developed and shared with SCDSS or child placing agency.

(22) All pets must be kept current with rabies vaccinations and proof of such provided. Pets must not pose a safety concern. SCDSS or the child placing agency will determine what constitutes a safety concern.

(23) Applicants and current licensed families must make themselves reasonably available on an ongoing basis to SCDSS or the child placing agency for statutorily required contacts or other contacts SCDSS or the child placing agency deems necessary. SCDSS or the child placing agency has the right to make unannounced visits, and talk to any foster child on an as needed basis.

(24) Board payments shall be utilized but not limited to reimbursement for a foster child's board, school expenses, food, clothing, incidentals, minor medical needs and other expenses.

(25) A foster home shall not provide full time care for more than five (5) children, including the foster parents' own children and/or other children who are household members unless SCDSS or the child placing agency is keeping siblings together or making an adoptive placement or the placement has been court ordered.

(a) No more than two (2) infants (age birth to one year) shall be placed in the same foster home without prior approval from SCDSS or child placing agency management staff.

(b) No foster home shall exceed the number of children stipulated on their issued license without permission from SCDSS or child placing agency staff.

(c) No foster home shall accept children referred by another public or private source without obtaining the permission of SCDSS or child placing agency staff prior to the actual placement.

(26) When a home is licensed to provide care for an unmarried mother, a plan for medical and hospital care, as well as appropriate protection from community stresses associated with pregnancy, must be made.

(27) A foster family is required to notify SCDSS or child placing agency staff of any significant change in the family/home including, but not limited to, any structural changes in the home; plans involving a change of residence; any major changes in the health of anyone living in the home; change in marital status and the addition of any occupants to the home; significant changes in finances; and criminal and/or child abuse allegation charges and/or investigations.

(28) No unrelated lodger or boarder shall be allowed to move into a foster home without the agency's concurrence. Foster children may be placed or remain in a foster home where there is an unrelated lodger or boarder or room mate after necessary safety checks have been made and written concurrence obtained by SCDSS or the child placing agency. Anyone over the age of eighteen years and living in the home must undergo a fingerprinting, SLED, Sex Offender, and CPS check. If children are already in placement, an affidavit must be submitted by the household member confirming there is no record. The license must be amended to a Standard with Temporary Waiver until the results of the submitted checks have been received.

(29) Applicants or current foster families must advise SCDSS or the child placing agency staff prior to opening a day care or other home based business in the home.

(30) Foster parents shall transport children in accordance with state public safety laws.

I. Records Documentation Required for Child Placing Agencies.

(1) All child placing agencies in the State shall keep records regarding each of their foster children containing the following information:

- (a) The child's name;
- (b) The child's birth date;
- (c) The date of his admission and discharge from each foster care placement;
- (d) Name, address and telephone number of relatives;
- (e) Place and hours of employment of child's relatives; and
- (f) Name, address and telephone number of available physician.

(2) All child placing agencies in the State shall keep records regarding each of their foster homes and said records shall contain documentation of compliance with these regulations and SCDSS procedures related to foster home licensing.

J. Adoption of Foster Children by Foster Parents.

(1) Foster parents may apply to adopt a foster child.

(2) Foster families who have been approved for adoption will be given first consideration for the adoption of a foster child under the following conditions:

- (a) The child has been in the same foster home for a consecutive six months period of time or more; and

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(b) The child is legally free for adoption; and

(c) Placement for adoption with the foster family is deemed to be in the best interest of the child by SCDSS or the child placing agency.

K. Initial Licensing, Renewal, Denial, Revocation, and Termination of License.

(1) Foster family licenses shall be studied for renewal every two years and prior to the expiration of the last license.

(2) Renewal process requirements include documentation of annual fire inspection, additional training hours, background checks through CPS, SLED, and Sex Offender Registry, home visit, assessment of ongoing compliance with requirements and standards of care, and any additional requirements as SCDSS or the child placing agency staff may deem necessary.

(3) A license will not be issued or renewed if licensing requirements are not met, or standards of care have not been maintained as prescribed within these regulations or if, in the opinion of SCDSS, it would be detrimental for children to be placed in the home. Written notification of the denial, signed by the director of SCDSS or his/her designee will be mailed via certified mail from SCDSS to the applicant(s) or license holder. The notification will inform the applicant(s) or license holder of any right to appeal this decision pursuant to established SCDSS procedure.

(4) A foster home license may be revoked by SCDSS if minimum licensing requirements or standards within these regulations are not met, or, if in the opinion of SCDSS or child placing agency staff, it would be detrimental for additional children to be placed in the home. Written notification of the revocation, signed by the director of SCDSS or his/her designee will be mailed via certified mail from SCDSS to the license holder. The notification will inform the license holder of any right to appeal this decision pursuant to established SCDSS procedure.

(5) A foster family license shall be terminated when:

(a) The time specified on the license has elapsed; or

(b) The foster family has moved to a new location without applying for a change in license; or

(c) The license has been revoked or renewal denied and the time frame for appeal has elapsed; or

(d) A foster family voluntarily returns the current license to SCDSS or the child placing agency for cancellation or otherwise informs SCDSS or the child placing agency that they no longer desire to be licensed.

L. Kinship Foster Parents.

(1) Per federal policy, relatives being licensed must be licensed in accordance with the same requirements as non-relative applicants. SCDSS may waive, on a case by case basis, for relatives or non-relatives, non-safety elements as SCDSS deems appropriate. Safety elements such as history of child abuse/neglect, state and/or federal criminal history checks must not be waived. SCDSS must note on the standard license if there was a waiver of non-safety element and identify the element being waived.

(2) Relatives are given preference in placement options provided such placement is in the best interest of the child(ren).

M. Confidentiality.

(1) No foster family shall directly or indirectly disclose any information regarding foster children, their biological families/relatives or other individuals who have had control of the foster children, other than to professionals treating, caring and providing services for the child or others as SCDSS or the licensed child placing agency deems appropriate.

(2) Information that is disclosed shall be limited to information that is necessary to provide for the child's needs and in their best interest.

N. Prior Regulations Repealed.

All regulations concerning foster family homes previously promulgated by the agency are hereby repealed, including: Regulations 114-550 (Vol. 27).

O. Regulations Review.

These regulations are to be evaluated at a minimum, every five (5) years from the date of initiation, to assess the need for revision.

Fiscal Impact Statement:

The Department of Social Services estimates the costs incurred by the State and its political subdivisions in complying with the proposed regulation will be approximately \$155,000.

Statement of Rationale:

This regulation authorizes the agency to issue a provisional license to kinship caregivers who meet specified conditions. This regulation will enable children who have been abused or neglected to be placed in a licensed foster home with an adult who is either known to the child or the child's family. Placement with relatives, lessens the impact of removal from the biological home, helps children maintain important connections to family and community, and reduces the likelihood that children will experience multiple placement changes while in foster care.

Document No. 4916

**DEPARTMENT OF TRANSPORTATION
CHAPTER 63**

Statutory Authority: 1976 Code Section 57-5-1650

63-307. Contractor Performance Evaluation.

Synopsis:

South Carolina Department of Transportation (SCDOT) proposes to amend Regulation 63-307 to clarify that the contract performance evaluation system applies to enhancement projects, school sidewalk projects, and beautification projects as well as the usual highway and bridge construction contracts. Also, SCDOT proposes to amend the Regulation to substitute the word "time" for "schedule" in Section (A)(1)(a) to avoid confusion with the contractor's Critical Path Method (CPM) schedule.

A Notice of Drafting for the proposed amendments to Regulation 63-307 was published in the *State Register* on September 27, 2019. The proposed amended regulations were published in the *State Register* on October 25, 2019. No comments were received nor was a hearing requested. Therefore, the amendments have been promulgated and are submitted for General Assembly review and approval.

Instructions:

Replace Regulation 63-307 as shown below.

Text:

63-307. Contractor Performance Evaluation.

A. Contract Performance Evaluation System.

1. The South Carolina Department of Transportation may use a contract performance evaluation system to evaluate the performance of a contractor on construction projects and to assign a contractor performance score. The Department shall use evaluation criteria and quality audits that include, but are not limited to:

(a) Objective evaluation of how well the contractor completed projects on time and within the bid amount;

(b) Field audits conducted during construction that evaluate the contractor's performance on active projects;

(c) Objective evaluation of the merit of claims filed by the contractor based on the proportional amount of each claim that was upheld and awarded to the contractor;

(d) Evaluations by the Resident Construction Engineers on the contractor's completed projects, which include rating of the contractor's performance in such areas as safety, environmental issues, the contractor's

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personnel and equipment, public relations, and compliance with Equal Employment Opportunities statutes, the Davis Bacon Act, and Disadvantaged Business Enterprise goals.

2. The Department may revise the evaluation criteria as it deems necessary to ensure equitable evaluation of all contractors.

B. Minimum Required Contractor Performance Score.

The Department may require bidders to have a minimum contractor performance score to bid on a project. The Department shall determine the appropriate minimum score for a project based on an evaluation of criteria that includes, but is not limited to: design complexity, critical time constraints, environmental sensitivity, complex traffic control, location in densely populated areas, need for specialized equipment, high traffic volume, and project cost. All prequalified contractors whose contractor performance score is below the minimum shall not be allowed to bid on projects that require a minimum required contractor performance score. Prequalified contractors who have never had or do not have a current contractor performance score will not be subject to this bidding restriction.

C. Definitions.

1. **Minimum Required Contractor Performance Score:** A minimum contractor performance score set by the Department for a particular project for acceptance of bids. The minimum score shall be set based on criteria established by the Department.

2. **State Highway Engineer:** The Deputy Secretary of Transportation of SCDOT.

D. **Contractor Performance Score.** A contractor performance score for each contractor may be determined by the Department using performance evaluations and quality audits of the contractor's performance compiled by the Department. All active contractors shall be periodically notified of their contractor performance score.

E. **Contractor's Right to Review of its Performance Score.** A contractor may request a conference to review the calculation of its contractor performance score and the information upon which the score is determined by requesting a review conference with the Director of Construction or his or her designee.

F. **Contractor's Right to Appeal Its Contractor Performance Score.** A contractor may appeal its contractor performance score to the State Highway Engineer. The appeal must be in writing and include the basis for the appeal. The State Highway Engineer may consider evidence submitted by the contractor and any other relevant evidence and consult with SCDOT staff and any other person or entity for recommendations concerning the appeal. The State Highway Engineer shall make a recommendation to the Secretary, who shall issue a final agency decision on the appeal within ninety (90) days of the receipt of the appeal.

Fiscal Impact Statement:

There should be no costs to the State or its political subdivisions to comply with the proposed amendments to the regulations.

Statement of Rationale:

SCDOT needs to clarify that the contractor performance evaluation system applies to enhancement projects, school sidewalk projects and beautification projects, as well as traditional highway and bridge projects. Also, SCDOT needs to clarify that the contractor will be evaluated on whether the contractor completes the contract on time, as measured by contract time, not the Critical Path Method (CPM) schedule. Therefore, the Regulation needs to be amended to make the above clarifications.

Document No. 4917
DEPARTMENT OF TRANSPORTATION
 CHAPTER 63
 Statutory Authority: 1976 Code Section 57-5-1650

63-306. Disqualification and Suspension from Participation in Contracts with the South Carolina Department of Transportation.

Synopsis:

South Carolina Department of Transportation (SCDOT) proposes to amend Regulation 63-306 by revising the definition of “affiliate” in Regulation 63-306(B)(1) to delete the reference to “contractor score.” A contractor’s score is not relevant to the disqualification and suspension process addressed in Regulation 63-306. Contractor score is addressed in Regulation 63-307.

A Notice of Drafting for the proposed amendments to Regulation 63-306 was published in the *State Register* on September 27, 2019. The proposed amended regulations were published in the *State Register* on October 25, 2019. No comments were received nor was a hearing requested. Therefore, the amendments have been promulgated and submitted for General Assembly review and approval.

Instructions:

Replace Regulation 63-306 as shown below.

Text:

63-306. Disqualification and Suspension from Participation in Contracts with the South Carolina Department of Transportation.

A. Policy Statement. Recognizing that preserving the integrity of the public contracting process is vital to the development of a balanced and efficient transportation system and is a matter of interest to all people of the State, it is hereby declared:

1. The procedures for bidding and qualification of bidders on contracts involving the South Carolina Department of Transportation exist to secure the quality of public works.
2. The opportunity to bid on contracts, to participate as subcontractor or to supply goods or services to the Department is a privilege, not a right.
3. In order to preserve the integrity of the public contracting process, the privilege of transacting business with the Department should be denied to persons involved in criminal and/or unethical conduct.
4. Therefore, as a means of maintaining the integrity of the public contracting process and protecting the public at large, persons engaging in criminal and/or unethical conduct will not be allowed to transact business with the Department during the period of any suspension or disqualification.

B. Definitions.

1. Affiliate: Any business entity having direct or indirect control over, or which is controlled directly or indirectly, by any person who has been disqualified or suspended. Indicia of control include, but are not limited to: interlocking management or ownership; identity of interest among family members; shared facilities and equipment; common use of employees; or any business entity organized following the suspension or disqualification of a person which has the same or similar management, ownership, or principal employees of the disqualified or suspended person.
2. Business Entity: A corporation, partnership, limited partnership, association or sole proprietorship.
3. Civil Judgment: The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation or otherwise, creating civil liability for the wrongful acts complained of.
4. Commission: The Commission of the South Carolina Department of Transportation.

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5. Contractor's Certificate: A Prequalification Certificate issued by the Department to qualified contractors as a necessary condition to bid on contracts with the Department.

6. Conviction: A judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of non contendere.

7. Department: South Carolina Department of Transportation.

8. Disqualification: An action taken in accord with these regulations to exclude a person from participating as a contractor, subcontractor, supplier, or in any other role under any contract with the Department during the period of disqualification.

9. Secretary: The Secretary of Transportation of the State of South Carolina.

10. Person: Any individual, corporation, partnership, limited partnership, association, sole proprietorship or any other business entity.

11. Principal: Officer, director, owner, partner, key employee or any other person within a business entity with primary management or supervisory responsibilities; or a person who has critical influence on or substantial control over the actions or conduct at issue, whether or not employed by the business entity.

12. Suspension: An action taken in accord with these regulations that immediately excludes a person from participating in any contracts with the Department for a temporary period.

13. Unlawful payment or gratuity: Transfer of anything of value to a Department employee in violation of state statute or regulatory law or Departmental policy.

C. Disqualification. Any person who violates any of the standards of conduct identified below may be subject to disqualification or suspension. Disqualification may be imposed for:

1. Conviction of any crime reflecting a lack of business integrity or business honesty, including but not limited to, crimes involving fraud, deceit, embezzlement, theft, forgery, bribery, falsification or destruction of records, bid rigging, price fixing, making false statement, receiving stolen property, anti-trust violations, making false claims, making any unlawful payment or gratuity, obstruction of justice, violation of ethical standards or conspiracy to commit any of the above.

2. Civil judgment for any acts or omissions reflecting a lack of business integrity or business honesty, including, but not limited to, acts or omissions involving fraud, deceit, embezzlement, theft, forgery, bribery, falsification or destruction of records, bid rigging, price fixing, making false statements, receiving stolen property, anti-trust violations, making false claims, making an unlawful payment or gratuity, obstruction of justice, violation of ethical standards or conspiracy to commit any of the above.

3. Final administrative decisions by any governmental agency responsible for supervising or regulating public contracts, standards of ethical conduct or licensure for any acts or omissions involving fraud, deceit, embezzlement, theft, forgery, bribery, falsification or destruction of records, bid rigging, price fixing, making false statements, receiving stolen property, anti-trust violations, making false claims, making an unlawful payment or gratuity, obstruction of justice, violation of ethical standards or conspiracy to commit any of the above.

4. Any act or omission reflecting a lack of business integrity or business honesty, including, but not limited to, acts or omissions involving fraud, deceit, embezzlement, theft, forgery, bribery, falsification or destruction of records, bid rigging, price fixing, making false statements, receiving stolen property, anti-trust violations, making false claims, making an unlawful payment or gratuity, obstruction of justice, violation of a debarment agreement, violation of the ethical standards or conspiracy to commit any of the above.

5. Willful violation of any provision of a contract with the Department, or any regulatory or statutory provision relating to such contract, while serving as a contractor, subcontractor or supplier.

6. Persistent failure to perform or incompetent performance on one or more contracts with the Department as a contractor, subcontractor or supplier; or

7. Knowingly allowing any person disqualified or suspended pursuant to this regulation, or by any other governmental or regulatory agency, to serve as a subcontractor or supplier or to play any other role under any contract with the Department without prior written authorization from the Secretary.

8. Failure to cooperate fully and completely with any investigation by the Department or any other appropriate regulatory or law enforcement agency. Such cooperation shall include, but not be limited to, disclosure of all written or computerized records and a full and complete accounting of the person's actions in the matter under investigation. Assertion of Fifth Amendment right against self-incrimination shall not be construed as a failure to cooperate under this regulation.

D. Suspension. In the event the Department finds that the public health, safety or welfare imperatively requires emergency action, a suspension may be implemented immediately pending a hearing, which shall be promptly provided on the issue of suspension. The grounds for a suspension shall be in accord with the standards for disqualification enumerated above.

E. Procedures.

1. Notice of disqualification, suspension, or sanctions may be issued by the Secretary and shall include:

- (a) A reference to the particular sections of the statutes, regulations, and rules involved;
- (b) A short and plain statement of the matters asserted.

2. The SCDOT shall have broad equitable powers in the impositions of civil sanctions, with the goal of preserving the integrity of the public contracting process and protecting the public at large. Any civil sanction imposed shall be remedial in nature and may include, but not limited to:

- (a) disqualification for a specific period of time;
- (b) monetary penalty;
- (c) restitution and reimbursement to the Department for the cost of any investigation or proceedings relating to the circumstances leading to any sanctions; and
- (d) conditions which must be met prior to restoration of a Contractor's Certificate.

3. A person may seek relief from the disqualification or suspension by requesting a contested case hearing before an Administrative Law Judge pursuant to S. C. Code Section 1-23-600 and the rules of procedure for the Administrative Law Judge Division. The request for a hearing must be made within thirty (30) days of receipt of SCDOT's Notice of Disqualification or Suspension.

F. Scope of Disqualification.

1. In the event a person is suspended or disqualified under this regulation, such person, and any affiliate of such person, shall be disqualified from serving as a contractor, subcontractor or supplier or performing any other service or role under any contract with the Department during the period of suspension disqualification.

2. A violation of the terms of any suspension/disqualification may be the basis of further sanction.

3. In the event that a person disqualified under this regulation is performing or providing services or materials on a Department project at the time of said disqualification, the Department may, in its discretion, allow the disqualified person to complete its obligation under the contract when such completion is in the public interest.

4. In the event a person which is a business entity is disqualified or suspended under this regulation, such disqualification or suspension shall be applicable to any principal of said business entity.

G. Duty of Disqualified/Suspended Persons. A disqualified or suspended person shall cooperate fully with any investigation by the Department or any other appropriate regulatory or law enforcement agency. Such cooperation shall include, but not be limited to, disclosure of all written or computerized records and a full and complete accounting of the person's actions in the matter under investigation. In the event a disqualified or suspended person fails to cooperate, as required by this paragraph, further remedial measures may be taken against the person, up to and including permanent disqualification. Assertion of Fifth Amendment right against self-incrimination shall not be construed as a failure to cooperate under this regulation.

H. Reinstatement of Contractor's Certificate. Any person disqualified or suspended under this regulation shall immediately lose its Contractor's Certificate. The disqualified or suspended person may apply for the reinstatement of the Contractor's Certificate upon completion of the period of suspension or disqualification and satisfaction of all conditions imposed by any final order or settlement. Any application for the reinstatement of a Contractor's Certificate shall be subject to the then existing statutory and regulatory provisions and Departmental policies relating to pre-qualification of bidders.

Fiscal Impact Statement:

There should be no costs to the State or its political subdivisions to comply with the proposed amendments to the regulations.

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Statement of Rationale:

The reference in Regulation 63-306 (B)(1) to a contractor being “prevented from bidding because of a contractor’s score” should be eliminated. Contractor performance scores are determined by the process set forth in Regulation 63-307. Contractor scores can prevent a contractor from bidding on specific projects, but do not disqualify the contractor from participation in all contracts with SCDOT. Therefore, the reference to contractor score in 63-306 (B)(1) is erroneous.