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# SOUTH CAROLINA STATE REGISTER

# PUBLISHED BY THE LEGISLATIVE COUNCIL of the GENERAL ASSEMBLY

ASHLEY HARWELL-BEACH, DIRECTOR DEIRDRE BREVARD SMITH, EDITOR

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# 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.

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

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

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

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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*.

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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.

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**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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# PART ONE (Parts One, Two, and Three Mailed Separately)

# **REGULATIONS SUBMITTED TO GENERAL ASSEMBLY**

04.4	Expiration Dates	1
Status and Legislative Review	expiration Dates	I

# **EXECUTIVE ORDERS**

Executive Order No. 2021-19	Prioritizing and Protecting South Carolina's Children	3
Executive Order No. 2021-20	State of Emergency	5
Executive Order No. 2021-21	Ordering New Runoff Election for Town of Estill	
Executive Order No. 2021-22	State of Emergency	15
Executive Order No. 2021-23	Emergency Measures Regarding Face Coverings, Vaccine Passports, and	
	Other Matters	24
Executive Order No. 2021-24	Emergency Measures Regarding Face Coverings, Vaccine Passports, and	
	Other Matters	36

# NOTICES

CONSUMER AFFAIRS, DEPARTMENT OF Dollar Amount Adjustments for the Pawnbrokers Act	40
HEALTH AND ENVIRONMENTAL CONTROL, DEPARTMENT OF Certificate of Need	40
LABOR, LICENSING AND REGULATION, DEPARTMENT OF Building Codes Council	
Adoption of 2021 International Codes and 2020 National Code	42
Notice of Public Hearing – 2021 International Codes and 2020 National Code	42

# **DRAFTING NOTICES**

EDUCATION, STATE BOARD OF Accreditation Criteria	44
Defined Program for the Palmetto Unified School District (PUSD)	44
LABOR, LICENSING AND REGULATION, DEPARTMENT OF Architectural Examiners, Board of	
Architectural Examiners.	45
Counselors, Marriage and Family Therapists, Addiction Counselors and Psycho-Educational	
Specialists, Board of Examiners for Licensure of Professional	
Counselors, Therapists, and Specialists	45
Engineers and Land Surveyors, Board of Registration for Professional	
Engineers and Land Surveyors	46

## **TABLE OF CONTENTS**

# FINAL REGULATIONS

# ATTORNEY GENERAL, OFFICE OF THE

Document No. 4983	Fees to Accompany Request for Confirmation of Solicitation Exemption.	47
Document No. 4982	Records of Charitable Trust	47
Consumer Affairs, Dep	ARTMENT OF	
Document No. 4994	Sale or Lease of Renewable Energy Facilities	48
EDUCATION, STATE BOAR	D OF	
Document No. 4991	Credential Classification	55
Document No. 4981	Minimum Standards of Student Conduct and Disciplinary Enforcement	
	Procedures to be Implemented by Local School Districts	60
Document No. 4980	Transfers and Withdrawals	

# HEALTH AND ENVIRONMENTAL CONTROL, DEPARTMENT OF

Document No. 4996	Athletic Trainers	68
Document No. 4975	Hazardous Waste Management Regulations	79
Document No. 5036	Radioactive Materials (Title A)	93
Document No. 4979	Septic Tank Site Evaluation Fees; Onsite Wastewater Systems; License to	
	Construct or Clean Onsite Sewage Treatment and Disposal Systems and	
	Self-Contained Toilets; and Licensing of Onsite Wastewater Systems	
	Master Contractors	.135

# PART TWO

# (MAILED SEPARATELY)

Document No. 5003	Solid Waste Management: Compost and Mulch Production from	
	Land-clearing Debris, Yard Trimmings and Organic Residuals	242
Document No. 4997	Standards for the Permitting of Agricultural Animal Facilities	270
Document No. 4995	Statement of Policy; and Specific Project Standards for Tidelands and	
	Coastal Waters	368

## HIGHER EDUCATION, COMMISSION ON

Document No. 5004	LIFE Scholarship Program and LIFE Scholarship Enhancement	374
Document No. 5005	Palmetto Fellows Scholarship Program	
Document No. 5006	South Carolina HOPE Scholarship	
Document No. 4970	South Carolina National Guard College Assistance Program	
	8 8 8 8	

## LABOR, LICENSING AND REGULATION, DEPARTMENT OF

Document No. 5008	Fee Schedule for Bulk Licensure Verification	442
Document No. 5009	Fee Schedule for Real Estate Appraisers Board	443
Document No. 5025	Fees Assessed by the Auctioneers' Commission	
Document No. 5024	Fees Assessed by the State Athletic Commission	446
Auctioneers' Commission	n	
Document No. 5010	Auctioneers' Commission	448

# PART THREE (Mailed Separately)

Dentistry, Board of		
Document No. 4985	Continuing Education; and Use of Lasers in a Dental Setting	451
Foresters, Board of Reg		
Document No. 5012	Board of Registration for Foresters	454
Long Term Health Care	e Administrators, Board of	
Document No. 4987	Administrator-in-Training Program Requirements	458
Medical Examiners, Boa		
Document No. 4986	Election Procedures for the State Board of Medical Examiners and the	
	Medical Disciplinary Commission	460
Occupational Safety and	l Health, Office of	
Document No. 5013	Recording and Reporting Occupational Injuries and Illnesses	461
MOTOR VEHICLES, DEPARTM	AENT OF	
Document No. 5002	Truck Driver Schools; and Driver Training Schools	469
NATURAL RESOURCES, DEPA	RTMENT OF	
Document No. 5020	Alexander Sprunt, Jr., Wildlife Refuge and Sanctuary	478
Document No. 5021	Boating	479
Document No. 5018	Freshwater Fisheries	480
Document No. 5016	Marine Resources Division	481
Document No. 5027	Regulations for Nonnative Wildlife	482
Document No. 5007	Regulations for Spotted Turtle; and Exchange and Transfer for Certain	
	Native Reptiles and Amphibians	
Document No. 5017	Restrictions on the Use of Watercraft in Certain Areas and No Wake Zones	.488
Document No. 5019	Sea Turtle Protection	491
Document No. 5011	Wildlife Management Area Regulations; and Turkey Hunting Rules and	
	Seasons	492
PUBLIC SERVICE COMMISSIO		
Document No. 4969	Protection of Customer Data	523
<b>REGULATORY STAFF, OFFIC</b>	E OF	
Document No. 4992	Consumer Protection for the Lease of Renewable Energy Generation	
	Facilities	526
SOCIAL SERVICES, DEPARTM	IENT OF	
Document No. 5023	Licensure for Foster Care	
Document No. 5022	Residential Group Care Facilities for Children	549

# **REGULATIONS SUBMITTED TO GENERAL ASSEMBLY 1**

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

Doc. No.	RAT. FINAL No. Issue	SUBJECT	Exp. Date	AGENCY	HOUSE COMMITTEE	Senate Committee
4980 4981	SR45-5 SR45-5	Transfers and Withdrawals Minimum Standards of Student Conduct and Disciplinary Enforcement Procedures to be Implemented by Local	05/12/2021	State Board of Education	Regs and Admin Procedures	Education
4982 4983	SR45-5 SR45-5	School Districts Records of Charitable Trust	05/12/2021 05/12/2021	State Board of Education Office of the Attorney General	Regs and Admin Procedures Regs and Admin Procedures	Education Judiciary
		Solicitation Exemption	05/12/2021	Office of the Attorney General	Regs and Admin Procedures	Labor, Commerce and Industry
4991 4969	SR45-5 SR45-5	Protection of Consumer Data	05/12/2021 05/12/2021	State Board of Education Public Service Commission	Regs and Admin Procedures Regs and Admin Procedures	Education Judiciary
4992		Consumer Protection for the Lease of Renewable Energy Generation Facilities	05/12/2021	Office of Regulatory Staff	Regs and Admin Procedures	Judiciary
4975 4997	SR45-5 SR45-5	8 8	05/12/2021	Department of Health and Envir Control	Regs and Admin Procedures	Medical Affairs
5011	SR45-5	Facilities Wildlife Management Area Regulations; and Turkey	05/12/2021	Department of Health and Envir Control	Regs and Admin Procedures	Ag and Nat Resources
4995	SR45-5	Hunting Rules and Seasons Statement of Policy; and Specific Project Standards for	05/12/2021	Department of Natural Resources	Regs and Admin Procedures	Fish, Game and Forestry
4970	SR45-5	8	05/12/2021	Department of Health and Envir Control	Regs and Admin Procedures	Fish, Game and Forestry
4996	SR45-5		05/12/2021 05/12/2021	Commission on Higher Education Department of Health and Envir Control	Regs and Admin Procedures Regs and Admin Procedures	Education Medical Affairs
4985	SR45-5	Dental Setting	05/12/2021	LLR-Board of Dentistry	Regs and Admin Procedures	Medical Affairs
4986	SR45-5	Examiners and the Medical Disciplinary Commission	05/12/2021	LLR-Board of Medical Examiners	Regs and Admin Procedures	Medical Affairs
4987 5008	SR45-5 SR45-5	Fee Schedule for Bulk Licensure Verification	05/12/2021 05/12/2021	LLR-Board of LTHC Administrators LLR	Regs and Admin Procedures Regs and Admin Procedures	Medical Affairs Labor, Commerce and Industry
5009 5013	SR45-5 SR45-5	11	05/12/2021	LLR	Regs and Admin Procedures	Labor, Commerce and Industry
5016	SR45-5	Illnesses Marine Resources Division	05/12/2021 05/12/2021	LLR-OSHA Department of Natural Resources	Regs and Admin Procedures Regs and Admin Procedures	Labor, Commerce and Industry Fish, Game and Forestry
5017	SR45-5	Restrictions on the Use of Watercraft in Certain Areas and No Wake Zones	05/12/2021	Department of Natural Resources	Regs and Admin Procedures	Fish, Game and Forestry
5018 5019	SR45-5 SR45-5	Freshwater Fisheries Sea Turtle Protection	05/12/2021 05/12/2021	Department of Natural Resources Department of Natural Resources	Regs and Admin Procedures Regs and Admin Procedures	Fish, Game and Forestry Fish, Game and Forestry
5020 5021	SR45-5 SR45-5	Alexander Sprunt, Jr., Wildlife Refuge and Sanctuary	05/12/2021 05/12/2021	Department of Natural Resources Department of Natural Resources	Regs and Admin Procedures Regs and Admin Procedures	Fish, Game and Forestry Fish, Game and Forestry
5024 5025	SR45-5 SR45-5	Fees Assessed by the State Athletic Commission	05/12/2021 05/12/2021	LLR LLR	Regs and Admin Procedures Regs and Admin Procedures	Labor, Commerce and Industry Labor, Commerce and Industry
5010 5012	SR45-5 SR45-5	Auctioneers' Commission	05/12/2021 05/12/2021 05/12/2021	LLR-Auctioneers' Commission LLR-Board of Registration for Foresters	Regs and Admin Procedures Regs and Admin Procedures	Labor, Commerce and Industry Fish, Game and Forestry
5004	SR45-5		05/12/2021	Commission on Higher Education	Regs and Admin Procedures	Education
5006 4994	SR45-5 SR45-5		05/12/2021 05/12/2021 05/12/2021	Commission on Higher Education Department of Consumer Affairs	Regs and Admin Procedures Regs and Admin Procedures Regs and Admin Procedures	Education Education Judiciary

# 2 REGULATIONS SUBMITTED TO GENERAL ASSEMBLY

:	5007	SR45-5	Regulations for Spotted Turtle; and Exchange and	05/12/2021		D 141 D 1		
	5002	SR45-5	Transfer for Certain Native Reptiles and Amphibians Truck Driver Schools; and Driver Training Schools	05/12/2021 05/12/2021	Department of Natural Resources Department of Motor Vehicles	Regs and Admin Procedures Regs and Admin Procedures	Fish, Game and Forestry Transportation	
	5022	SR45-5	Residential Group Care Facilities for Children	05/12/2021	Department of Notor Veneres	Regs and Admin Procedures	Family and Veterans' Services	
	5023	SR45-5	Licensure for Foster Care	05/12/2021	Department of Social Services	Regs and Admin Procedures	Family and Veterans' Services	
	5005	SR45-5	Palmetto Fellows Scholarship Program	05/13/2021	Commission on Higher Education	Regs and Admin Procedures	Education	
	1979	SR45-5	Septic Tank Site Evaluation Fees; Onsite Wastewater	03/15/2021	Commission on Higher Education	regs and reamin roceaures	Education	
			Systems; License to Construct or Clean Onsite Sewage					
			Treatment and Disposal Systems and Self-Contained					
			Toilets; and Licensing of Onsite Wastewater Systems					
			Master Contractors	05/13/2021	Department of Health and Envir Control	Regs and Admin Procedures	Medical Affairs	
4	5003	SR45-5	Solid Waste Management: Compost and Mulch Production		•	-		
			from Land-clearing Debris, Yard Trimmings and Organic					
			Residuals	05/13/2021	Department of Health and Envir Control	Regs and Admin Procedures	Medical Affairs	
4	1952		Procedure to Employ, through Contract or Otherwise,					
			Qualified, Independent Third-Party Consultants or Experts	01/21/2022	Public Service Commission	Regs and Admin Procedures	Judiciary	
	5015		Asian Longhorned Beetle Quarantine	01/29/2022	Clemson UnivState Crop Pest Comm	Regs and Admin Procedures	Ag and Nat Resources	
	5028		Term and Universal Life Insurance Reserve Financing	01/31/2022	Department of Insurance	Regs and Admin Procedures	Banking and Insurance	
	5029 5027	R.29 SR45-5	Credit for Reinsurance	01/31/2022 02/20/2022	Department of Insurance	Regs and Admin Procedures	Banking and Insurance	
	5027	K.29 SK45-5	Regulations for Nonnative Wildlife Raw Milk for Human Consumption; and Pasteurized	02/20/2022	Department of Natural Resources	Regs and Admin Procedures	Fish, Game and Forestry	
	0033		Milk and Milk Products	03/14/2022	Department of Health and Envir Control	Regs and Admin Procedures	Ag and Nat Resources	
4	5032		Seed Certification	03/16/2022	Clemson University	Regs and Admin Procedures	Ag and Nat Resources	
	5034		Emergency Temporary Work Permits	03/28/2022	LLR-Board of Cosmetology	Regs and Admin Procedures	Labor, Commerce and Industry	
	5037		Licensing Provisions; and Continuing Education	05/08/2022	LLR-Board of Funeral Service	Regs and Admin Procedures	Labor, Commerce and Industry	
			Licensing Trevisions, and Continuing Descention	00,00,2022			Lucci, commerce and measury	
	Commi	ttee Request Wi	thdrawal					
4	1977	•	Standards for Licensing Day Care Facilities for Adults	Tolled	Department of Health and Envir Control	Regs and Admin Procedures	Medical Affairs	
4	1993		South Carolina Jobs-Economic Development Authority	Tolled	SC Jobs-Economic Development Auth	Regs and Admin Procedures	Labor, Commerce and Industry	
Permanently Withdrawn								
	1974		Licensed Midwives		Department of Health and Envir Control	Regs and Admin Procedures	Medical Affairs	
	1984		Board of Architectural Examiners		LLR-Board of Architectural Examiners	Regs and Admin Procedures	Labor, Commerce and Industry	
			Role of the Qualified Independent Third-Party Consultant and Expert and the Commissioners' Reliance on the					
			Contents of the Qualified Independent Third-Party					
			Consultant and Expert's Report		Public Service Commission	Regs and Admin Procedures	Judiciary	
			Consultant and Export 5 Report		i ushe service commission	regs and rammin rocedures	successfy	

#### **Executive Order No. 2021-19**

WHEREAS, the United States Department of Health and Human Services' Administration for Children and Families ("ACF") recently submitted an inquiry or request to the South Carolina Department of Social Services ("DSS") regarding potential support resources available in the State of South Carolina for utilization in connection with the placement of unaccompanied migrant children entering the United States via the southern border; and

WHEREAS, following the aforementioned inquiry, DSS identified several potential problematic impacts associated with such a scenario, which involve varied avenues and degrees of risk exposure to the State of South Carolina, to include the fact that any relatively large cohort of children suddenly occupying foster care placements otherwise available to children who enter the care of the State would necessarily strain South Carolina's current capacity for timely and stable placements and other services and supports; and

WHEREAS, in light of the above-referenced and other concerns and the State of South Carolina's efforts over the last two years to build and expand capacity for timely and stable placements for children in foster care and other services and supports, as well as the requirements imposed by the United States District Court for the District of South Carolina since 2015 in connection with the *Michelle H. v. Haley* class action litigation and settlement agreement, C/A No. 2:15-cv-00134-RMG (D.S.C.), the undersigned has determined that accepting placements of unaccompanied migrant children entering the United States via the southern border into residential group care facilities or other foster care facilities located in, and licensed by, the State of South Carolina would unduly limit the availability of placements for children in South Carolina and would present a threat of harm to the children in such facilities and would constitute a failure of any such facility to keep the facility safe to care for children as contemplated by section 114-590(F)(4)(a) and (b) of the South Carolina Code of Regulations, as amended; and

WHEREAS, in addition to the foregoing, under the circumstances of the public health emergency related to the 2019 Novel Coronavirus ("COVID-19") and given the ongoing and evolving public health threats associated with the potential emergence and introduction of additional COVID-19 variants in this State originating from different geographic areas—as well as the migrant crisis occurring at the southern border of the United States and the questionable testing processes, quarantine procedures, and congregate facilities apparently being utilized by the federal government in connection with the same—the undersigned has determined that accepting placements of unaccompanied migrant children entering the United States via the southern border into residential group care facilities or other foster care facilities located in, and licensed by, the State of South Carolina would present a threat of harm to the children in such facilities and would constitute a failure of any such facility to keep the facility safe to care for children as contemplated by section 114-590(F)(4)(a) and (b) of the South Carolina Code of Regulations; and

WHEREAS, in accordance with section 43-1-80 of the South Carolina Code of Laws, as amended, DSS is charged with supervising and administering certain "public welfare activities and functions of the State" and "child protective services," and in furtherance of the foregoing responsibilities, "may adopt all necessary rules and regulations and formulate policies and methods of administration, when not otherwise fixed by law, to carry out effectively the activities and responsibilities delegated to it"; and

WHEREAS, consistent with the foregoing mission, and in accordance with section 114-590(F)(4)(a) and (b) of the South Carolina Code of Regulations, DSS may refuse to issue or revoke a license for a residential group care organization and facility for children if the licensee, *inter alia*, "[f]ails to . . . keep safe and sanitary the facility to care for children," and DSS is further "empowered to seek an injunction against the continuing operation of a facility" if DSS "determines threat of harm to children in the facility"; *see* S.C. Code Ann. § 63-7-1210(C); S.C. Code Ann. § 63-11-50; and

WHEREAS, although section 63-11-40 of the South Carolina Code of Laws, as amended, authorizes DSS "to develop a network of homes and facilities to use for temporary crisis placements for children," such placements may not occur "unless it is agreed to by the child's parent, guardian, or custodian and [DSS]" and "may last no longer than seventy-two hours," which demonstrates that such temporary crisis placements are not suited for use in connection with the federal government's potential placement of unaccompanied migrant children in the State for an unspecified or unlimited length of time; 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 that it is necessary and appropriate to take proactive action to address and mitigate the identified risks and threats associated with the federal government's potential placement of unaccompanied migrant children entering the United States via the southern border into residential group care facilities or other foster care facilities located in, and licensed by, the State of South Carolina.

**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. Prioritizing and Protecting South Carolina's Children

A. Pursuant to the cited authorities and other applicable law, I hereby direct DSS to take any and all necessary and appropriate action, in accordance with DSS's existing statutory and regulatory authority, and to the maximum extent permitted by applicable state and federal laws, regulations, and Orders, to prevent placements of unaccompanied migrant children entering the United States via the southern border into residential group care facilities or other foster care facilities located in, and licensed by, the State of South Carolina, including the initiation of corrective action plans and further enforcement action, as needed, such as the revocation of a current license, the refusal to issue a license, or the pursuit of an injunction against the continued operation of any licensee providing residential care for children that accepts the placement of an unaccompanied migrant child at the request of ACF. In furtherance of the foregoing, as well as the undersigned's responsibility to provide for and protect the health, safety, security, and welfare of the people of South Carolina, I hereby direct DSS to continue utilizing DSS's existing resources to protect and prioritize the needs of children in the State of South Carolina as provided by law.

B. I hereby expressly rely upon and incorporate by reference the recitals and other specific factual findings, legal authorities, determinations, and conclusions contained in previous Orders, to include Executive Order Nos. 2021-12 and 2021-18.

#### 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, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

C. This Order is effective immediately.

#### GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA, THIS 12th DAY OF APRIL, 2021.

HENRY MCMASTER Governor

**Executive Order No. 2021-20** 

WHEREAS, the State of South Carolina has taken, and must continue to take, any and all necessary and appropriate actions in confronting and coping with the significant public health threats and other impacts associated with the 2019 Novel Coronavirus ("COVID-19"), which now present different, additional, and evolving emergency conditions and extraordinary circumstances that necessitate the State taking further coordinated actions, maximizing state and federal intergovernmental and interagency financial and operational resources and collaborative response efforts, and implementing the requisite measures to address and respond to the same; and

WHEREAS, in preparing for and responding to the threats posed by COVID-19, the State must remain flexible to account for new and distinct circumstances—to include not only the evolving public health threats associated with COVID-19 but also modifications to the State's allocated supplies of authorized COVID-19 vaccines and the recent expansion of COVID-19 vaccine eligibility—and focus on implementing narrowly tailored emergency measures and expanding interagency coordination and targeted mitigation efforts designed to, *inter alia*, reduce community spread and transmission of COVID-19; minimize the resulting strain on healthcare facilities and resources; address emerging and amplifying issues associated with the presence of COVID-19 variants in the State and the potential emergence of additional COVID-19 variants; facilitate the safe resumption or continuation of in-person classroom instruction; stabilize and reinvigorate the State's economy; enable businesses and industries to safely reopen or resume operations; enhance testing capacity; and accelerate deployment of the State's vaccine distribution program to ensure that allocated supplies of authorized and available vaccines are administered in an efficient, equitable, and expedited manner; and

WHEREAS, in furtherance of the foregoing, and in preparing for and responding to the various and evolving threats posed by COVID-19, 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 White House Coronavirus Task Force, the South Carolina Department of Health and Environmental Control ("DHEC"), and the South Carolina Emergency Management Division ("EMD"); 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 more recently, on February 24, 2021, the

President of the United States published a notice in the *Federal Register* that the national emergency shall continue and remain in effect beyond March 1, 2021; and

WHEREAS, in addition to declaring an initial State of Emergency on March 13, 2020, the undersigned has issued various Executive Orders initiating, directing, and modifying specific extraordinary measures designed 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, 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, 2020-35, 2020-38, 2020-40, 2020-42, 2020-44, 2020-48, 2020-53, 2020-56, 2020-59, 2020-62, 2020-65, 2020-67, 2020-70, 2020-72, 2020-75, 2020-77, 2021-03, 2021-07, 2021-08, 2021-10, 2021-13, 2021-15, and 2021-18; 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, since the President of the United States first declared that a major disaster exists in the State of South Carolina due to "emergency conditions . . . resulting from the Coronavirus Disease 2019 (COVID-19) pandemic," the Federal Emergency Management Agency ("FEMA") has periodically amended the terms of such disaster declaration to provide, authorize, or otherwise make available to the State different and additional federal funds and resources to facilitate emergency assistance and response operations; and

WHEREAS, on May 18, 2020, the undersigned approved and signed Act No. 135 of 2020 (H. 3411, R-140), as passed by the General Assembly and ratified on May 12, 2020, which expressly 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"; *see also* Act No. 133 of 2020 (R-138, S. 635); Act No. 142 of 2020 (R-148, H. 5202); Act No. 143 of 2020 (R-149, H. 5305); Act No. 154 of 2020 (R-170, H. 3210); Act No. 2 of 2021 (H. 3707, R-4); and

WHEREAS, on August 2, 2020, the undersigned issued Executive Order No. 2020-50, initiating additional proactive emergency actions designed to limit community spread and transmission of COVID-19, while also superseding, rescinding, and replacing specific prior Executive Orders and consolidating, restating, or otherwise incorporating, in whole or in part, certain provisions thereof to clarify which emergency measures remained in effect; and

WHEREAS, on September 24, 2020, the undersigned issued Executive Order No. 2020-63, superseding, rescinding, and replacing Executive Order No. 2020-50 and amending and consolidating certain emergency measures to ensure that the remaining measures were targeted and narrowly tailored to address and mitigate the public health and other threats associated with COVID-19 in the least restrictive manner possible; and

WHEREAS, on November 25, 2020, the undersigned issued Executive Order No. 2020-73, superseding, rescinding, and replacing Executive Order No. 2020-63 and further modifying and amending certain emergency measures to ensure that the remaining initiatives and limited restrictions were targeted and narrowly tailored to address the current circumstances and public health and other threats associated with COVID-19; and

WHEREAS, on March 1, 2021, the undersigned issued Executive Order No. 2021-11, superseding, rescinding, and replacing Executive Order No. 2020-73 and memorializing additional modifications and

amendments to certain emergency measures to account for recent significant improvements in several key indicators, metrics, and data elements used to assess the measure of impact from COVID-19 and to ensure that the remaining targeted restrictions or initiatives were necessary and appropriate and narrowly tailored to address and mitigate the public health and other threats and impacts associated with COVID-19 in the least restrictive manner possible; and

WHEREAS, on March 5, 2021, the undersigned issued Executive Order No. 2021-12, superseding, rescinding, and replacing Executive Order No. 2021-11 and memorializing further modifications and amendments to certain emergency measures as part of the process of regularly reviewing the same to confirm that the State's actions are narrowly tailored to address the evolving needs and circumstances and the various public health and other threats and impacts associated with COVID-19; and

WHEREAS, although the above-referenced and other measures have helped limit and slow the spread of COVID-19, the COVID-19 pandemic represents an evolving public health threat and now poses different and additional emergency circumstances, which require that the State of South Carolina take any and all necessary and appropriate actions in proactively preparing for and promptly responding to the public health emergency and the significant economic impacts and other consequences associated with the same; and

WHEREAS, as of April 22, 2021, DHEC has identified at least 477,395 confirmed cases of COVID-19 in the State of South Carolina, including 8,266 deaths due to COVID-19; and

WHEREAS, although COVID-19 continues to pose a serious threat to the State of South Carolina and present new and distinct emergency circumstances, the State has recently noted and documented significant improvements in several key indicators, metrics, and data elements used to assess the measure of impact from COVID-19, which are due in large part to the implementation of previous emergency measures and the expedited distribution and administration of the limited supplies of authorized and allocated COVID-19 vaccines, as well as the continued diligence, resilience, and persistence of South Carolinians in making responsible choices to protect themselves and their communities; and

WHEREAS, for example, as of the date of this Order, DHEC and its public and private partners have conducted more than 7,225,000 tests for COVID-19 and have administered over 2,685,000 doses of vaccines for COVID-19, and as a result, DHEC continues to document measured progress and downward or declining trends associated with the average rate of cases of COVID-19 per 100,000 individuals and the number of new hospital admissions and deaths associated with or related to COVID-19; and

WHEREAS, notwithstanding the aforementioned measured progress in addressing COVID-19, according to the latest public health data, the State has recently noted a slight increase in the percent of positive test results for COVID-19, with approximately 91% of the counties in South Carolina are still experiencing high or substantial levels of community transmission of COVID-19, and certain other geographic regions of the United States have recently reported significant increases in the number of cases of COVID-19; and

WHEREAS, because DHEC has noted that increased testing of both symptomatic and asymptomatic individuals remains a critical component in the fight against COVID-19 and because DHEC has also continued to identify additional "hot spots" in certain areas of South Carolina, the State must remain focused on maximizing interagency coordination, cooperation, and collaboration to enhance existing capacity and the availability of, and access to, COVID-19 testing and further expand associated contact tracing initiatives; and

WHEREAS, the State of South Carolina must also continue to take further proactive action to utilize, maximize, and coordinate state and federal intergovernmental and interagency resources, operations, and response efforts to facilitate and expedite the distribution and administration of authorized COVID-19 vaccines allocated to the State, particularly as the currently limited supplies of the same are anticipated to increase and in light of the recent expansion of eligibility for COVID-19 vaccines; and

WHEREAS, in addition to implementing certain emergency measures designed to limit community spread and transmission of COVID-19, in further proactively preparing for and promptly responding to the evolving threats posed by COVID-19, the State of South Carolina must also simultaneously confront the significant economic impacts and other consequences associated with COVID-19 and undertake efforts to stabilize and reinvigorate the State's economy by addressing issues related to unemployment, facilitating the safe reopening of businesses and industries, permitting economic flexibility by reducing regulations, accessing and utilizing federal funds and resources to assist with emergency operations, and maximizing interagency or intergovernmental coordination, cooperation, and collaboration to enhance the State's response to COVID-19; and

WHEREAS, particularly as public and private K–12 schools and higher education institutions in the State of South Carolina continue to resume or expand in-person instruction, it is critically important that the State remain vigilant in addressing COVID-19 by maximizing interagency coordination to facilitate the safe resumption or continuation of classroom instruction while simultaneously implementing measures to minimize the risk of community spread and transmission of COVID-19 in schools and other settings; and

WHEREAS, in light of the foregoing, and due to, *inter alia*, the continued spread of COVID-19 and the need to utilize, maximize, and coordinate state and federal intergovernmental and interagency resources, operations, and response efforts to enhance testing availability and expedite the administration of authorized and allocated vaccines, the State of South Carolina must promptly take any and all necessary and appropriate steps to implement and expand certain mitigation efforts designed to reduce community transmission of COVID-19 and to minimize the resulting strain on healthcare facilities and resources; 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," *Op. Att'y Gen.*, 1980 S.C. Op. Att'y Gen. 142, 1980 WL 81975, at \*1 (S.C.A.G. Sept. 5, 1980); and

WHEREAS, the State of South Carolina has made meaningful 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 and now present different and additional threats, which must be dealt with on their own terms and by utilizing and maximizing state and federal intergovernmental and interagency financial and operational resources and facilitating further coordination, cooperation, and collaboration; and

WHEREAS, consistent with the findings set forth in section 44-4-110 of the South Carolina Code of Laws, as amended, the aforementioned and other different and additional public health threats posed by COVID-19—as well as the need to, *inter alia*, address emerging and amplifying issues associated with

COVID-19, such as the presence of new variants of COVID-19 in the State and the potential emergence of additional variants of COVID-19; enhance existing testing capacity; facilitate and expedite the large-scale administration of authorized vaccines allocated to the State; and implement and expand other mitigation efforts designed to reduce community transmission and minimize the resulting strain on healthcare facilities and resources—"require the exercise of extraordinary government functions . . . to respond, rapidly and effectively" to the evolving emergency currently facing the entire State; and

WHEREAS, for the foregoing and other reasons, and after consulting with various state and federal agencies, officials, and experts, the undersigned has determined based on the latest data, in accordance with section 44-4-130 of the South Carolina Code of Laws, that the current status of community spread and transmission of COVID-19 in the State, the detection of cases associated with new variants of COVID-19 in South Carolina, and the other circumstances referenced herein, represent the "occurrence" 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"—thereby warranting and necessitating the declaration of a unique and distinct public health emergency for the State of South Carolina, which must be dealt with on its own accord; and

WHEREAS, it is imperative that the State of South Carolina continue to utilize targeted extraordinary measures and deploy substantial resources to meet the unprecedented threats 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 state and federal intergovernmental and interagency financial and operational resources and collaborative 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 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 safe 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 targeted and narrowly tailored emergency measures to combat and control the spread of COVID-19; 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 and data, changing conditions, and the previously unforeseen occurrence of a combination of extraordinary circumstances—that an effective response to the COVID-19 pandemic, including the different, additional, and evolving threats and risks cited herein, represents and requires the declaration of 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 new and distinct public health threats posed by COVID-19 and to mitigate the other significant impacts associated with the same, including the resulting strain on healthcare facilities and resources, 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 further proactive action and enhance mitigation efforts to reduce community transmission of COVID-19 and implement narrowly tailored extraordinary measures to prepare for, respond to, and address the evolving public health threat posed by the COVID-19 pandemic, to include the continued utilization and coordination of state and federal intergovernmental and interagency financial and operational resources and collaborative response efforts to facilitate and accelerate the large-scale administration of the limited supplies of authorized COVID-19 vaccines allocated to the State and the continued expansion of testing capacity.

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."

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 Executive Order No. 2021-12 are hereby extended and 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 future Order.

#### Section 2. Transportation Waivers

To expedite the State of South Carolina's preparation for and response to the new 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 February 17, 2021 Expansion and Extension of the Modified 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; responding to declared emergencies in the State of North Carolina or the State of Georgia; 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:

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 3. 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 4. 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, 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 22nd DAY OF APRIL, 2021.

#### HENRY MCMASTER Governor

## Executive Order No. 2021-21

WHEREAS, the undersigned has been informed that on April 13, 2021, the Town of Estill held an election for the office of Mayor of the Town of Estill; and

WHEREAS, on April 29, 2021, the Town of Estill's Municipal Election Commission ("Commission") notified the undersigned that following the aforementioned election, the Commission failed to "declare the results not later than three days following the election," as required by section 5-15-100 of the South Carolina Code of Laws, as amended, due to the absence of a quorum of the Commission's membership; and

WHEREAS, the Commission has advised that after meeting on April 21, 2021, for purposes of receiving the number of votes cast for each candidate, considering certain challenged absentee ballots, and declaring the results of the April 13, 2021 election for the office of Mayor of the Town of Estill, the Commission determined that the election resulted in a tie, which the Commission subsequently confirmed following a recount on April 27, 2021; and

WHEREAS, section 5-15-125 of the South Carolina Code of Laws, as amended, provides, in pertinent part, that "[i]f any municipal election results in a tie, the municipal election commission or the municipal party committee shall conduct a runoff election to break the tie two weeks following that election"; and

WHEREAS, pursuant to section 5-15-25 of the South Carolina Code of Laws, the Commission was required to "conduct a runoff election to break the tie" on April 27, 2021, but the Commission failed to conduct the runoff election at the appointed time and in the manner prescribed by law; and

**WHEREAS,** in light of the foregoing circumstances and events, and after consulting with the State Election Commission, the Commission has requested that the undersigned order a new runoff election to break the tie resulting from the April 13, 2021 election for the office of Mayor of the Town of Estill; and

WHEREAS, section 7-13-1170 of the South Carolina Code of Laws, as amended, provides as follows: "When any election official of any political subdivision of this State charged with ordering, providing for, or holding an election has neglected, failed, or refused to order, provide for, or hold the election at the time appointed, or if for any reason the election is declared void by competent authority, and these facts are made to appear to the satisfaction of the Governor, he shall, should the law not otherwise provide for this contingency, order an election or a new election to be held at the time and place, and upon the notice being given which to him appears adequate to insure the will of the electorate being fairly expressed. To that end, he may designate

the existing election official or other person as he may appoint to perform the necessary official duties pertaining to the election and to declare the result."

**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 that a runoff election shall be held on Tuesday, May 18, 2021, to break the tie resulting from the April 13, 2021 election for the office of Mayor of the Town of Estill. Pursuant to section 7-13-1170 of the South Carolina Code of Laws, I designate and appoint the Commission to perform the necessary official duties pertaining to the runoff election, in accordance with the applicable constitutional and statutory provisions, and to declare the results thereof. This Order is effective immediately.

#### GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA, THIS 30th DAY OF APRIL, 2021.

HENRY MCMASTER Governor

#### Executive Order No. 2021-22

WHEREAS, the State of South Carolina has taken, and must continue to take, any and all necessary and appropriate actions in confronting and coping with the significant public health threats and other impacts associated with the 2019 Novel Coronavirus ("COVID-19"), which now present different, additional, and evolving emergency conditions and extraordinary circumstances that necessitate the State taking further coordinated actions, maximizing state and federal intergovernmental and interagency financial and operational resources and collaborative response efforts, and implementing narrowly tailored measures to address and respond to the same, while also simultaneously expediting and enhancing ongoing recovery and revitalization activities and initiatives; and

WHEREAS, in preparing for and responding to the threats posed by COVID-19, the State must remain flexible to account for new and distinct circumstances—to include not only the evolving public health threats associated with COVID-19 but also modifications to the State's allocated supplies of authorized COVID-19 vaccines and further expansion of COVID-19 vaccine eligibility—and focus on utilizing and expanding intergovernmental and interagency coordination and targeted mitigation efforts designed to, *inter alia*, reduce community spread and transmission of COVID-19; minimize the resulting strain on healthcare facilities and resources; address emerging and amplifying issues associated with the presence of COVID-19 variants in the State and the potential emergence of additional COVID-19 variants; enhance testing capacity; accelerate deployment of the State's vaccine distribution program to ensure that allocated supplies of authorized and available vaccines are administered in an efficient, equitable, and expedited manner; stabilize and reinvigorate the State's economy; and enable businesses, industries, and government agencies and departments to safely resume normal operations; and

WHEREAS, in furtherance of the foregoing, and in preparing for and responding to the various and evolving threats posed by COVID-19, 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 White House Coronavirus Task Force, the South Carolina Department of Health and Environmental Control ("DHEC"), and the South Carolina Emergency Management Division ("EMD"); 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 more recently, on February 24, 2021, the President of the United States published a notice in the *Federal Register* that the national emergency shall continue and remain in effect beyond March 1, 2021; and

WHEREAS, in addition to declaring an initial State of Emergency on March 13, 2020, the undersigned has issued various Executive Orders initiating, directing, and modifying specific extraordinary measures designed 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, 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, 2020-35, 2020-38, 2020-40, 2020-42, 2020-44, 2020-48, 2020-53, 2020-56, 2020-59, 2020-65, 2020-67, 2020-70, 2020-72, 2020-75, 2020-77, 2021-03, 2021-07, 2021-08, 2021-10, 2021-13, 2021-15, 2021-18, and 2021-20; and

WHEREAS, the Supreme Court of South Carolina has likewise issued various Orders in response to, and addressing the impacts of, COVID-19, and in doing so, the Court has expressly recognized that the extraordinary circumstances associated with COVID-19 differ from previous emergencies in many respects, as "in the prior emergencies, the circumstances giving rise to the emergency involved a single event with a beginning and a predictable end," which "is not the case for the coronavirus," *In re Operation of the Trial Courts During the Coronavirus Emergency*, App. No. 2020-000447, Am. Order No. 2021-03-04-01, ¶ (a) (S.C. Sup. Ct. filed March 4, 2021); 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, since the President of the United States first declared that a major disaster exists in the State of South Carolina due to "emergency conditions . . . resulting from the Coronavirus Disease 2019 (COVID-19) pandemic," the Federal Emergency Management Agency ("FEMA") has periodically amended the terms of such disaster declaration to provide, authorize, or otherwise make available to the State different and additional federal funds and resources to facilitate emergency assistance and response operations; and

WHEREAS, on May 18, 2020, the undersigned approved and signed Act No. 135 of 2020 (H. 3411, R-140), as passed by the General Assembly and ratified on May 12, 2020, which expressly 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"; *see also* Act No. 133 of 2020 (R-138, S. 635); Act No. 142 of 2020 (R-148, H. 5202); Act No. 143 of 2020 (R-149, H. 5305); Act No. 154 of 2020 (R-170, H. 3210); Act No. 2 of 2021 (H. 3707, R-4); and

WHEREAS, on August 2, 2020, the undersigned issued Executive Order No. 2020-50, initiating additional proactive emergency actions designed to limit community spread and transmission of COVID-19, while also superseding, rescinding, and replacing specific prior Executive Orders and consolidating, restating,

or otherwise incorporating, in whole or in part, certain provisions thereof to clarify which emergency measures remained in effect; and

WHEREAS, on September 24, 2020, the undersigned issued Executive Order No. 2020-63, superseding, rescinding, and replacing Executive Order No. 2020-50 and amending and consolidating certain emergency measures to ensure that the remaining measures were targeted and narrowly tailored to address and mitigate the public health and other threats associated with COVID-19 in the least restrictive manner possible; and

WHEREAS, on November 25, 2020, the undersigned issued Executive Order No. 2020-73, superseding, rescinding, and replacing Executive Order No. 2020-63 and further modifying and amending certain emergency measures to ensure that the remaining initiatives and limited restrictions were targeted and narrowly tailored to address the current circumstances and public health and other threats associated with COVID-19; and

WHEREAS, on March 1, 2021, the undersigned issued Executive Order No. 2021-11, superseding, rescinding, and replacing Executive Order No. 2020-73 and memorializing additional modifications and amendments to certain emergency measures to account for recent significant improvements in several key indicators, metrics, and data elements used to assess the measure of impact from COVID-19 and to ensure that the remaining targeted restrictions or initiatives were necessary and appropriate and narrowly tailored to address and mitigate the public health and other threats and impacts associated with COVID-19 in the least restrictive manner possible; and

WHEREAS, on March 5, 2021, the undersigned issued Executive Order No. 2021-12, superseding, rescinding, and replacing Executive Order No. 2021-11 and memorializing further modifications and amendments to certain emergency measures as part of the process of regularly reviewing the same to confirm that the State's actions are narrowly tailored to address the evolving needs and circumstances and the various public health and other threats and impacts associated with COVID-19; and

WHEREAS, although the above-referenced and other measures have helped limit and slow the spread of COVID-19, the COVID-19 pandemic represents an evolving public health threat and now poses different and additional emergency circumstances, which require that the State of South Carolina take any and all necessary and appropriate actions in proactively preparing for and promptly responding to the public health emergency and the significant economic impacts and other consequences associated with the same; and

WHEREAS, as of May 7, 2021, DHEC has identified at least 484,922 confirmed cases of COVID-19 in the State of South Carolina, including 8,419 deaths due to COVID-19; and

WHEREAS, although COVID-19 continues to pose a serious threat to the State of South Carolina and present new and distinct emergency circumstances, the State has recently noted and documented significant improvements in several key indicators, metrics, and data elements used to assess the measure of impact from COVID-19, which are due in large part to the implementation of previous emergency measures and the expedited distribution and administration of the available supplies of authorized and allocated COVID-19 vaccines, as well as the continued diligence, resilience, and persistence of South Carolinians in making responsible choices to protect themselves and their communities; and

WHEREAS, for example, as of the date of this Order, DHEC and its public and private partners have conducted more than 7,530,000 tests for COVID-19 and have administered over 3,150,000 doses of vaccines for COVID-19, and as a result, DHEC continues to document measured progress and downward or declining trends associated with the average rate of cases of COVID-19 per 100,000 individuals, the percentage of positive tests for COVID-19, and the number of new hospital admissions and deaths associated with or related to COVID-19; and

WHEREAS, notwithstanding the aforementioned measured progress in addressing COVID-19, according to the latest public health data, approximately 93% of the counties in South Carolina are experiencing high or substantial levels of community transmission of COVID-19 and certain other geographic regions of the United States have recently reported significant increases in the number of cases of COVID-19; and

WHEREAS, because DHEC has noted that increased testing of both symptomatic and asymptomatic individuals remains a critical component in the fight against COVID-19 and because DHEC has also continued to identify additional "hot spots" in certain areas of South Carolina, the State must remain focused on maximizing interagency coordination, cooperation, and collaboration to enhance existing capacity and the availability of, and access to, COVID-19 testing and further expand associated contact tracing initiatives; and

WHEREAS, the State of South Carolina must also continue to take further proactive action to utilize, maximize, and coordinate state and federal intergovernmental and interagency resources, operations, and response efforts to facilitate and expedite the distribution and administration of authorized COVID-19 vaccines allocated to the State; and

WHEREAS, in addition to implementing certain emergency measures designed to limit community spread and transmission of COVID-19, in further proactively preparing for and promptly responding to the evolving threats posed by COVID-19, the State of South Carolina must also simultaneously confront the significant economic impacts and other consequences associated with COVID-19 and undertake efforts to stabilize and reinvigorate the State's economy by addressing issues related to unemployment, facilitating the safe reopening of businesses and industries, permitting economic flexibility by reducing regulations, accessing and utilizing federal funds and resources to assist with emergency operations, and maximizing interagency or intergovernmental coordination, cooperation, and collaboration to enhance the State's response to COVID-19; and

WHEREAS, in light of the foregoing, and due to, *inter alia*, the continued spread of COVID-19 and the need to utilize, maximize, and coordinate state and federal intergovernmental and interagency resources, operations, and response efforts to enhance testing availability and expedite the administration of authorized and allocated vaccines, the State of South Carolina must promptly take any and all necessary and appropriate steps to implement and expand certain mitigation efforts designed to reduce community transmission of COVID-19 and to minimize the resulting strain on healthcare facilities and resources; 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," *Op. Att'y Gen.*, 1980 S.C. Op. Att'y Gen. 142, 1980 WL 81975, at \*1 (S.C.A.G. Sept. 5, 1980); and

WHEREAS, the State of South Carolina has made meaningful 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 and now present different and additional threats, which must be dealt with on their own terms, to include by utilizing and maximizing state and federal intergovernmental and interagency financial and operational resources and facilitating further coordination, cooperation, and collaboration; and

WHEREAS, consistent with the findings set forth in section 44-4-110 of the South Carolina Code of Laws, as amended, the aforementioned and other different and additional public health threats posed by COVID-19—as well as the need to, *inter alia*, address emerging and amplifying issues associated with COVID-19, such as the presence of new variants of COVID-19 in the State and the potential emergence of additional variants of COVID-19; enhance existing testing capacity; facilitate and expedite the large-scale administration of authorized vaccines allocated to the State; and implement and expand other mitigation efforts designed to reduce community transmission and minimize the resulting strain on healthcare facilities and resources—"require the exercise of extraordinary government functions . . . to respond, rapidly and effectively" to the evolving emergency currently facing the entire State; and

WHEREAS, for the foregoing and other reasons, and after consulting with various state and federal agencies, officials, and experts, the undersigned has determined based on the latest data, in accordance with section 44-4-130 of the South Carolina Code of Laws, that the current status of community spread and transmission of COVID-19 in the State, the detection of cases associated with new variants of COVID-19 in South Carolina, and the other circumstances referenced herein, represent the "occurrence" 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"—thereby warranting and necessitating the declaration of a unique and distinct public health emergency for the State of South Carolina, which must be dealt with on its own accord; and

WHEREAS, it is imperative that the State of South Carolina continue to utilize targeted extraordinary measures and deploy substantial resources to meet the unprecedented threats 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 state and federal intergovernmental and interagency financial and operational resources and collaborative 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 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 safe 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 targeted and narrowly tailored emergency measures to combat and control the spread of COVID-19; 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 and data, changing conditions, and the previously unforeseen occurrence of a combination of extraordinary circumstances—that an effective response to the COVID-19 pandemic, including the different, additional, and evolving threats and risks cited herein, represents and requires the declaration of 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 new and distinct public health threats posed by COVID-19 and to mitigate the significant economic and other 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 further proactive action and enhance mitigation efforts to reduce community transmission of COVID-19 and implement narrowly tailored extraordinary measures to prepare for, respond to, and address the evolving public health threats posed by the COVID-19 pandemic and to address the significant economic and other impacts associated with the same, to include the continued utilization and coordination of state and federal intergovernmental and interagency financial and operational resources and collaborative response efforts to facilitate and accelerate the large-scale administration of the current supplies of authorized COVID-19 vaccines allocated to the State.

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 authorize DHEC to utilize and exercise, as necessary and appropriate, the emergency powers set forth in the Emergency Health Powers Act, codified as amended in Title 44, Chapter 4 of the South Carolina Code of Laws, 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."

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 Executive Order No. 2021-12 are hereby extended and 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 future Order.

#### Section 2. Transportation Waivers

To expedite the State of South Carolina's preparation for and response to the new 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 February 17, 2021 Expansion and Extension of the Modified 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; responding to declared emergencies in the State of North Carolina or the State of Georgia; 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:

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 3. 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 4. 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, 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 7th DAY OF MAY, 2021.

## HENRY MCMASTER Governor

## Executive Order No. 2021-23

WHEREAS, the State of South Carolina has taken, and must continue to take, any and all necessary and appropriate actions in confronting and coping with the significant public health threats and other impacts associated with the 2019 Novel Coronavirus ("COVID-19"), and in doing so, the State must remain flexible to account for new and distinct circumstances—to include not only the evolving public health threats associated with COVID-19 but also the recent substantial improvements in the key metrics and data elements related to COVID-19 and South Carolina's significant progress in administering current supplies of authorized and available COVID-19 vaccines allocated to the State—and focus on taking coordinated action to expedite and enhance ongoing recovery and revitalization initiatives, utilizing and maximizing state and federal intergovernmental and interagency financial and operational resources and collaborative response efforts, and safely and strategically revisiting and revising previous emergency measures to ensure that any remaining provisions are targeted and narrowly tailored to address the current conditions in the least restrictive manner possible; and

WHEREAS, in furtherance of the foregoing, and in preparing for and responding to the evolving threats posed by COVID-19, 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 White House Coronavirus Task Force, the South Carolina Department of Health and Environmental Control ("DHEC"), and the South Carolina Emergency Management Division ("EMD"); 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 more recently, on February 24, 2021, the President of the United States published a notice in the *Federal Register* that the national emergency shall continue and remain in effect beyond March 1, 2021; 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, since the President of the United States first declared that a major disaster exists in the State of South Carolina due to "emergency conditions . . . resulting from the Coronavirus Disease 2019 (COVID-19) pandemic," the Federal Emergency Management Agency ("FEMA") has periodically amended the terms of such disaster declaration to provide, authorize, or otherwise make available to the State different and additional federal funds and resources to facilitate emergency assistance and response operations; and

WHEREAS, on May 18, 2020, the undersigned approved and signed Act No. 135 of 2020 (H. 3411, R-140), as passed by the General Assembly and ratified on May 12, 2020, which expressly 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"; *see also* Act No. 133 of 2020 (R-138, S. 635); Act No. 142 of 2020 (R-148, H. 5202); Act No. 143 of 2020 (R-149, H. 5305); Act No. 154 of 2020 (R-170, H. 3210); Act No. 2 of 2021 (H. 3707, R-4); and

WHEREAS, in addition to declaring an initial State of Emergency on March 13, 2020, the undersigned has issued various Executive Orders initiating, directing, and modifying further extraordinary measures designed to address the significant and evolving 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, 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, 2020-35, 2020-38, 2020-40, 2020-42, 2020-44, 2020-48, 2020-53, 2020-56, 2020-59, 2020-62, 2020-65, 2020-67, 2020-70, 2020-72, 2020-75, 2020-77, 2021-03, 2021-07, 2021-08, 2021-10, 2021-13, 2021-15, 2021-18, 2021-20, and 2021-22; and

WHEREAS, the Supreme Court of South Carolina has likewise issued various Orders in response to, and addressing the impacts of, COVID-19, and in doing so, the Court has expressly recognized that the extraordinary circumstances associated with COVID-19 differ from previous emergencies in many respects, as "in the prior emergencies, the circumstances giving rise to the emergency involved a single event with a beginning and a predictable end," which "is not the case for the coronavirus," *In re Operation of the Trial Courts During the Coronavirus Emergency*, App. No. 2020-000447, Am. Order No. 2021-03-04-01, ¶ (a) (S.C. Sup. Ct. filed March 4, 2021); and

WHEREAS, on March 5, 2021, the undersigned issued Executive Order No. 2021-12, superseding, rescinding, and replacing Executive Order No. 2021-11 and memorializing further modifications and amendments to certain emergency measures as part of the process of regularly reviewing the same to ensure that

the remaining targeted restrictions or initiatives were necessary and appropriate and narrowly tailored to address and mitigate the public health and other threats and impacts associated with COVID-19 in the least restrictive manner possible; and

WHEREAS, in addition to issuing the above-referenced and other Executive Orders and directing additional emergency measures, the undersigned has consistently and repeatedly urged South Carolinians to practice effective "social distancing" and wear face coverings to limit community spread and transmission of COVID-19 and previously encouraged counties, municipalities, and political subdivisions of this State to enact or implement, or modify, amend, or rescind, appropriate and narrowly tailored emergency ordinances, orders, or other measures requiring individuals to wear face coverings in public settings where they are, will be, or reasonably could be located in close proximity to others who are not members of the same household and where it is not feasible to maintain six (6) feet of separation from such individuals or to otherwise practice effective "social distancing" in accordance with guidance from DHEC and the Centers for Disease Control and Prevention ("CDC"); and

WHEREAS, state and federal public health experts have consistently encouraged public officials not to rescind certain emergency measures designed to address and reduce community spread or transmission of COVID-19 unless and until identifying a downward trajectory of documented cases of COVID-19 within a defined period or a downward trajectory related to the percentage of positive tests for COVID-19 within a defined period; and

WHEREAS, contemporaneous with the State's implementation of various initiatives designed to reduce community spread or transmission of COVID-19, the United States Food and Drug Administration ("FDA") has granted emergency use authorizations for multiple COVID-19 vaccines, which have not yet received standard FDA approval, pursuant to the Project BioShield Act of 2004, 21 U.S.C. § 360bbb-3; and

WHEREAS, federal law expressly recognizes that each individual who receives an administration of a product pursuant to an emergency use authorization has "the option to accept or refuse administration of the product," 21 U.S.C. § 360bbb-3(e)(1)(A)(ii)(III); and

WHEREAS, although the State of South Carolina will continue to encourage eligible individuals who wish to receive a COVID-19 vaccine approved for use by the FDA in accordance with an emergency use authorization to do so, the State will not mandate that South Carolinians receive such vaccines; and

WHEREAS, an individual's COVID-19 vaccination status should be regarded as private health information, and governmental entities should not compel proof, certification, documentation, or disclosure of the same, whether by mandating what has been characterized as a "vaccine passport" or otherwise, for purposes of conditioning receipt of services or assistance or restricting access to any building, structure, facility, or other physical or geographic location based on an individual's COVID-19 vaccination status; and

WHEREAS, the United States Constitution does not authorize or empower the federal government to mandate the use of vaccine passports on a nationwide basis, and for the reasons set forth herein, the State of South Carolina will not impose such a requirement on the people of this State using the police power that is reserved to the States in accordance with the United States Constitution and under the system of federalism established thereby; and

WHEREAS, in recent weeks and months, due in large part to the implementation of previous emergency measures and the expedited distribution and administration of available supplies of COVID-19 vaccines, as well as the continued diligence, resilience, and persistence of South Carolinians in making responsible choices to protect themselves and their communities, the State has noted and documented significant improvements in several key indicators, metrics, and data elements used to assess the measure of impact from COVID-19; and

WHEREAS, as of the date of this Order, DHEC and its public and private partners have conducted more than 7,600,000 tests for COVID-19; and

WHEREAS, while simultaneously enhancing testing capacity and expanding contract tracing efforts, DHEC and its public and private partners have also administered over 3,100,000 doses of vaccines for COVID-19; and

WHEREAS, on March 26, 2021, the undersigned and DHEC announced that all South Carolinians over the age of sixteen would be eligible to receive a vaccine for COVID-19 beginning on March 31, 2021; and

WHEREAS, at present, over 43% of South Carolinians eligible to receive a COVID-19 vaccine have received at least one dose of a vaccine for COVID-19; and

WHEREAS, as a result of the foregoing progress, DHEC continues to document measured progress and downward or declining trends associated with the average rate of cases of COVID-19 per 100,000 individuals, the percentage of positive tests for COVID-19, and the number of new hospital admissions and deaths associated with or related to COVID-19; and

WHEREAS, according to a recent study published by the Medical University of South Carolina, approximately 60% of South Carolinians are immune from COVID-19, whether by virtue of having received a COVID-19 vaccine or because of natural immunity; and

WHEREAS, in addition to continuing, in whole or in part, certain emergency measures designed to limit community spread and transmission of COVID-19, in further proactively preparing for and promptly responding to the evolving threats posed by COVID-19, the State of South Carolina must also simultaneously confront the significant economic impacts and other consequences associated with COVID-19 and undertake efforts to stabilize and reinvigorate the State's economy by addressing issues related to unemployment, facilitating the safe reopening of businesses and industries, permitting economic flexibility by reducing regulations, accessing and utilizing federal funds and resources to assist with emergency operations, and maximizing interagency or intergovernmental coordination, cooperation, and collaboration to enhance the State's response to COVID-19; and

WHEREAS, as part of the foregoing initiative, and to the extent that counties, municipalities, or other political subdivisions of the State continue to impose or implement emergency measures or mandates predicated upon or issued in connection with the undersigned's prior authorization or declarations of a State of Emergency related to COVID-19, the undersigned must review and assess any remaining restrictions to ensure that such measures are narrowly tailored to serve a legitimate and compelling public health or other necessary and appropriate purpose, are properly limited in scope and duration so as not to needlessly restrict or infringe upon recognized rights or liberty interests without sufficient justification and the requisite consideration of improving circumstances and conditions related to COVID-19, and do not conflict with the undersigned's Orders; and

WHEREAS, although COVID-19 continues to pose a serious threat to the State of South Carolina, for the aforementioned and other reasons—and particularly in light of the recent significant improvements in the key metrics and data elements related to COVID-19 and the State's cited progress in administering COVID-19 vaccines—the undersigned has determined that it is necessary and appropriate to modify, amend, or rescind certain emergency measures as part of the process of regularly reviewing such measures to account for new and distinct circumstances and the latest data related to the impact of COVID-19 and to ensure that any remaining measures are targeted and narrowly tailored to address and mitigate the current public health threats in the least restrictive manner possible; and

WHEREAS, in view of the foregoing objectives, the undersigned has determined that it is necessary and appropriate to supersede, rescind, and replace Executive Order No. 2021-12 and to consolidate, restate, or

otherwise incorporate, in whole or in part, any modified or remaining provisions thereof to clarify which emergency measures are in effect; and

WHEREAS, consistent with the aforementioned objectives, in addition to reviewing and revising certain measures contained in previous Orders, the undersigned has also determined that it is necessary and appropriate to address certain ongoing mandates and continued restrictions imposed by counties, municipalities, and other political subdivisions related to COVID-19; 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," *Op. Att'y Gen.*,1980 S.C. Op. Att'y Gen. 142, 1980 WL 81975, at \*1 (S.C.A.G. Sept. 5, 1980); and

WHEREAS, for the aforementioned and other reasons, and in recognition and furtherance of the undersigned's authority and 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 that the State of South Carolina must take proactive action and implement, extend, and modify certain targeted measures designed to slow the spread of COVID-19 and mitigate the significant economic impacts and other consequences associated with COVID-19, while also ensuring that any remaining measures narrowly tailored to address and mitigate the current public health threats in the least restrictive manner possible.

**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. Modification, Consolidation, and Continuation of Previous Emergency Measures

A. I hereby supersede, rescind, and replace Executive Order No. 2021-12, with any modified or remaining provisions thereof restated, in whole or in part, below or otherwise incorporated herein.

B. I hereby expressly rely upon and incorporate by reference, to the extent applicable, the recitals and other specific factual findings, legal authorities, determinations, and conclusions contained in previous Orders, to include Executive Order Nos. 2021-12 and 2021-22.

## Section 2. Emergency Measures Regarding Face Coverings

A. I hereby continue to encourage all individuals within the State of South Carolina who are not fully vaccinated against COVID-19 to wear a Face Covering, as set forth below and further defined herein, in public settings where they are, will be, or reasonably could be located in close proximity to others who are not members of the same household and where it is not feasible to maintain six (6) feet of separation from such individuals or to otherwise practice effective "social distancing" in accordance with CDC and DHEC guidance, and I further urge all individuals within the State of South Carolina who are eligible and wish to get vaccinated against COVID-19 to do so.

B. I hereby authorize the South Carolina Department of Administration ("Department of Administration"), in consultation with DHEC, to promulgate guidelines regarding the use of Face Coverings in state government offices, buildings, and facilities.

C. For purposes of this Order, "Face Covering" shall mean a covering of the nose and mouth that is secured to the head with ties, straps, or loops over the ears or is otherwise wrapped around the lower face. A Face Covering can be made of natural or synthetic fabrics and can be handmade or improvised from other items. A face shield that covers the nose and mouth and extends below the chin shall satisfy the Face Covering provisions of this

Order. Medical-grade masks or respirators shall satisfy the Face Covering provisions of this Order; however, according to the latest CDC guidance, these critical supplies should be reserved for use by healthcare workers and medical first responders.

D. During the course of the COVID-19 pandemic, I have repeatedly declined to issue an Order mandating the use of Face Coverings, on a statewide basis, in many or all public settings. However, in certain prior Orders, I have required the use of Face Coverings, in limited contexts and subject to certain exceptions, by individuals in state government offices, buildings, and facilities and by employees, customers, patrons, suppliers, vendors, and other visitors in restaurants, except while actively engaged in eating or drinking. I have also noted that the foregoing measures did not prevent or prohibit counties, municipalities, or other political subdivisions of this State from enacting or implementing, or modifying, amending, or rescinding, appropriate and narrowly tailored emergency ordinances, orders, or other measures requiring individuals to wear a Face Covering, provided that such actions considered and accounted for localized circumstances and key indicators, metrics, and data elements used to assess the measure of impact from COVID-19 and were targeted and narrowly tailored to address and mitigate the existing public health threats in the least restrictive manner possible. E.g., Executive Order No. 2021-11, § 2(G); see also Executive Order No. 2021-11, § 13(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."). Based on the State's significant progress related to the administration of authorized and available COVID-19 vaccines and the latest key indicators, metrics, and data elements used to assess the measure of impact from COVID-19, as well as the other circumstances described herein. I have determined that any remaining mandates issued by counties, municipalities, or other political subdivisions of this State related to Face Coverings are no longer necessary or appropriate to address and mitigate the existing public health threats and that circumstances are such that South Carolinians can make responsible choices and take appropriate precautions to protect themselves and their communities. For the foregoing reasons, to the extent any county, municipality, or political subdivision of this State continues to impose any ordinance, order, or other measure that requires the general public within its jurisdiction to wear a Face Covering and has relied in whole or in part on the undersigned's prior authorization or declarations of a State of Emergency as part of the basis for imposing, or for the duration of, a Face Covering requirement, I have determined and do hereby declare that any such ordinance, order, or other measure is invalid and preempted in accordance with Section 10(C) of this Order.

E. This Section shall not be interpreted, applied, implemented, or construed in a manner so as to prohibit any county, municipality, or political subdivision of this State from promulgating guidelines regarding the use of Face Coverings by its employees or in government offices, buildings, and facilities that are consistent with guidance from DHEC or from implementing appropriate measures or undertaking efforts to "reasonably adhere[] to public health guidance" for purposes of the South Carolina COVID-19 Liability Immunity Act (R-39, S. 147).

F. This Section shall not apply to actions or activities of or to buildings or structures, or portions thereof, that are occupied or controlled by agencies, departments, officials, or employees of the Legislative or Judicial Branches of the State of South Carolina, which shall be governed by their respective orders, rules, or regulations.

G. This Section shall not be interpreted, applied, implemented, or construed in a manner so as to prevent businesses or other establishments from developing or implementing proprietary safety requirements or restrictions or incorporating, implementing, complying with, and adhering to any applicable sanitation guidelines promulgated by the CDC, DHEC, or any other state or federal public health officials, whether related to Face Coverings or other hygiene-related measures, or from implementing appropriate measures or undertaking efforts to "reasonably adhere[] to public health guidance" for purposes of the South Carolina COVID-19 Liability Immunity Act (R-39, S. 147) or taking other appropriate precautions to facilitate effective "social distancing" and avoid potential exposure to, and prevent the spread of, COVID-19.

H. This Section shall not be interpreted, applied, implemented, or construed in a manner so as to apply to healthcare settings in which a Face Covering is determined to be medically necessary and appropriate.

I.I hereby authorize and direct DHEC to take any necessary and appropriate action to allow for the parent, guardian, legal custodian, foster-care provider, or other representative authorized to provide consent for or on behalf of a student in any public school in the State of South Carolina to opt out of any Face Covering requirement imposed by any public school official or public school district in the State of South Carolina pertaining to school operations and facilities, subject to any guidance issued by the South Carolina Department of Education related to school bus operations based on purported limitations, restrictions, or requirements promulgated by the federal government. See Executive Order No. 13998 (Executive Order on Promoting COVID-19 Safety in Domestic and International Travel) (Jan. 21, 2021); CDC Order Under Section 361 of the Public Health Service Act (42 U.S.C. § 264) and 42 C.F.R. §§ 70.2, 71.31(b), 71.32(b) (Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs) (Jan. 29, 2021). To facilitate the foregoing initiative, I hereby direct DHEC, in consultation with the Superintendent of Education, to develop and distribute a standardized form for the parent, guardian, legal custodian, foster-care provider, or other representative authorized to provide consent for or on behalf of a student in any public school in the State of South Carolina to opt out a student from a Face Covering requirement imposed by any public school official or public school district pertaining to school operations and facilities. I hereby authorize DHEC, in consultation with the Superintendent of Education, to provide or issue any necessary and appropriate additional or supplemental guidance, rules, regulations, or restrictions regarding the application of this Paragraph or to otherwise provide clarification regarding the same, through appropriate means, without the need for further Orders.

## Section 3. Emergency Measures to Prohibit Vaccine Passports

A. I hereby prohibit any agency, department, official, or employee of the State of South Carolina, or any political subdivision thereof, from developing, issuing, or requiring presentation of a Vaccine Passport, as further defined herein.

B. I hereby prohibit any agency, department, official, or employee of the State of South Carolina, or any political subdivision thereof, from adopting or enforcing any order, ordinance, policy, regulation, rule, or similar measure that requires or purports to require an individual to provide, as a condition of receiving any government service or entering any building, structure, facility, or other physical or geographic location, any certification or documentation regarding the individual's vaccination status for any COVID-19 vaccine administered under an emergency use authorization issued by the FDA.

C. For purposes of this Section, a "Vaccine Passport" is defined as uniform or standardized documentation developed for the purpose of verifying, confirming, or certifying an individual's vaccination status solely with respect to any COVID-19 vaccine administered pursuant to an emergency use authorization issued by the FDA to a third party or otherwise publishing or sharing an individual's COVID-19 vaccination record or status or corresponding personal health information.

D. This Section shall not be interpreted, applied, implemented, or construed in a manner so as to apply to healthcare-related activities or settings, in which documentation or certification regarding an individual's vaccination status is medically necessary and appropriate or otherwise addressed or required by existing law, or to limit the ability of an individual to access their own vaccination-related records or to request that copies of any such records be provided or released to a third party.

E. This Section shall not apply to actions or activities of or to buildings or structures, or portions thereof, that are occupied or controlled by agencies, departments, officials, or employees of the Legislative or Judicial Branches of the State of South Carolina, which shall be governed by their respective orders, rules, or regulations.

F. 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 4. Emergency Measures to Provide Regulatory Flexibility, Accelerate Emergency Preparation and Response Activities, and Ensure the Continuity of Government Operations

A. I hereby authorize and direct 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.

B. I hereby authorize and direct state agencies and departments to use the emergency procurement procedures set forth in section 11-35-1570 of the South Carolina Code of Laws, as amended, and any regulations issued pursuant thereto, as necessary and appropriate, to facilitate and expedite acquisition of any critical resources during the State of Emergency.

C. I hereby suspend, in accordance with section 25-1-440 of the South Carolina Code of Laws and other applicable law, any existing procurement-related regulations "if strict compliance with the provisions thereof would in any way prevent, hinder, or delay necessary action in coping with the emergency."

D. I hereby direct all state agencies to immediately expedite the transition back to normal operations. All Agency Heads, or their designees, shall submit to the Department of Administration, for review and approval, a plan to expeditiously return all non-essential employees and staff to the workplace on a full-time basis. This Section shall apply to state government agencies, departments, and offices under the authority of the undersigned. I further direct the Department of Administration to continue to provide or issue any necessary and appropriate additional or supplemental guidance, rules, or regulations regarding the application of this Section, or to otherwise provide clarification regarding the same, to such agencies, departments, and offices and to any additional agencies, departments, and offices so as to facilitate and expedite implementation of these initiatives.

E. I hereby prohibit any county, municipality, or other political subdivision of the State of South Carolina from closing any location or facility that is occupied or utilized, in whole or in part, by any agency, department, official, or employee of the State. Accordingly, pursuant to sections 1-3-410, 25-1-440, and 25-1-450 of the South Carolina Code of Laws, as well as other applicable law, I hereby direct that any such county, municipality, or other political subdivision of this State shall authorize, allow, and provide access to such locations or facilities by any state agency or department, and the officials and employees thereof, as deemed necessary and appropriate and in the manner prescribed by the state agency or department so as to ensure the uninterrupted performance and provision emergency, essential, or otherwise mission-critical government functions and services during the State of Emergency.

## Section 5. Emergency Measures to Expedite the Provision of Critical Healthcare Services

A. I hereby authorize and direct DHEC to suspend, for the duration of the State of Emergency, pursuant to Regulation 61-112 of the South Carolina Code of Regulations, any necessary and applicable provisions of Regulations 61-15 and 61-16, which restrict the use of unlicensed beds or space, the conversion of single and double occupancy patient rooms to account for higher patient capacity, or the establishment of wards, dormitories, or other spaces not designated as patient rooms.

B. I hereby suspend the monetary thresholds set forth in Section 102 of Regulation 61–15 of the South Carolina Code of Regulations for items requiring Certificate of Need Review, to the extent necessary and applicable, so as to permit healthcare facilities to make those capital expenditures and acquire medical equipment deemed necessary to prevent, diagnose, treat, or monitor the progression of COVID-19.

C. I further direct DHEC to suspend certain sections of the South Carolina Health Plan addressing health services requiring Certificate of Need Review, as DHEC deems necessary and appropriate, to allow a healthcare facility to provide temporary health services to adequately care for patients that may be affected by COVID-19. Healthcare facilities shall address any such requests pursuant to this Section to DHEC and coordinate with DHEC regarding the same.

D. I hereby direct the Adjutant General to continue implementing and overseeing efforts to coordinate with, between, and among the South Carolina National Guard and hospitals or other healthcare providers, as necessary and applicable, regarding any actual or potential requirements for, or contingency plans related to, the mobilization, utilization, or acquisition of resources; the creation, modification, or construction of mobile or temporary facilities or other critical infrastructure; or other anticipated or unanticipated matters related to the State's preparation for, and response to, the evolving public health threat posed by COVID-19. In accordance with section 25-1-1840 of the South Carolina Code of Laws, as well as previous Executive Orders and other applicable law, I further authorize and direct the Adjutant General to activate and utilize any and all South Carolina National Guard personnel and equipment he deems necessary and appropriate and to issue the requisite supplemental orders.

# Section 6. Emergency Measures to Provide Regulatory Flexibility and Facilitate "Social Distancing" in Restaurants and Retail Settings

A. I have determined that the State of South Carolina must continue to undertake and implement additional measures to slow the spread of COVID-19, minimize the current and future strain on healthcare providers, and mitigate the economic impacts on affected individuals and businesses. In furtherance of the foregoing, and in accordance with the President's Coronavirus Guidelines for America, as well as other applicable state and federal public health guidance, the State must promote and facilitate effective "social distancing" practices, including "us[ing] drive-thru, pickup, or delivery options" to the greatest extent practicable.

B. I hereby suspend Regulation 7–702.5 of the South Carolina Code of Regulations, which provides, in pertinent part, that "[a] permit holder, employee of a permit holder, or agent of a holder must not sell or deliver beer or wine to anyone who remains in a motor vehicle during the transaction."

C. I hereby authorize and direct the South Carolina Department of Revenue ("DOR") to implement, interpret, and apply the provisions of this Order, as necessary and appropriate and in accordance with and to the extent allowed by state and federal law, in a manner that will facilitate current holders of a valid Beer and Wine Permit ("Permit"), as set forth below, selling or delivering beer and wine in a sealed container for curbside delivery or pickup and off-premises consumption.

D. Subject to any further clarification, guidance, or regulations issued or promulgated by DOR, Permit holders electing to offer curbside delivery or pickup shall be subject to the following definitions, conditions, and restrictions:

1. For purposes of this Section, "Permit" is defined as an on- or off-premises permit issued by DOR in accordance with Title 61, Chapter 4 of the South Carolina Code of Laws, with the exception of "special event" permits, for use at fairs and special functions, issued pursuant to section 61-4-550 of the South Carolina Code of Laws, as amended.

2. A retailer shall have a clearly designated delivery or pickup area abutting or adjacent to the retailer's place of business.

3. A customer who purchases beer or wine must prove at the time of curbside delivery or pickup that he is twenty-one (21) years of age or older by providing a valid government-issued identification.

4. A retailer shall not allow curbside delivery of beer or wine to, or pickup of beer or wine by, an intoxicated person or a person who is under twenty-one (21) years of age.

5. Any Permit holder's employee or agent who is responsible for delivering beer or wine in sealed containers for off-premises consumption to a customer's vehicle shall be eighteen (18) years of age or older.

6. Curbside delivery or pickup of "alcoholic liquors," as defined by section 61-6-20 of the South Carolina Code of Laws, as amended, shall be prohibited.

## Section 7. Authorization of Voluntary COVID-19 Testing at Public Schools

A. I hereby authorize DHEC's Director of Public Health to issue a statewide standing order to allow for the voluntary testing of students, teachers, and staff for COVID-19 at public schools in the State of South Carolina. Any and all such testing shall be conducted pursuant to the terms of the standing order issued by the Director of Public Health, with the requisite prior consent, and in a manner that is consistent with applicable law. To facilitate the foregoing initiative, I hereby direct DHEC to develop and distribute a standardized form to memorialize and confirm that prior consent for voluntary testing is obtained from any participant or participant's parent, guardian, legal custodian, foster-care provider, or other representative authorized to provide consent, as applicable, in a manner that is consistent with state and federal law.

B. 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 8. Emergency Measures to Facilitate Law Enforcement Assistance and Support and Protect First Responders

A. I hereby authorize law enforcement agencies or departments in this State to enter into mutual aid agreements in connection with the State of Emergency, pursuant to Title 23, Chapter 20 of the South Carolina Code of Laws, "for the purpose of providing the proper and prudent exercise of public safety functions across jurisdictional lines, including, but not limited to, multijurisdictional task forces, criminal investigations, patrol services, crowd control, traffic control and safety, and other emergency service situations."

B. In accordance with section 23-20-60 of the South Carolina Code of Laws, as amended, I hereby waive the requirement for a written mutual aid agreement for law enforcement services for the duration of the State of Emergency.

C. 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.

#### Section 9. 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 State of Emergency.

B. I hereby authorize, order, and direct any and all law enforcement officers of the State, or any political subdivision thereof, in accordance with section 16-7-10 of the South Carolina Code of Laws and other applicable law, to 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. 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." I further authorize and instruct the South Carolina Law Enforcement Division ("SLED"), in consultation with the Attorney General of South Carolina, to provide any necessary and appropriate additional or supplemental guidance to law enforcement agencies, departments, or officers of the State, or any political subdivision thereof, regarding the interpretation, application, or enforcement of section 16-7-10 of the South Carolina Code of Laws.

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

E. This Order is effective immediately and shall remain in effect for the duration of the State of Emergency unless otherwise modified, amended, extended, 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 MAY, 2021.

## HENRY MCMASTER Governor

#### Executive Order No. 2021-24

WHEREAS, on May 7, 2021, the Colonial Pipeline Company ("Colonial Pipeline"), which operates a fuel pipeline system that serves numerous States along the East Coast and in the southeastern region of the United States, reported that it had been the target or victim of a cybersecurity incident or attack involving ransomware, and in response to the same and to contain the corresponding threats, Colonial Pipeline temporarily halted all pipeline operations; and

WHEREAS, Colonial Pipeline is responsible for transporting a substantial portion of the critical fuels delivered to and consumed in the State of South Carolina, including gasoline, diesel fuel, jet fuel, and other refined petroleum products; and

WHEREAS, the temporary shutdown and disruption of Colonial Pipeline's operations, as well as any attendant actual, potential, or perceived intermittent shortage or interruption in the availability, transportation, or delivery of essential fuels and petroleum products, poses a threat to the people, critical infrastructure, and public welfare of the State of South Carolina; and

WHEREAS, although Colonial Pipeline recently initiated the restart of certain pipeline operations, Colonial Pipeline has advised that it will take additional time for the critical supply chain to return to normal and that some markets may experience or continue to experience periodic or intermittent service interruptions during this period; and

WHEREAS, the undersigned has determined that the sudden and unexpected suspension of Colonial Pipeline's operations and the corresponding disruption of critical fuel supplies and supply chains has posed, and continues to pose, a threat to the State of South Carolina and that the State must utilize any necessary and appropriate measures to address the current circumstances and to proactively prepare for and mitigate any further intermittent interruptions in the availability, transportation, or delivery of essential fuels or additional delays in connection with Colonial Pipeline resuming normal operations; and

WHEREAS, on May 7, 2021, the undersigned issued Executive Order No. 2021-22, declaring a State of Emergency in connection with certain public health threats and other impacts associated with the 2019 Novel Coronavirus ("COVID-19") and, *inter alia*, expressly providing that the prohibitions against price gouging pursuant to section 39-5-145 of the South Carolina Code of Laws, as amended, shall remain in effect for the duration of the State of Emergency and waiving or suspending transportation-related rules and regulations, in accordance with 49 C.F.R. § 390.23 and section 56-5-70 of the South Carolina Code of Laws, as amended, for certain commercial vehicles and operators of commercial vehicles, to include those transporting essential fuels and petroleum products; and

WHEREAS, although Executive Order No. 2021-22 has provided important regulatory relief and flexibility to date in connection with the aforementioned threats and circumstances, the undersigned has determined that it is necessary and prudent to provide additional relief to proactively assist in facilitating and further supporting the operation of critical transportation services and mitigating additional intermittent interruptions and delays related to the availability of essential fuels and petroleum products and the delivery of the same to the impacted areas until such time as Colonial Pipeline fully restores service to the State of South Carolina; and

WHEREAS, the Federal Motor Carrier Safety Regulations limit, *inter alia*, the hours of service for operators of commercial vehicles, 49 C.F.R. §§ 390 *et seq.*, and federal law prescribes certain weight limitations for vehicles on interstate highways, 23 U.S.C. § 127; and

WHEREAS, pursuant to 49 C.F.R. § 390.23, the governor of a state may suspend certain federal rules and regulations for commercial vehicles responding to an emergency if the governor determines that an emergency condition exists; and

WHEREAS, subsequent to the undersigned's issuance of Executive Order No. 2021-22 and the corresponding waiver or suspension of certain transportation-related rules and regulations as set forth therein, by separate Executive Orders dated May 10, 2021, the Governor of the State of North Carolina and the Governor of the State of Georgia declared that emergency conditions existed in their respective States due to the aforementioned disruption in Colonial Pipeline's operations and temporarily waived or suspended certain similar motor vehicle and transportation-related rules and regulations in connection with the same; and

WHEREAS, section 56-5-70(B) of the South Carolina Code of Laws provides that "[w]hen an emergency is declared which triggers relief from regulations pursuant to 49 C.F.R. [§] 390.23 in North Carolina or Georgia, an emergency, as referenced in the regional emergency provision of 49 C.F.R. [§] 390.23(a)(1)(A), must be declared in this State by the Governor"; and

WHEREAS, on May 11, 2021, the Federal Motor Carrier Safety Administration ("FMCSA") issued Amended Regional Emergency Declaration No. 2021-002 Under 49 C.F.R. § 390.23 to provide certain regulatory relief for commercial motor vehicle operations in response to the unanticipated shutdown of the Colonial Pipeline system and the impacts of the same on the supply of gasoline, diesel fuel, jet fuel, and other refined petroleum products throughout the Affected States identified therein; and

WHEREAS, following requests from the South Carolina Department of Health and Environmental Control and authorities in other impacted States, on May 11, 2021, the United States Environmental Protection Agency issued a waiver of certain gasoline-related regulations "to address the fuel supply emergency caused by a cyberattack on Colonial Pipeline's computer networks that led to the pipeline's shutdown" and "to minimize or prevent disruption of an adequate supply of gasoline to consumers"; and

WHEREAS, for the aforementioned and other reasons, the undersigned has determined that the existing and anticipated threats and circumstances described herein in connection with the temporary shutdown and disruption of Colonial Pipeline's operations and any actual, potential, or perceived intermittent shortage or interruption in the availability, transportation, or delivery of essential fuels and petroleum products in the State of South Carolina, as well as any additional delays associated with Colonial Pipeline resuming normal operations and service to the State, constitute an emergency for purposes of 49 C.F.R. § 390.23.

**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 and direct as follows:

## Section 1. Transportation Waivers

A. I hereby determine and declare that the existing and anticipated threats and circumstances described herein associated with the temporary suspension of Colonial Pipeline's operations and the impacts related to the same constitute an emergency pursuant to 49 C.F.R. § 390.23 for purposes of suspending 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.

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 FMCSA's May 11, 2021 Amended Regional Emergency Declaration No. 2021-002 Under 49 C.F.R. § 390.23, or any future amendments or supplements thereto; responding to the emergency conditions in the State of South Carolina or providing direct assistance to supplement state and local efforts and capabilities in connection with the same; responding to the declared emergencies in the State of North Carolina or the State of Georgia; or otherwise assisting with the existing or anticipated threats and circumstances associated with the temporary suspension of Colonial Pipeline's operations and further described herein, to include commercial vehicles and operators of commercial vehicles transporting essential goods and products, such as essential fuels and petroleum products, to include gasoline, diesel fuel, jet fuel, and other refined petroleum products and related equipment or assets.

C. I hereby authorize and direct DOT and DPS, as applicable, to apply for or request any additional federal regulatory relief, waivers, permits, or other appropriate flexibility deemed necessary, whether pertaining to the transportation of overweight loads on interstate highways or otherwise, on behalf of the State of South Carolina and to promptly implement the same without the need for further Orders.

D. 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 or addressed in any additional or supplemental guidance, rules, regulations, restrictions, or clarification issued, provided, or promulgated by DOT or DPS.

E. Subject to any guidance, rules, regulations, restrictions, or clarification 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, and 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:

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.

F. I hereby authorize DOT and DPS to issue, provide, or promulgate any necessary and appropriate additional or supplemental guidance, rules, regulations, or restrictions regarding the application, implementation, or enforcement of this Section, or to otherwise provide clarification regarding the same, without the need for further Orders.

## Section 2. General Provisions

A. The provisions of this Order, or any subsequent Orders issued in connection with the matters addressed or circumstances described herein, shall not be interpreted, applied, implemented, or construed in a manner so as to modify, amend, or otherwise alter the provisions of Executive Order No. 2021-22, or any prior Orders addressed therein or any future Orders issued in connection therewith, which shall remain in full force and effect in accordance with their respective terms unless and until otherwise modified, amended, or rescinded by subsequent Order.

B. 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.

C. 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, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

D. This Order is effective immediately and shall remain in effect for thirty (30) days or until the declared emergencies in the State of North Carolina and the State of Georgia are terminated, 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.

## GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA, THIS 13th DAY OF MAY, 2021.

HENRY MCMASTER Governor

## **DEPARTMENT OF CONSUMER AFFAIRS**

## NOTICE OF GENERAL PUBLIC INTEREST

#### CHANGES IN DOLLAR AMOUNTS

The Administrator of the Department of Consumer Affairs announces changes in dollar amounts pursuant to Section 40-39-55. In 2016, the General Assembly passed Act No. 262, which amended the South Carolina Pawnbrokers Act (Act), Title 40, Chapter 39, to provide, *inter alia*, for periodic dollar amount adjustments. Designated dollar amounts in the Act are subject to change every five years beginning July 1, 2021, based on the change in the Consumer Price Index for All Urban Consumers (CPI-U) for that five-year period. For this first notice, the calculation will be based on the change from June 2016 (when the Act became effective) to January 2021. In the future, the calculation will be based on the change from January to January. Due to the change between June 2016 CPI-U and January 2021 CPI-U, the designated dollar amounts in Sections 40-39-50(A)(1) and 40-39-100(C) will increase by 8.5% from the previous amount. Pursuant to Section 40-39-55(B), the Administrator is required to announce these changes by publication in the State Register. The historical dollar amounts and additional information are available on the Department's website at consumer.sc.gov.

		Change Dollar Amount	
		From	То
		6/9/2016	7/1/2021
Section	Description	to 6/30/2021	to 6/30/2026
40-39-50(A)(1)	Bond amount	15,000.00	16,275.00
40-39-100(C)	Maximum loan amount	15,000.00	16,275.00

## 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 <u>accepted for filing</u> and publication on **May 28, 2021**, 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 Certificate of Need Program, 2600 Bull Street, Columbia, South Carolina 29201, at (803) 545-4200, or by email at <u>coninfo@dhec.sc.gov</u>.

#### **Affecting Berkeley County**

# KidsCare Home Health of South Carolina, LLC d/b/a KidsCare Home Health of South Carolina

Establishment of a Specialty Pediatric Home Health Agency in Berkeley County at a total project cost of \$11,955.

#### Affecting Calhoun County

## InvestSouth IHC, LLC d/b/a Interim Healthcare of the Upstate

Establishment of a Home Health Agency in Calhoun County at a total project cost of \$3,550.

#### Affecting Charleston County

## KidsCare Home Health of South Carolina, LLC d/b/a KidsCare Home Health of South Carolina

Establishment of a Specialty Pediatric Home Health Agency in Charleston County at a total project cost of \$11,955.

## Medical University Hospital Authority d/b/a MUSC Health West Ashley Medical Pavilion

Renovation of existing space and addition of 1,926 sf to add an outpatient vascular lab at a total project cost of \$2,278,962.

## **Affecting Dorchester County**

KidsCare Home Health of South Carolina, LLC d/b/a KidsCare Home Health of South Carolina Establishment of a Specialty Pediatric Home Health Agency in Dorchester County at a total project cost

Establishment of a Specialty Pediatric Home Health Agency in Dorchester County at a total project cost of \$11,955.

## Affecting Florence County

US Advocate Care, LLC d/b/a US Advocate Care

Establishment of a Home Health Agency in Florence County at a total project cost of \$7,500.

## Affecting Greenville County

**Prisma Health Tuomey Hospital** 

Purchase of a da Vinci XI surgical system at a total project cost of \$2,077,811.

## Affecting Lancaster County

# Medical University Hospital Authority d/b/a MUSC Health Lancaster Medical Center

Purchase of a da Vinci XI surgical system at a total project cost of \$2,233,350.

## Affecting Lexington County

# InvestSouth IHC, LLC d/b/a Interim Healthcare of the Upstate

Establishment of a Home Health Agency in Lexington County at a total project cost of \$3,550.

## Affecting Orangeburg County

## InvestSouth IHC, LLC d/b/a Interim Healthcare of the Upstate

Establishment of a Home Health Agency in Orangeburg County at a total project cost of \$3,550.

#### **Affecting Richland County**

## InvestSouth IHC, LLC d/b/a Interim Healthcare of the Upstate

Establishment of a Home Health Agency in Orangeburg County at a total project cost of \$11,550.

## Prisma Health-Midlands d/b/a Prisma Health Richland Hospital

Purchase of a da Vinci XI surgical system at a total project cost of \$2,280,386.

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 <u>deemed</u> <u>complete</u>, and the review cycle has begun. A proposed decision will be made as early as 30 days, but no later than 120 days, from **May 28, 2021**. "Affected persons" have 30 days from the above date to submit requests for a public hearing to 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) 545-4200 or email <u>coninfo@dhec.sc.gov</u>.

#### **Affecting Horry County**

## Grand Strand Regional Medical Center, LLC d/b/a Grand Strand Medical Center

Purchase of a da Vinci XI Dual Console surgical system at a total project cost of \$2,188,687.

#### DEPARTMENT OF LABOR, LICENSING AND REGULATION BUILDING CODES COUNCIL

## NOTICE OF GENERAL PUBLIC INTEREST

Notice is hereby given that, in accordance with Section 6-9-40 of the 1976 Code of Laws of South Carolina, as amended, the South Carolina Building Codes Council intends to adopt the following building codes for use in the State of South Carolina:

Mandatory codes include the:

- 2021 Edition of the International Building Code;
- 2021 Edition of the International Residential Code;
- 2021 Edition of the International Fire Code;
- 2021 Edition of the International Plumbing Code;
- 2021 Edition of the International Mechanical Code;
- 2021 Edition of the International Fuel Gas Code;
- 2020 Edition of the National Electrical Code.

The Council specifically requests comments concerning sections of the proposed editions, which may be unsuitable for enforcement in South Carolina. Written comments may be submitted to Molly F. Price, Council Administrator, at PO Box 11329 Columbia, SC 29211-1329, or to <u>contact.bcc@llr.sc.gov</u> on or before September 22, 2021. Additional information may be found on the Council's website at <u>www.llr.sc.gov/bcc</u>.

## DEPARTMENT OF LABOR, LICENSING AND REGULATION BUILDING CODES COUNCIL

## NOTICE OF GENERAL PUBLIC INTEREST

## NOTICE OF PUBLIC HEARING

The South Carolina Department of Labor, Licensing and Regulation and the Building Codes Council do hereby give notice under Section 6-9-40(A)(3) and (4), of the South Carolina Code of Laws, as amended, that a public hearing will be held on July 27, 2021, at the South Carolina Fire Academy in the Denny Auditorium, 141 Monticello Trail, Columbia, SC 29203, at 10:30 A.M., at which time interested persons will be given the opportunity to appear and present views to the Council's appointed Study Committee on the following building codes for use in the State of South Carolina.

Mandatory codes include the:

- 2021 Edition of the International Building Code;
- 2021 Edition of the International Residential Code;
- 2021 Edition of the International Fire Code;
- 2021 Edition of the International Plumbing Code;
- 2021 Edition of the International Mechanical Code;
- 2021 Edition of the International Fuel Gas Code;
- 2020 Edition of the National Electrical Code.

Any person who wishes to appear before or provide evidence or comments to the committee, or both, must submit a written notice of his or her intention to appear before the Study Committee to Molly F. Price, Administrator of the Building Codes Council, at the physical address stated below, or to the email address also provided below, by or before Friday, July 23, 2021, at 5:00 p.m. Molly F. Price S.C. Building Codes Council SC Department of Labor, Licensing and Regulation PO Box 11329 Columbia, SC 29211-1329 Molly.Price@llr.sc.gov

If any person chooses not to attend the hearing but wishes to submit evidence or comments for the Committee's consideration, the evidence or comments should be sent to the same addresses provided above by or before Friday, July 23, 2021, at 5:00 p.m.

#### **44 DRAFTING NOTICES**

#### **STATE BOARD OF EDUCATION**

CHAPTER 43

Statutory Authority: 1976 Code Sections 59-5-60(1), 59-18-110, 59-18-710, 59-18-1110, 59-20-60, 59-25-110, and 59-26-10 et seq.

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

The South Carolina Board of Education proposes to amend Regulation 43-300, Accreditation Criteria, last revised on June 27, 2014.

Interested persons may submit their comments in writing to Dr. Sarah Longshore, Director, Office of Federal and State Accountability, 1429 Senate Street, Suite 512-C, Columbia, South Carolina 29201 or by e-mail to <u>sclongshore@ed.sc.gov</u>. To be considered, all comments must be received no later than 5:00 p.m. on June 28, 2021.

#### Synopsis:

State Board of Education Regulation 43-300 outlines the process by which districts and schools are accredited. The purpose of this amendment is to institute a more streamlined approach and ensure proper attention is given to both compliance and continuous improvement. Amendments to R.43-300 will 1) require that public districts and schools seek accreditation through an external accrediting entity approved by the South Carolina Department of Education (SCDE) to engage in a rigorous and relevant self-evaluation and peer review process that focuses on student learning; 2) outline consequences and corrective action when accreditation of a district or school is denied; 3) establish that the SCDE will monitor each district and the schools within its jurisdiction to ensure compliance with State laws, regulations, and policies; 4) require that noncompliance be corrected as soon as possible, but in no case more than one year from identification; and 5) include a provision for the SCDE to take action or impose special requirements or specific conditions, or seek remedies when identified noncompliance has not been corrected within a timely manner.

Legislative review is required.

#### STATE BOARD OF EDUCATION CHAPTER 43

Statutory Authority: 1976 Code Sections 24-25-10 and 59-5-60

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

The South Carolina Department of Education proposes to amend State Board of Education Regulation 43-229, Defined Program for the Palmetto Unified School District (PUSD).

Interested persons may submit their comments in writing to: Cynthia Cash-Greene, Superintendent of Schools, South Carolina Department of Corrections/Palmetto Unified School District, 1735 Haviland Circle, Columbia, SC 29210; <u>cash-greene.cynthia@doc.sc.gov</u>; (803) 896-1583. To be considered, all comments must be received no later than 5:00 p.m. on June 28, 2021.

#### **Synopsis:**

Palmetto Unified School District (PUSD) was established in 1981 as a dual system to provide education for Grades 9–12 and Adult Education (Level 1, Level 2, High School Equivalency Programs). Amendments to R.43-229 will allow incarcerated inmates to complete their high school diploma degrees if given sufficient time for completion. Many inmates often fall short of achieving their degrees by a few courses when analyzing official transcripts. Due to their sentences, they are unable to complete their diploma, and they are months shy of their

21st birthday. The dropout rate for South Carolina is significant, and prison is a vast enhancer of this problem. PUSD also receives a Graduation rating on the State Report Card, imposing a difficult task within the pre-established cohort for graduation. The purpose of this amendment is to provide incarcerated individuals with an opportunity to complete what they have started with a re-set of the four-year graduation timeline and to increase the age of receiving a high school diploma to age 25 years old.

Legislative review is required.

#### DEPARTMENT OF LABOR, LICENSING AND REGULATION BOARD OF ARCHITECTURAL EXAMINERS CHAPTER 11 Statutory Authority: 1976 Code Sections 40-1-70 and 40-3-60

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

The South Carolina Board of Architectural Examiners proposes to amend its regulations to: rename the Intern Development Program as the Architectural Experience Program in R.11-1 and R.11-6; update information regarding submission of applications and payment of fees in R.11-5; amend references to licensure periods for purposes of continuing education in R.11-8.1 to establish biennial as opposed to annual licensure periods; modify and delete language regarding seals and add language regarding minimum construction phase services in R.11-11; delete provisions in the code of ethics in R.11-12; and to clarify additional language in R.11-1, R.11-6, R.11-8.1 and throughout the chapter. Interested persons may submit comments to Lenora Addison-Miles, Administrator, Board of Architectural Examiners, Post Office Box 11329, Columbia, S.C. 29211-1139.

#### **Synopsis:**

The South Carolina Board of Architectural Examiners proposes to amend its regulations to: rename the Intern Development Program as the Architectural Experience Program in R.11-1 and R.11-6; update information regarding submission of applications and payment of fees in R.11-5; amend references to licensure periods for purposes of continuing education in R.11-8.1 to establish biennial as opposed to annual licensure periods; modify and delete language regarding seals and add language regarding minimum construction phase services in R.11-11; delete provisions in the code of ethics in R.11-12; and to clarify additional language in R.11-1, R.11-6, R.11-8.1 and throughout the chapter.

Legislative review of this amendment is required.

## DEPARTMENT OF LABOR, LICENSING AND REGULATION BOARD OF EXAMINERS FOR LICENSURE OF PROFESSIONAL COUNSELORS, MARRIAGE AND FAMILY THERAPISTS, ADDICTION COUNSELORS AND PSYCHO-EDUCATIONAL SPECIALISTS CHAPTER 36

Statutory Authority: 1976 Code Sections 40-1-50, 40-1-70, and 40-75-60

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

The Board of Examiners for Licensure of Professional Counselors, Marriage and Family Therapists, Addiction Counselors and Psycho-Educational Specialists proposes to amend various sections in Chapter 36. Interested parties may submit comments to Roselind Bailey-Glover, Administrator, Board of Examiners for Licensure of Professional Counselors, Marriage and Family Therapists, Addiction Counselors and Psycho-Educational Specialists, South Carolina Department of Labor, Licensing and Regulation, Post Office Box 11329, Columbia, SC 29211.

## **46 DRAFTING NOTICES**

## **Synopsis:**

The Board of Examiners for Licensure of Professional Counselors, Marriage and Family Therapists, Addiction Counselors and Psycho-Educational Specialists proposes to amend various sections in Chapter 36.

Legislative review of this amendment is required.

# DEPARTMENT OF LABOR, LICENSING AND REGULATION BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS CHAPTER 49

Statutory Authority: 1976 Code Sections 40-1-70 and 40-22-60

## **Notice of Drafting:**

The Board of Registration for Professional Engineers and Land Surveyors proposes to amend various sections of Chapter 49 of the Code of Regulations. Interested persons may submit comments to Lenora Addison-Miles, Administrator, Board of Registration for Professional Engineers and Land Surveyors, South Carolina Department of Labor, Licensing and Regulation, Post Office Box 11329, Columbia, S.C. 29211-1329.

## **Synopsis:**

The Board of Registration for Professional Engineers and Land Surveyors proposes to amend various sections of Chapter 49 of the Code of Regulations.

Legislative review of this amendment is required.

#### Document No. 4983 OFFICE OF THE ATTORNEY GENERAL CHAPTER 13 Statutory Authority: 1976 Code Chapter 55 of Title 33 Code

102-1. Fees to Accompany Request for Confirmation of Solicitation Exemption.

## **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. The publication date of the Notice of Drafting was June 26, 2020.

## **Instructions:**

The following section of Chapter 102 is to be repealed as provided below.

## Text:

102-1. Repealed.

## **Fiscal Impact Statement:**

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

#### **Statement of Rationale:**

The regulation is being amended to repeal this regulations related to the Division of Public Charities. The repeal is to delete this regulation because it is part of the Attorney General - Division of Public Charities Chapter, and this Division is no longer part of the Attorney General's Office.

#### Document No. 4982 OFFICE OF THE ATTORNEY GENERAL CHAPTER 13 Statutory Authority: 1976 Code Section 62-7-405(e)

- 13-1. Inspection of Records of Charitable Trusts and Public Foundations.
- 13-2. Limitations on Inspections.
- 13-3. Notes, Photo-copies, etc.
- 13-4. Records Concerning Charitable Purposes Only May Be Inspected.

#### 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. The publication date of the Notice of Drafting was June 26, 2020.

#### **Instructions:**

The following sections of Chapter 13 are to be repealed as provided below. All other sections of Chapter 13 not mentioned below are to remain unchanged.

## Text:

- 13-1. Repealed.
- 13-2. Repealed.
- 13-3. Repealed.
- 13-4. Repealed.

# **Fiscal Impact Statement:**

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

## **Statement of Rationale:**

The regulations are being amended to repeal 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.

# Document No. 4994 DEPARTMENT OF CONSUMER AFFAIRS CHAPTER 28

Statutory Authority: 1976 Code Sections 37-6-104, 37-6-402, 37-6-403, 37-6-506, and 58-27-2660

28-78. Sale or Lease of Renewable Energy Facilities.

#### **Synopsis:**

The South Carolina Department of Consumer Affairs proposes to promulgate R.28-78 to provide consumer protection parameters applicable to the sale or lease of renewable energy facilities, including disclosure requirements, pursuant to Section 58-27-2660.

Notice of Drafting for the proposed regulation was published in the *State Register* on December 27, 2019. This proposed regulation was published in the *State Register* on September 25, 2020.

## Instructions:

Print the new regulation as shown below.

## Text:

28-78. Sale or Lease of Renewable Energy Facilities.

A. Definitions: Definitions shall be those contained in Title 37 and the following:

(1) "Advertisement" means an oral, written, graphic, or pictorial statement made in the course of soliciting for the sale or lease of a renewable energy facility, including in a newspaper, magazine, on radio, television, or the Internet, or in the form of a mailer or other direct solicitation.

(2) "Consumer" means a purchaser or lessee or prospective purchaser or lessee of a renewable energy facility for a personal, family, or household purpose.

(3) "Lead" means any information identifying a consumer.

(4) "Lead generation" means to:

(a) Initiate consumer interest or inquiry in a renewable energy facility through advertisements;

(b) Engage in the business of selling leads for renewable energy facilities; or

(c) Generate or augment leads for, or refer South Carolina residents to, a third party for renewable energy facilities for a fee, compensation, or gain or expectation thereof.

(5) "Lead generator" means a person engaging in the business of lead generation for the purpose of sale to or benefit of a third party. For purposes of this regulation, the lead generator is an agent of the renewable energy facility retailer purchasing or otherwise benefitting from the lead.

(6) "Lease agreement" means a contract, commitment or document between a consumer and lessor for the exclusive rights to use a renewable energy facility for a period of time in exchange for a payment.

(7) "Purchase agreement" means a contract, commitment or document under which a consumer purchases a residential renewable energy facility from a renewable energy facility retailer.

(8) "Renewable energy facility" means any facility for the production of electrical energy that utilizes a renewable generation resource such as solar photovoltaic and solar thermal resources, wind resources, low impact hydroelectric resources, geothermal resources, tidal and wave energy resources, recycling resources, hydrogen fuel derived from renewable resources, combined heat and power derived from renewable resources, and biomass resources.

(9) "Renewable energy facility agreement" or "agreement" means a purchase agreement or a lease agreement.

(10) "Renewable energy facility retailer" or "retailer" means a person who:

(a) Sells or proposes to sell a renewable energy facility to a consumer under a purchase agreement; or

(b) Owns the renewable energy facility that is the subject of a lease agreement.

(11) "Renewable energy facility solicitation" means, for compensation or gain or with the expectation of compensation or gain, to:

(a) Offer, solicit, broker, directly or indirectly arrange, place, or find a renewable energy facility for a consumer in this State;

(b) Engage in any activity intended to assist a consumer in this State in obtaining a renewable energy facility, including lead generation;

(c) Arrange, in whole or in part, the sale or lease of a renewable energy facility through a third party, regardless of whether approval, acceptance, or ratification by the third party is necessary to create a legal obligation for the third party, through any method, including mail, telephone, Internet, or any electronic means; or

(d) Represent to consumers through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that a person can or will provide a renewable energy facility or any of the services described in subdivisions (a)–(c) of this definition.

(12) "Retail electric provider" includes an electrical utility as defined in Section 58-27-10 and all other entities providing retail electric service in South Carolina regardless of where organized or domiciled.

(13) "Third-party servicer" means a person that enters into a contract with a renewable energy facility retailer to perform the installation, maintenance, or servicing of a facility for a consumer in this State.

#### B. Marketing

(1) The administrator shall develop a written pamphlet that explains the rights and responsibilities of consumers who are marketed renewable energy facilities. Such pamphlet shall include the names, addresses, and telephone numbers of state agencies responsible for administering and/or enforcing the provisions of Title 37 and Title 58. Such pamphlet shall be given to a consumer at the time of any renewable energy facility solicitation. The administrator shall consult with and seek input from consumer representatives, representatives from the

renewable energy facility industry, retail electric providers, and the Office of Regulatory Staff. Each person engaged in the renewable energy facility solicitation shall be responsible for reproducing and distributing the pamphlet finally approved and authorized by the administrator. The pamphlet developed under this subsection shall be provided to consumers beginning three months after the effective date of this regulation.

(2) Persons engaging in lead generation shall clearly and conspicuously include in all advertisements and solicitations of leads, the following statement in bolded typeface at least two points larger than the surrounding typeface or 14-point font, whichever is larger: "This is a solicitation for [insert renewable energy facility type]. [Insert lead generator name] will not provide you with [insert renewable energy facility type]. Instead [insert lead generator name] will share your information with one or more third parties who may contact you to provide [insert renewable energy facility type]."

(3) A person engaging in renewable energy facility solicitations shall not advertise or market to a consumer:

(a) in a manner that is false, deceptive, or misleading, or that misrepresents a renewable energy facility offered for sale or lease, whether by affirmative statement, implication or omission; or

(b) if the retailer or lead generator knows or reasonably should know that the consumer would likely be unable to:

(i) fulfill the terms of a financing agreement for a renewable energy facility; or

(ii) benefit from a renewable energy facility agreement.

(4) Any written marketing material provided to consumers by a person engaging in renewable energy facility solicitations shall:

(a) Be in at least 12-point font;

(b) Be given to the consumer in the same language as any oral representations or solicitations are made;

(c) Contain a provision identifying the name, address, telephone number, and email address of the individual making the renewable energy facility solicitation;

(d) Provide the following disclosures if providing any statement, whether oral or written, regarding the price of the renewable energy facility:

(i) The total price to be paid by the consumer, including any interest, installation fees, document preparation fees, service fees, or other fees;

(ii) Whether maintenance and repairs of the renewable energy facility are included in the total price;

(iii) The consumer's eligibility for or receipt of tax credits or other governmental or retail electric provider incentives, and if a tax credit is applicable, a disclosure of the price before and after the application of the tax credit. If a tax credit or rebate is indicated as part of an advertised price, the tax credit or rebate must be one that is available to the majority of the general buying public. If the tax credit or rebate is not available to the majority of the general buying public. If the advertised price. The amount of the tax credit or rebate may be listed as an additional incentive to those who qualify.

(e) Provide a description of any warranty, representation, or guarantee of energy production of the system;(f) Provide the following disclosures in writing if giving any estimate of the savings a consumer is projected to realize from the facility, whether oral or written:

(i) The estimated projected savings over the life of the renewable energy facility agreement;

(ii) Any material assumptions used to calculate estimated projected savings and the source of those assumptions, including:

(A) If a change in the retail electric provider's annual electricity rate is assumed, the rate of the change and the retailer's basis for the assumption of the change;

(B) The consumer's eligibility for or receipt of tax credits or other governmental or retail electric provider incentives;

(C) Facility production data, including production degradation;

(D) The facility's eligibility for interconnection under any net metering or similar program;

(E) The consumer's electrical usage and the facility's designed offset of the electrical usage;

(F) Historical retail electric provider costs paid by the consumer, to include a period of not less than twelve months;

(G) Any escalation affecting a payment between the consumer and the retailer; and

(H) The costs associated with replacing equipment making up part of the facility or, if those costs are not assumed, a statement indicating that those costs are not assumed.

(g) Include two separate statements in bolded typeface at least two points larger than the surrounding typeface or 14-point font, whichever is larger, in close proximity to any written estimate of projected savings:

(i) "This is a quote. Your power company's rate for [insert renewable energy facility type] may be different from your current rate. Rates may go up or down and the money you may save, if any, may vary. Past data may not be a good gauge of future results. For more information about rates, contact your power company."; and

(ii) "Tax and credits or incentives including those provided by federal, state, or local governments may change or end. This can impact the amount of money you might save. Consult a tax professional to understand any tax liability or eligibility for any tax credits that may result from the purchase of your [insert renewable energy facility type]."

## C. Agreements

(1) Before entering an agreement, a retailer shall provide to a consumer a written copy of the agreement as provided in this section. A person engaging in home solicitation sales shall present the agreement to a consumer aged 70 years or older no less than three calendar days before formal signing of the agreement by the consumer. If any substantive changes are made to the terms of the agreement, the consumer must be given a new agreement for review and the three-day pre-signing period, if applicable, restarts. For the purposes of the three-day waiting period, home solicitation sales do not include a transaction in which the consumer has initiated the contact and requested the retailer to visit the consumer's home.

(2) The administrator, in consultation with the Office of Regulatory Staff, consumer representatives, conservation representatives, renewable energy facility industry members and retail electric providers, shall develop standardized disclosures and provisions that must be included in agreements. Retailers shall include the standardized disclosures and provisions developed under this subsection in all agreements provided to consumers beginning three months after the effective date of this regulation.

(3) The agreement shall, at a minimum:

(a) Be in at least 12-point font;

(b) Be given to a consumer in the same language as the sales offer was presented;

(c) Be separately signed and dated by the consumer and the retailer;

(d) Contain:

(i) The name, address, telephone number, and any email address of the consumer;

(ii) The name, address, telephone number, and email address of the retailer;

(iii) The name, address, telephone number, and email address of the lead generation company and individual used by the retailer, if applicable;

(iv) The name, address, telephone number, and email address of:

(A) the person that is expected to install the facility that is the subject of the agreement;

(B) the person that is expected to maintain or otherwise service the facility that is the subject of the agreement; and

(C) the retailer's representative the consumer should contact to file a complaint about the renewable energy facility;

(v) The following statement in bolded typeface at least two points larger than the surrounding typeface or 14-point font, whichever is larger, immediately above a section for the consumer to sign and date: "This is a contract to [insert agreement type] [insert renewable energy facility type]. You may cancel this contract at any time prior to the tenth calendar day after the date you sign the contract. If you choose to cancel, you will not owe anything and will receive a refund of any money you paid. For consumers aged 70 and older, the contract cannot be signed for three days after you receive a copy. Once you sign the contract, the ten-day right to cancel begins.

During the ten-day cancellation period, you should read the contract fully and seek help in understanding its terms. You may want to discuss this contract with your power company and homeowner's association prior to signing it. You may also wish to shop around and compare the terms with other companies or systems. See the attached notice of cancellation form for more details on this right.";

(vi) A notice of cancellation form notifying the consumer of the right to cancel as set forth in this regulation;

(vii) A statement indicating the nature of the transaction:

(A) If the renewable energy facility will be leased, the written statement must include a disclosure, in bold font, stating the following: "You are entering into a contract to lease a [insert renewable energy facility type]. You will lease (not own) the facility that is installed."

(B) If the renewable energy facility will be purchased, the written statement must include a disclosure, in bold font, stating the following: "You are entering into a contract to purchase a [insert renewable energy facility type]. You will own (not lease) the facility that is installed."

(viii) The total price to be paid by the consumer, including any interest, installation fees, document preparation fees, service fees, or other fees;

(ix) If financing the purchase of the renewable energy facility through the retailer or an affiliate thereof, the total amount financed, the total number of payments, the payment frequency, the amount of payment expressed in dollars, the payment due dates and the applicable annual percentage rate;

(x) If leasing the renewable energy facility through the retailer or an affiliate thereof, a payment schedule, including any amounts owed at contract signing, at the commencement of installation, at the completion of installation, and any final payments. If the renewable energy facility is being leased, the written statement must include the frequency and amount of each payment due under the lease and the total estimated lease payments over the term of the lease;

(xi) A description of any one-time or recurring fees, including, but not limited to, estimated system removal fees, maintenance fees, payments for replacement of system components likely to require replacement before the end of the useful life of the system as a whole, Internet connection fees, and automated clearinghouse fees. If delinquency charges may apply, the description must describe the circumstances triggering such delinquency charges;

(xii) A statement describing the facility and indicating the facility design assumptions. The description should include, but is not limited to, the make and model of the facility and related components, system size, estimated energy production, cost-per-watt, position of the facility and its components on the consumer's property, and estimated annual energy production degradation, including the overall percentage degradation over the term of the agreement or, at the retailer's option, over the estimated useful life of the system;

(xiii) The approximate start and completion dates for the installation of the renewable energy facility;

(xiv) If the retailer provides any oral or written estimate of the savings the consumer is projected to realize from the facility:

(A) The estimated projected savings over the life of the renewable energy facility agreement;

(B) If a consumer is participating in a net energy metering program pursuant to Title 58, Chapter 40, a disclosure stating the consumer may only be eligible for one-to-one net metering credits until May 21, 2029;

(C) If a consumer enters into a renewable energy facility agreement on or after June 1, 2021, and if applicable, a disclosure stating solar choice metering tariffs will be offered in lieu of one-to-one net metering credits;

(D) Any material assumptions used to calculate estimated projected savings and the source of those assumptions, including:

(1) If a change in the retail electric provider's annual electricity rate is assumed, the rate of the change and the renewable energy facility retailer's basis for the assumption of the rate change;

(2) The consumer's eligibility for or receipt of tax credits or other governmental or retail electric provider incentives, and if a tax credit is applicable, a disclosure of the price before and after the application of the tax credit. If a tax credit or rebate is indicated as part of a price, the tax credit or rebate must be one that is available to the majority of the general buying public. If the tax credit or rebate is not available to the majority of the general buying public, it may not be figured in the advertised price. The amount of the tax credit or rebate may be listed as an additional incentive to those who qualify;

(3) Renewable energy facility production data, including production degradation;

(4) The facility's eligibility for interconnection under any net metering or similar program;

(5) The consumer's electrical usage and the facility's designed offset of the electrical usage;

(6) Historical retail electric provider costs paid by the consumer, to include a period of not less than twelve months;

(7) Any escalation affecting a payment between the consumer and the retailer; and

(8) The costs associated with replacing equipment making up part of the facility or, if those costs are not assumed, a statement indicating that those costs are not assumed.

(E) Two separate statements in bolded typeface at least two points larger than the surrounding typeface or 14-point font, whichever is larger, in close proximity to any written estimate of projected savings:

(1) "This is a quote. Your power company's rate for [insert renewable energy facility type] may be different from your current rate. Rates may go up or down and the money you may save, if any, may vary. Past data may not be a good gauge of future results. For more information about rates, contact your power company."; and

(2) "Tax and credits or incentives including those provided by federal, state, or local governments may change or end. This can impact the amount of money you might save. Consult a tax professional to understand any tax liability or eligibility for any tax credits that may result from the purchase of your [insert renewable energy facility type]."

(xv) A description of any warranty, representation, or guarantee of energy production of the facility;

(xvi) A disclosure as to whether maintenance and repairs of the renewable energy facility are included in the total price;

(xvii) A statement of whether the retailer will make a fixture filing or other notice in the county real property records covering the facility and any fees or other costs associated with the filing that may be charged to the consumer;

(xviii) A disclosure identifying whether the agreement contains any restrictions on the consumer's ability to modify or transfer ownership of the facility, including whether any modification to transfer is subject to review or approval by a third party;

(xix) A disclosure notifying the consumer of the party responsible for obtaining interconnection approval from the retail electric provider;

(xx) A description of how the retailer will protect consumer data privacy and security; and

(xxi) A blank section that allows the retailer to provide additional relevant disclosures or explain disclosures made elsewhere in the disclosure form;

(xxii) A disclosure on the first page of the agreement where a consumer may indicate whether he or she qualifies for the three-day waiting period per subsection (C)(1).

(4) A copy of the fully and completely filled in and executed agreement must be provided to the consumer.

(5) Any finance agreement for a loan, lease, or retail installment sales contract offered by or through the retailer must be a separate addendum to the renewable energy facility agreement. The finance agreement must comply with all applicable state and federal laws.

#### D. Right to Cancel

(1) In addition to any right otherwise to revoke an offer, the consumer may cancel an agreement until midnight of the tenth calendar day after the day on which the consumer signs an agreement which complies with applicable laws. Information and notices that comply with S.C. Code Title 37, Chapter 2, Part 5 or 16 C.F.R. Part 429 shall be deemed compliant with this subsection.

(2) Notwithstanding the ten-day right to cancel set forth above, the enforceability of an agreement is contingent upon issuance of a building permit by the local government authority and approval by the consumer's homeowner's association, if applicable. If a local government authority denies the building permit or the consumer's homeowner's association does not approve the installation, a consumer may, within seven calendar days of receiving notice:

(a) Cancel the renewable energy facility agreement upon payment of reasonable cancellation costs or fees; or

(b) Agree to amend the terms of the agreement with the retailer and resubmit the proposal for approval by the local government authority and/or the consumer's homeowner's association. In this circumstance, all applicable requirements set forth in Sections B and C of this regulation apply, including the three-day pre-signing period for consumers aged 70 and older.

#### E. Due Diligence Requirements

(1) A retailer shall not enter into a contract with a third-party servicer the retailer knows or reasonably should know is unlikely to fulfill the material terms of the contract.

(2) A retailer shall be responsible for verifying a third-party servicer understands and is capable of complying with all material terms and provisions stated in the renewable energy facility agreement relating to the installation, maintenance, and/or servicing of a renewable energy facility.

(3) Construction or installation of a renewable energy facility shall not commence until a local government authority has issued the building permit.

### F. Recordkeeping

(1) A person that engages in renewable energy facility solicitation or enters into agreements shall maintain at the person's usual place of business books, records, and documents pertaining to the business conducted.

(2) To enable the administrator to determine compliance with this and other related regulations and applicable laws, at a minimum the following records shall be maintained for not less than three years:

(a) Copies of all agreements entered into with residents of this State;

(b) Copies of all solicitation materials used in its business, regardless of medium, including business cards, telephone scripts, mailers, electronic mail, and radio, television, and Internet advertisements;

(c) Records of any contact or attempted contact with a consumer, including the name, date, method, and nature of contact, and any information provided to or received from the consumer; and

(d) The name, address, and, if applicable, unique identifier of any person who received, requested, or contracted for leads or referrals and any fees or consideration charged or received for such services.

#### G. Electronic Delivery of Documents

(1) The requirement to provide a written document under this section may be satisfied by the electronic delivery of the document if the intended recipient provides prior consent to receive the document electronically and affirmatively acknowledges its receipt.

(2) An electronic document satisfies the font and other formatting standards required for a written document if the format and the relative size of characters of the electronic document are reasonably similar to those required in the written document or if the information is otherwise displayed in a reasonably conspicuous manner.

(3) All electronic documents and signatures are subject to compliance with the Uniform Electronic Transactions Act, Section 26-6-10 *et seq.*, and the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Chapter 96.

#### H. Remedies

(1) The administrator, upon finding a violation of Title 37 or this regulation, may issue an administrative order requiring the person to cease and desist, return property or money received in violation of Title 37 or this regulation, and pay penalties of up to five thousand dollars for each violation. The Department of Consumer Affairs may bring a civil action seeking similar relief, including to restrain any person from violating Title 37 or this regulation and for other appropriate relief including but not limited to: preventing a person from using or employing prohibited practices, reforming contracts to conform to Title 37 or this regulation, and rescinding contracts into which a person has induced a consumer to enter by conduct violating Title 37 or this regulation shall be retained by the Department of Consumer Affairs.

(2) The remedial provisions of this regulation are cumulative of and in addition to any other action at law and any other action taken by the Department of Consumer Affairs pursuant to Title 37.

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

Implementation of the regulation will not result in a fiscal impact to the State or its political subdivisions.

#### **Statement of Rationale:**

Section 58-27-2660(A)(1) provides that the Department and the Office of Regulatory Staff develop such consumer protection regulations, which shall, at a minimum, include appropriate disclosures to be made by sellers and lessors. Sections 37-6-104, 37-6-402, 37-6-403 and 37-6-506 allow the Department to promulgate regulations necessary for the implementation of the South Carolina Consumer Protection Code. It is necessary

to promulgate a regulation to set forth the requisite marketing and contractual disclosure provisions needed to ensure consumer protection for the sale or lease of renewable energy facilities.

#### Document No. 4991 **STATE BOARD OF EDUCATION** CHAPTER 43 Statutory Authority: 1976 Code Sections 59-5-60(1), 59-5-65, 59-25-110, 59-25-115, 59-26-40, and 59-26-85

#### 43-53. Credential Classification.

#### **Synopsis:**

State Board of Education Regulation 43-53 governs the type of certificates issued to educators. Amendments to R.43-53 are proposed to include proviso language and longstanding department policy that an educator earning a master's degree with 60 or more semester hours of graduate course work is eligible for the master's plus 30 credential classification. Amendments also address longstanding department policy regarding the eligibility of an educator who earns a single master's degree containing at least 51 graduate semester hours to complete additional courses to equal 60 or more graduate semester hours to remain eligible for the master's plus 30 credential classification.

Notice of Drafting for the proposed amendments to the regulation was published in the *State Register* on July 24, 2020.

#### **Instructions:**

Section II(D) through Section II(D)(5) below replaces Section II(D) through Section II(D)(2) currently in law.

#### Text:

43-53. Credential Classification.

I. Types of Credential Classification

#### A. Initial Certificate

An initial certificate is valid for three years. Beyond the initial three-year validity period, teachers who do not yet meet the requirements for professional certification, but who are employed by a public school district at the induction or annual contract level, as defined in S.C. Code Ann. Section 59-26-40, may have their certificates extended annually at the request of the employing school district.

Teachers who hold initial certificates and are employed in a public school setting in a position that does not require certification or is not included in the ADEPT system may have their certificates extended annually for an indefinite period at the request of the employing school or school district, provided that certificate renewal requirements, as specified in Reg.43-55 (Renewal of Credentials) are met every five years.

Teachers who hold initial certificates and are employed in a nonpublic school educational setting may have their certificates extended annually for an indefinite period at the request of the educational entity, provided that certificate renewal requirements, as specified in Reg.43-55 (Renewal of Credentials) are met every five years.

Teachers who hold initial certificates but who are not employed by a public school district in a position requiring certification at the time the initial certificate expires, and who have not otherwise met the requirements

for professional certification, may reapply for an initial certificate at such time as they become employed by a public school district or private school, subject to the requirements for initial certification in effect at the time of reapplication. To qualify for an initial certificate, the applicant must fulfill the following requirements:

1. Earn a bachelor's or master's degree either from an institution that has a state-approved teacher education program and is accredited for general collegiate purposes by a regional accreditation association, or from a South Carolina institution that has programs approved for teacher education by the State Board of Education (SBE), or from an institution that has programs approved for teacher education by a national accreditation association with which the South Carolina Department of Education (SCDE) has a partnership agreement. Professional education credit must be earned through an institution that has a teacher education program approved for initial certification.

2. Submit the required teaching content area examination score(s) and the required score on the examination of general professional knowledge (pedagogy) as adopted by the SBE for purposes of certification.

3. Undergo a criminal records check by the South Carolina Law Enforcement Division (SLED) and a national criminal records check supported by fingerprints conducted by the Federal Bureau of Investigation (FBI). If the applicant does not complete the initial certification process within eighteen months from the original date of application, the FBI fingerprint process must be repeated. Eligible applicants who have prior arrests and/or convictions must undergo a review by the SBE and be approved before a certificate may be issued. Background checks from other states or agencies are not transferable to South Carolina.

### B. Professional Certificate

All professional certificates are valid for five years and may be renewed as specified in Reg. 43-55 (Renewal of Credentials). To qualify for a professional certificate an individual must

1. Meet all criteria to advance from an initial to a professional certificate as specified in Section 59-26-40.

## OR

2. Meet all criteria to advance from an alternative route certificate as specified in the SBE-approved guidelines for the specific alternative route program.

### OR

3. Meet all educator experience criteria as specified in Reg. 43-51 (Certification Requirements) to be issued a professional certificate if applying as a certified educator from out-of-state.

#### OR

4. Meet all criteria of Section 59-26-85 to be issued a professional certificate if applying from out-of-state as an educator holding a current, valid certification through the National Board of Professional Teaching Standards.

## C. Alternative Route Certificate

The alternative route certificate for an individual who qualifies under the rules and guidelines published by the SBE for one of the state's approved alternative route programs is valid for one year initially and may be renewed under the conditions specified in the rules and guidelines for that program. The teacher will be eligible for a professional certificate upon his or her successful completion of all requirements as outlined in the SBE-published guidelines for that program, including additional testing requirements approved by the SBE and the formative and summative evaluation of teaching performance and effectiveness as part of the state's system for Assisting, Developing, and Evaluating Professional Teaching (ADEPT).

## D. International Certificate

An International Certificate may be issued to a teacher from a country outside of the United States provided the individual has completed at least a bachelor's degree with a major in the teaching field. Organizations that recruit and select teachers from other countries to teach in South Carolina must assure that all cultural/educational visa requirements have been met. The International Certificate may be renewed annually for up to three years at the request of the local school district, provided the teacher has demonstrated content competency based on the SCDE review of the official transcript evaluation or has met the certification examination requirements specified by the SBE during the first year of certification.

## E. Internship Certificate

1. Approved Educator Preparation Program. The Internship Certificate will be issued to individuals who are currently enrolled in an SBE approved educator preparation program in South Carolina and have completed all academic and bachelor's degree requirements, with the exception of the teaching internship, as well as all certification examination requirements. The certificate will be issued for up to one year, and must be requested by the employing school district. Upon completion of the teaching internship and verification by the college or university that all approved program requirements have been met, the internship certificate will be converted to an initial certificate.

2. School Psychologist. The Internship Certificate will also be issued to any individual who is serving the required internship for certification as a School Psychologist I or II under the supervision of a certified School Psychologist II or III, or who is serving the required internship for School Psychologist III under the supervision of a certified School Psychologist III.

The applicant for the Internship Certificate in School Psychology must submit official written verification from the college or university that he or she is currently enrolled and working toward full certification as a school psychologist, and that the internship is being served through an SBE-approved training program. The Internship Certificate may be renewed once on the basis of written documentation from the director of the school psychology program that the applicant is a full-time student in the program during the second year of the renewed certificate. Upon successful completion of the internship year(s) and recommendation for certification by the SBE-approved training program, the candidate for school psychologist will be issued a professional certificate.

3. Speech-Language Pathology. The Internship Certificate will also be issued to any individual who holds the Certificate of Clinical Competence in Speech-Language Pathology issued by the American Speech-Hearing Association (ASHA) or who has completed a master's degree that includes the academic and clinical requirements for the ASHA Certificate of Clinical Competence and has achieved the minimum qualifying score on the required certification examination(s). The certificate will be effective for one academic year and must be requested by the employing school district. The Internship Certificate may be renewed once upon the written request of the employing school district. The Internship Certificate may be converted to an initial certificate upon verification of a successful formative evaluation in fulfillment of the state's induction requirements.

#### F. Limited Professional Certificate

The purpose of the Limited Professional Certificate is to provide a certificate advancement option for educators who hold South Carolina Initial teaching certificates and who are employed as educators in eligible, non-regulated educational entities in this state. In this context, "non-regulated" means that the entity is not required to comply with SBE regulations and guidelines for evaluating educator performance and effectiveness. Examples of eligible, non-regulated educational entities include South Carolina public charter schools that elect not to participate in the SBE-approved process for evaluating teacher performance and effectiveness, state or

regionally accredited private and parochial schools in South Carolina, and South Carolina institutions of higher education that have programs approved for teacher preparation by the SBE.

1. In order to be eligible to advance from an initial certificate to a Limited Professional Certificate, the educator must be employed by an eligible, non-regulated educational entity in South Carolina and must have accrued a minimum total of three years of experience credit over the previous seven years in one or more of these entities. During the entirety of the qualifying time period, the educator must

(a) hold a valid South Carolina Initial teaching certificate,

(b) be employed as a teacher or a professional support specialist, such as a library media specialist, school guidance counselor, or other support professional, in an area in which the educator holds Initial certification, and

(c) successfully complete an annual performance evaluation process that is approved by the employing educational entity.

2. In order to activate the certificate advancement process (i.e., from Initial to Limited Professional), the educator must submit the following documents to the SCDE office that is responsible for educator certification:

(a) a request for change/action requesting advancement for the Limited Professional Certificate,

(b) official verification of experience,

(c) verification of successful annual performance evaluations from each employing entity, and

(d) a recommendation for the Limited Professional Certificate signed by the head of the educational entity in which the educator is employed at the time the certificate is requested.

3. All Limited Professional Certificates are valid for a period of five years.

4. Requirements for renewing Limited Professional Certificates, including the provisions for expired certificates, are the same as those for Professional Certificates, as specified in SBE Regulation 43-55 (Renewal of Credentials).

5. An educator who holds a valid Limited Professional Certificate and who applies for a position as a teacher or a professional support specialist in a "regulated" South Carolina public school is eligible for employment at the annual-contract level. Once employed under an annual contract, the teacher is subject to all requirements and sanctions for annual-contract teachers, as set forth in the applicable state statutes, regulations, and guidelines. Upon successful completion of the SBE-approved process for evaluating teaching performance and effectiveness, the educator is eligible to move from a Limited Professional Certificate to a Professional Certificate and to be employed under a continuing contract.

G. Certification Permit

A one-year certification permit may be issued to an educator who holds a valid South Carolina initial or professional teaching certificate and is assigned teaching duties for any amount of time in an area for which he or she is not appropriately certified. Permits may be issued to classroom-based teachers and for the areas of administration, library media specialist, and school guidance counselor. Certification permits are not issued for the areas of school psychologist and speech-language therapist.

The SCDE has the authority to develop guidelines for the issuance of certification permits in accordance with the provisions of this regulation to include eligibility for the issuance of a certification permit, annual coursework

requirements and progress necessary for renewal of the permit, and final requirements for attaining full certification in the permit area. Certification permits must be requested by the educator and his or her employing school or school district.

II. Levels of Credential Classification

A. Bachelor's degree: the educator must meet all criteria for an initial area of certification and have earned a bachelor's degree that meets SBE regulations for teacher certification and program approval.

B. Bachelor's degree plus 18 hours: the educator must have 18 hours of graduate credit that he or she earns within seven years from the time the course work is started. Individuals who do not complete the requirements during the seven years must request that the college/university revalidate the course credits before the work can be submitted for credential advancement.

C. Master's degree: the educator must have earned a master's degree that meets SBE regulations for teacher certification and program approval.

D. Master's degree plus 30 hours:

In order to advance to the level of master's degree plus 30 hours, the educator must fulfill one of the following requirements:

1. The educator must earn 30 semester hours of graduate credit above the master's degree with 21 hours of the graduate credit in one area of concentration. These hours may or may not be in the teacher's initial area of certification. The course work must be completed within seven years from the time it was started. Individuals who do not complete the course work during the seven years must request that the college/university revalidate the course credits before the work can be submitted for credential advancement.

#### OR

2. The educator must earn an additional master's degree that meets SBE regulations for teacher certification and program approval.

#### OR

3. The educator must earn a specialist's degree that meets SBE regulations for teacher certification and program approval.

#### OR

4. The educator must earn a single master's degree with at least 60 graduate semester hours that meets SBE regulations for teacher certification and program approval.

#### OR

5. If the educator has earned a single master's degree containing 51 or more graduate semester hours, the educator must complete additional courses to equal at least 60 graduate semester hours in order to be eligible for the master's degree plus 30 credential classification. The master's degree must meet SBE regulations for teacher certification and program approval, and the additional hours must be earned in a single concentration area and completed within seven years of the conferral of the master's degree. Individuals who do not complete the course work during the seven years will not be eligible for this option.

E. Doctorate: the teacher must have earned a doctoral degree that meets the SBE regulations for teacher certification and program approval.

III. Requirements for Credential Advancement

A. To advance his or her credential from one classification to another, the applicant must submit to the teacher certification office of the SBE the following:

1. Written request to have the certificate advanced on the designated action form.

2. Documentation, including transcripts, that the SBE requirements have been met for certificate advancement.

3. The specified fee, if such a fee is currently being charged.

B. The effective date of the credential advancement will be based on the following:

1. If an applicant completes the degree or coursework to become eligible for the advancement of his or her South Carolina educator certificate between May 1 and November 1, the effective date of the credential is July 1 of that year provided that all documentation is on file in the SCDE teacher certification no later than November 1.

2. If an applicant completes the degree or coursework to become eligible for the advancement of his or her South Carolina educator certificate after November 1 and all required documentation is received within forty-five days of completion and no later than April 30, the effective date of the credential is the completion date. If documentation is received forty-five or more days after completion and no later than April 30, the effective date of the credential is the date on which the last supporting document is received by the SCDE teacher certification office. If documentation is submitted after April 30, the effective date of the credential is July 1 of that year.

#### **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.43-53.

### **Statement of Rationale:**

Amendments to R.43-53 will align the text of the regulation with proviso and department policy regarding the master's plus 30 credential classification.

#### Document No. 4981 **STATE BOARD OF EDUCATION** CHAPTER 43 Authority 107( Code Society 50 5 (0, 50 5 (5, 10, 150 5

Statutory Authority: 1976 Code Sections 59-5-60, 59-5-65, and 59-59-10 et seq.

43-279. Minimum Standards of Student Conduct and Disciplinary Enforcement Procedures to be Implemented by Local School Districts.

#### Synopsis:

The State Board of Education proposes to amend R.43-279, Minimum Standards of Student Conduct and Disciplinary Enforcement Procedures to be Implemented by Local School Districts to identify "sexting" as a

Level II disciplinary infraction and distinguish it from the "illegal use of technology" that is currently addressed in the regulation.

Notice of Drafting for the proposed amendment was published in the State Register on May 22, 2020.

## **Instructions:**

Replace Section IV(B)(2)(o) currently in law with Section IV(B)(2)(o. and p.); replace Section IV(C)(2)(k) currently in law with Section IV(C)(2)(k. and l.); replace Section IV(D)(1. and 2.) currently in law with IV(D)(new paragraph). All other sections remain the same.

## Text:

43-279. Minimum Standards of Student Conduct and Disciplinary Enforcement Procedures to be Implemented by Local School Districts.

I. Expectations for Student Conduct in South Carolina Public Schools

The mission of the SCDE is to provide leadership and support so that all public education students graduate prepared for success in citizenship, college, and careers as envisioned by the Profile of the South Carolina Graduate. Students in the public schools of South Carolina enjoy the same basic rights of United States citizenship as do other United States citizens. The rights of students are supported by the responsibility to insure that the rights of others are respected. This regulation is adopted with the intent to better assure that the opportunity to enjoy the benefits of public education is available to all those attending the public schools of the state of South Carolina.

II. Previously Adopted School District Discipline Policies

This regulation is established as a uniform system of minimum disciplinary enforcement for the school districts of South Carolina. School districts that previously have adopted discipline policies that are consistent with and contain the elements included in this regulation may retain their local policies as adopted.

III. Levels of Student Misconduct

A. The levels of student misconduct considered in this regulation are arranged by degrees of seriousness. The levels are arranged from the least serious to the most serious.

B. Three levels of student misconduct are identified: behavioral misconduct, disruptive conduct, and criminal conduct. The levels are defined in this regulation.

C. This regulation includes a listing of possible consequences and/or sanctions for the three levels of student misconduct. As the levels increase in seriousness, the severity of possible disciplinary consequences and/or sanctions increases.

D. Suggested consequences within the Level I misconduct category range from verbal reprimand to detention. Level II misconduct includes sanctions ranging from temporary removal from class to expulsion. Level III misconduct includes sanctions ranging from out-of-school suspension to appropriate action within the criminal justice system.

E. A local school board, in its discretion, may authorize more stringent standards and consequences than those contained in this regulation.

IV. Minimum Standards

A. Behavioral Misconduct-Level I

1. Behavioral misconduct is defined as those activities engaged in by student(s) which tend to impede orderly classroom procedures or instructional activities, orderly operation of the school, or the frequency or seriousness of which disturb the classroom or school. The provisions of this regulation apply not only to within-school activities, but also to student conduct on school bus transportation vehicles, and during other school-sponsored activities.

2. Acts of behavioral misconduct shall include, but are not limited to:

a. Classroom tardiness;

b. Cheating on examinations or classroom assignments;

c. Lying;

d. Abusive language between or among students;

e. Failure to comply with directives from school/district personnel or agents (to include volunteer aides or chaperones);

f. Use of forged notes or excuses;

g. Cutting class;

h. School tardiness;

i. Truancy (three consecutive unlawful absences from school or a total of five unlawful absences);

j. Possession of an electronic communication device (including, but not limited to, cell phones, tablets, computers, and iPods) inconsistent with school board policy. An electronic communication device is a device that emits an audible signal, vibrates, displays a message, image or otherwise summons or delivers a communication to the possessor;

k. Other acts of behavioral misconduct as determined and communicated by local school authorities.

3. The basic enforcement procedures to be followed in instances of behavioral misconduct are:

a. Upon observation or notification and verification of acts of behavioral misconduct, the staff member shall take immediate action to rectify the misconduct. The staff member shall impose an appropriate consequence, and maintain a record of the misconduct and the consequence.

b. If, either in the opinion of the staff member or according to local school board policy, a certain misconduct is not immediately rectifiable, the problem shall be referred to the appropriate administrator for action specified by local school board policy.

c. The administrator shall meet with the reporting staff member, and, if necessary, the student and the parent or guardian, and impose the appropriate consequence and/or establish an intervention plan and/or behavioral contract.

d. A complete record of the procedures shall be maintained.

4. Possible consequences to be applied in cases of behavioral misconduct may include, but are not limited to:

a. Verbal reprimand;

b. Withdrawal of privileges;

c. Demerits;

d. Detention (silent lunch, after school, weekends, or another time that does not interfere with the instructional day);

e. Other consequences as approved and communicated by local school authorities.

B. Disruptive Conduct-Level II

1. Disruptive conduct is defined as those activities engaged in by student(s) which are directed against persons or property, and the consequences of which tend to endanger the health or safety of oneself or others in the school. Some instances of disruptive conduct may overlap certain criminal offenses, justifying both administrative sanctions and court proceedings. Behavioral misconduct (Level I) may be reclassified as disruptive conduct (Level II) if it occurs three or more times. The provisions of this regulation apply not only to within school activities, but also to student conduct on school bus transportation vehicles, and during other school-sponsored activities.

2. Acts of disruptive conduct may include, but are not limited to:

- a. Violation of a Level I intervention plan and/or behavioral contract;
- b. Use of an intoxicant;
- c. Fighting;
- d. Vandalism (minor);
- e. Stealing;
- f. Threats against others;
- g. Trespass;
- h. Abusive language to staff;

i. Repeated refusal to comply with directives from school personnel or agents (such as volunteer aides or chaperones);

j. Possession or use of unauthorized substances, as defined by law and/or local school board policy;

k. Illegally occupying or blocking in any way school property with the intent to deprive others of its use;

1. Unlawful assembly;

m. Disrupting lawful assembly;

n. Inappropriate use of technology (e.g., bullying, harassing, or intimidating other students or district employees, plagiarizing copyrighted materials, and accessing inappropriate websites);

o. Creating, possessing, or sharing nude, partially nude, or other sexually explicit or suggestive images, videos, or visual representations using non-digital means (e.g., printed materials) or electronic communication, including but not limited to texting, emailing, or posting on social media platforms. These acts are prohibited whether or not the subjects of the images, videos, or visual representations consent to their being created, possessed, or shared.

p. Other acts as determined and communicated by local school authorities.

3. The basic enforcement procedures to be followed in instances of disruptive conduct are:

a. Upon observation or notification and verification of an offense, the administrator shall investigate the circumstances of the misconduct and shall confer with staff on the extent of the consequences.

b. The administrator shall notify the parent or guardian of the student's misconduct and related proceedings. The administrator shall meet with the student and, if necessary, the parent or guardian, confer with them about the student's misconduct and impose the appropriate disciplinary action. Verification shall be defined as the following:

- (1) self-admittance by the student
- (2) witnessed involvement of the student by school administrators staff
- (3) parental admission of student involvement
- (4) evidence obtained through investigation by school administrators and staff

c. The administrator may refer the student to the appropriate intervention team to establish behavioral management strategies (e.g., restorative justice, counseling, service learning projects) and propose the appropriate disciplinary action.

d. The administrator or other school officials may refer Level II misconduct to the School Resource Officer or other local law enforcement authorities only when the conduct rises to a level of criminality, and the conduct presents an immediate safety risk to one or more people or it is the third or subsequent act which rises to a level of criminality in that school year.

e. A complete record of the procedures shall be maintained.

4. Possible sanctions to be applied in cases of disruptive conduct may include, but are not limited to:

- a. Temporary removal from class;
- b. Alternative education program;
- c. In-school suspension;
- d. Out-of-school suspension;
- e. Transfer;
- f. Referral to outside agency;
- g. Expulsion;

h. Restitution of property and damages, where appropriate, shall be sought by local school authorities;

i. Other sanctions as approved and communicated by local school authorities.

C. Criminal Conduct-Level III

1. Criminal conduct is defined as those activities engaged in by student(s) which result in violence to oneself or another's person or property or which pose a direct and serious threat to the safety of oneself or others in the school. When school officials have a reasonable belief that students have engaged in such actions, then these activities usually require administrative actions which result in the immediate removal of the student from the school, the intervention of the School Resource Officer or other law enforcement authorities, and/or action by the local school board. The provisions of this regulation apply not only to within-school activities, but also to student conduct on school bus transportation vehicles, and during other school-sponsored activities.

2. Acts of criminal conduct may include, but are not limited to:

a. Assault and battery that poses a serious threat of injury or results in physical harm;

b. Extortion;

c. Threat of the use of a destructive device (bomb, grenade, pipe bomb or other similar device);

d. Possession, use, or transfer of dangerous weapons;

e. Sexual offenses;

f. Vandalism (major);

g. Theft, possession, or sale of stolen property;

h. Arson;

i. Furnishing or selling unauthorized substances, as defined by law and/or local school board policy;

j. Furnishing, selling, or possession of controlled substances (drugs, narcotics, or poisons);

k. Illegal use of technology (e.g., communicating a threat of a destructive device, weapon, or event with the intent of intimidating, threatening, or interfering with school activities.)

l. Maliciously transmitting sexual images of minors other than self-images of the student or images transmitted with the uncoerced consent of the individual in the images.

3. "Acts of criminal conduct," for purposes of defining Level III conduct, do not include acts that only amount to disturbing schools, breach of peace, disorderly conduct, or affray under South Carolina law.

4. The basic enforcement procedures to be followed in instances of criminal conduct are:

a. Upon observation or notification and verification of a criminal offense, the administrator shall contact the School Resource Officer or local law enforcement authorities immediately.

b. An administrator shall notify the student's parent or guardian as soon as possible.

c. An administrator shall impose the appropriate disciplinary action. If warranted, the student shall be removed immediately from the school environment.

- d. Established due process procedures shall be followed when applicable.
- e. A complete record of the incident shall be maintained in accordance with district policy.
- 5. Possible sanctions to be applied in cases of criminal conduct may include, but are not limited to:
  - a. Out-of-school suspension;
  - b. Assignment to alternative schools;
  - c. Expulsion;
  - d. Restitution of property and damages, where appropriate, shall be sought by local school authorities;
  - e. Other sanctions as approved by local school authorities.
- D. Extenuating, Mitigating or Aggravating Circumstances

A local school board may confer upon the appropriate administrator the authority to consider extenuating or mitigating circumstances which may exist in a particular case of misconduct, or criminal activity. Such circumstances shall be considered in determining the most appropriate sanction to be used.

V. Discipline of Students with Disabilities

For additional information regarding Disciplinary Procedures for students with disabilities, see Reg.43-243.

VI. Other Areas of Student Conduct Which May Be Regulated by Local School Board Policy

A. Other areas of student conduct which are subject to regulation by local school boards include, but are not limited to:

- 1. School attendance;
- 2. Use of and access to public school property;
- 3. Student dress and personal appearance;
- 4. Speech and assembly within the public schools;
- 5. Publications produced and/or distributed in the public schools;

6. The existence, scope and conditions of availability of student privileges, including extracurricular activities and rules governing participation;

7. Other activities not in conflict with existing state statutes or regulations as approved and communicated by the local school authorities.

B. Rules of student conduct are required by state and federal law to be reasonable exercises of the local school board's authority in pursuance of legitimate educational and related functions and shall not infringe upon students' constitutional rights.

#### **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.43-279.

#### **Statement of Rationale:**

This regulation is being amended to identify "sexting" as a Level II disciplinary infraction and distinguish it from the "illegal use of technology" that is currently addressed in the regulation.

#### Document No. 4980 STATE BOARD OF EDUCATION CHAPTER 43

Statutory Authority: 1976 Code Sections 59-19-90(10), 59-63-30, 59-63-420, 59-63-470, 59-63-480, 59-63-490, 59-63-500, 59-63-510, 59-63-520, 59-63-530, 59-65-30, and 59-65-90

43-273. Transfers and Withdrawals.

#### **Synopsis:**

The State Board of Education proposes to amend R.43-273, Transfers and Withdrawals to clarify how district representatives should treat the evidence of work provided by students who desire to transfer from a home school association to a public school in South Carolina.

Notice of Drafting for the proposed amendment was published in the State Register on May 22, 2020.

#### **Instructions:**

Replace the Section II(C) that is currently in regulation with the amended Section II(C) as shown below. All other sections remain the same.

#### Text:

43-273. Transfers and Withdrawals.

Each student transferring or withdrawing shall be given a form showing name, date of birth, grade placement, and attendance record to present to the appropriate school official where he or she is enrolling. Appropriate additional data shall be furnished by the sending school when requested in writing by the receiving school, as soon as possible, but no later than ten business days upon receiving the written request, excluding weekends and recognized state holidays.

I. Kindergarten; Grades 1–6; 7–8:

A school must transfer a student's disciplinary record of suspensions and expulsions to the public or private school to which the student is transferring when requested in writing by the receiving school, as soon as possible, but no later than ten business days upon receiving the written request, excluding weekends and recognized state holidays.

Schools must transfer these records within ten business days upon receiving the written request from the public or private school to which the student is transferring. Schools may not withhold the transfer of records to a public or private school for fees owed by the student.

#### II. Grades 9–12:

A. Accurate accounting records shall be developed and maintained for student transfers and withdrawals. Comprehensive transcripts shall be submitted directly to the receiving school when requested in writing, as soon as possible, but no later than ten business days upon receiving the written request, excluding weekends and recognized state holidays. A permanent record of the transferred student shall be retained in the school from which the student is transferred. The school of record must transfer a student's disciplinary record of suspensions and expulsions to the public or private school to which the student is transferring as soon as possible, but no later than ten business days upon receiving the written request, excluding weekends and recognized state holidays. Schools may not withhold the transfer of records to a public or private school for fees owed by the student.

B. Units earned by a student in an accredited high school of this state or in a school of another state which is accredited under the regulations of the board of education of that state, or the appropriate regional accrediting agency recognized by the U.S. Department of Education will be accepted under the same value which would apply to students in the school to which they transferred.

C. Home school, private school, or out-of-state non-public school students shall have the opportunity to provide evidence of work to be considered for credit when transferring to a public school. The district shall have the right to evaluate evidence provided by the parent or student before transcribing the credit. If the evaluated evidence is insufficient, districts shall follow the option(s) defined in their district policy, which comply with options listed in the SC Uniform Grading Policy. The receiving school must also use the South Carolina Honors Framework criteria to evaluate such evidence and shall make the final decision on whether to award the said weighting. The South Carolina Department of Education advises districts to adopt a policy for accepting units of credit from home schools, private schools, or out-of-state nonpublic schools that is consistent with state regulation.

#### **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.43-273.

## **Statement of Rationale:**

This change is being proposed to clarify how district representatives should treat the evidence of work provided by students who desire to transfer from a home school association to a public school in South Carolina. The proposed changes were requested by Senator Richard Cash on behalf of representatives from several home school associations in the state. Input was sought from and provided by home school representatives and school counseling personnel representing a number of districts of various sizes and located in various geographic regions.

#### Document No. 4996 DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL CHAPTER 61 Statutory Authority: 1976 Code Sections 44-75-10 et seq.

61-96. Athletic Trainers.

#### Synopsis:

The Department of Health and Environmental Control ("Department" or "DHEC") amends R.61-96 to update provisions in accordance with current practices and standards. Amendments incorporate and revise provisions

relating to statutory mandates, update definitions to conform to terminology widely used and understood within the provider community, and revise requirements for obtaining certification, inspections and investigations, continuing education, patient care, documentation, and the incorporation of statutory change allowing for monetary penalties. The amendments also update the structure of the regulation throughout for consistency with other DHEC Healthcare Quality regulations.

The Department further revises for clarity, readability, grammar, references, codification, and overall improvement to the text of the regulation. R.61-96 was last amended in 2015.

The Department had a Notice of Drafting published in the February 28, 2020, South Carolina State Register.

## Instructions:

Replace R.61-96, Athletic Trainers, in its entirety with this amendment.

## Text:

61-96. Athletic Trainers.

(Statutory Authority: S.C. Code Sections 44-75-10 et seq.)

TABLE OF CONTENTS

## SECTION 100 – DEFINITIONS AND CERTIFICATION

- 101. Definitions.
- 102. Certification.
- 103. Temporary Certification Hold.
- 104. Reciprocity. (II)
- 105. Change of Name or Address.
- 106. Variance.

SECTION 200 – ENFORCING REGULATIONS

- 201. General.
- 202. Inspections and Investigations.
- 203. Consultations.

SECTION 300 – ENFORCEMENT ACTIONS
301. General.
302. Violation Classifications.
303. Standards of Conduct. (I)

SECTION 400 – ATHLETIC TRAINERS' ADVISORY COMMITTEE

SECTION 500 - CONTINUING EDUCATION

SECTION 600 – [RESERVED]

SECTION 700 - PATIENT CARE AND RECORDS. (II)

SECTION 800 – [RESERVED]

SECTION 900 – [RESERVED]

- SECTION 1000 [RESERVED]
- SECTION 1100 [RESERVED]
- SECTION 1200 [RESERVED]
- SECTION 1300 [RESERVED]
- SECTION 1400 [RESERVED]
- SECTION 1500 [RESERVED]
- SECTION 1600 [RESERVED]
- SECTION 1700 [RESERVED]
- SECTION 1800 [RESERVED]
- SECTION 1900 [RESERVED]
- SECTION 2000 [RESERVED]
- SECTION 2100 [RESERVED]
- SECTION 2200 [RESERVED]
- SECTION 2300 [RESERVED]
- SECTION 2400 [RESERVED]
- SECTION 2500 [RESERVED]
- SECTION 2600 [RESERVED]
- SECTION 2700 SEVERABILITY

SECTION 2800 – GENERAL

# SECTION 100 – DEFINITIONS AND CERTIFICATION

# 101. Definitions.

A. Athletic Trainer. An allied healthcare professional with specific qualifications as set forth in South Carolina Code Section 44-75-50 who, upon the advice and consent of a licensed Physician, carries out the practice of care, prevention, and physical rehabilitation of athletic injuries and who, in carrying out these functions, may use physical modalities including, but not limited to, heat, light, sound, cold, electricity, or mechanical devices related to rehabilitation and treatment.

B. Board. The South Carolina Board of Health and Environmental Control.

C. Certificate. Official acknowledgement by the Department that an individual has successfully completed the education and other requirements in accordance with South Carolina Code Sections 44-75-10 et seq. and this regulation, which entitle that individual to perform the functions and duties of an Athletic Trainer.

D. Committee. The South Carolina Athletic Trainers' Advisory Committee.

E. Consultation. A meeting with Department representatives who will provide information to the Certificate holder with the goal of facilitating compliance with this regulation.

F. Continuing Education. Education beyond the basic preparation required for entry into the profession that is directly related to the performance and practice of the Athletic Trainer.

G. Department. The South Carolina Department of Health and Environmental Control.

H. Inspection. A visit, in-person meeting, or review of materials by Department representatives for the purpose of determining compliance with this regulation.

I. Investigation. A visit, in-person meeting, or review of materials by Department representatives for the purpose of determining the validity of allegations received by the Department relating to statutory and regulatory compliance.

J. Patient. A person who receives care, treatment, or services from an Athletic Trainer certified by the Department.

K. Physically Active Population. Any individual, entity, group, or organization who participates in an athletic activity, a job function, or a job-related activity that requires physical strength, range of motion, flexibility, control, speed, stamina, or agility.

L. Physician. An individual currently licensed to practice medicine by the South Carolina Board of Medical Examiners.

M. Variance. An alternative method that ensures the equivalent level of compliance with the standards in this regulation.

# 102. Certification.

A. Certification.

1. No person may hold himself or herself out as an Athletic Trainer or perform for compensation any activities of an Athletic Trainer as defined in South Carolina Code Section 44-75-20 without first obtaining a Certificate from the Department. When it has been determined by the Department that an individual is engaged as an Athletic Trainer and the individual has not been issued a Certificate from the Department, the individual shall cease engaging as an Athletic Trainer immediately. Current and/or previous violation(s) of the South Carolina Code of Laws or Department regulations may jeopardize the issuance of an Athletic Trainer Certificate. (I)

2. A person is engaged as an Athletic Trainer if the person is employed on a salary or contractual basis by an educational institution, a hospital, a rehabilitation clinic, a Physician's office, an industry, a performing arts group, a professional athletic organization, the military, a governmental agency, or other bona fide organization which employs or serves a Physically Active Population and performs the duties of an Athletic Trainer as a major responsibility of this employment.

3. A person certified by the Department to practice and perform as an Athletic Trainer may use the title "State Certified Athletic Trainer" and/or the abbreviations "S.C.A.T." and "SCAT."

B. Issuance and Terms of Certification.

1. The Athletic Trainer Certificate is issued pursuant to South Carolina Code Sections 44-75-10 et seq. and this regulation. The issuance of a Certificate does not guarantee adequacy of individual care, treatment, personal safety, or well-being of any Patient.

2. The Athletic Trainer Certificate is not assignable or transferable and shall be subject to denial, suspension, or revocation by the Department for failure to comply with the South Carolina Code of Laws and this regulation.

3. The Athletic Trainer Certificate shall be effective for a twenty-four (24) month period following the date of issue by the Department.

4. The Athletic Trainer shall carry the identification Certificate card issued by the Department while performing his or her duties and present the identification Certificate card when requested.

C. Initial Application. Applicants for an initial Athletic Trainer Certificate shall submit to the Department a completed application on a form prescribed, prepared, and furnished by the Department prior to issuance of an initial Certificate. The applicant shall submit, along with the application, documentation that he or she has successfully passed the Athletic Trainer certification exam as administered by the Board of Certification, Inc. or its successors or assigns.

D. Certification Fees. The applicant shall pay a certification fee of fifty dollars (\$50.00) prior to issuance of an initial Certificate. The applicant shall pay a biennial certification renewal fee of forty dollars (\$40.00) prior to renewal of the certification. The renewal late fee shall be fifteen dollars (\$15.00). The Athletic Trainer shall pay one hundred dollars (\$100.00) to restore his or her certification. The Athletic Trainer shall pay seven dollars (\$7.00) for duplicate Certificates and identification Certificate cards. All fees shall be non-refundable. Athletic Trainers and Athletic Trainer applicants shall submit payment of certification fees with each application to the Department by check, money order, or other means as determined by the Department. (II)

E. Certification Renewal. To renew his or her certification, the Athletic Trainer shall submit a complete and accurate biennial renewal application on a form prescribed and furnished by the Department, shall pay the biennial renewal fee, and shall not have pending enforcement actions by the Department.

1. The Athletic Trainer shall submit the following with the biennial renewal application:

a. Proof of Continuing Education pursuant to Section 500; and

b. Proof of current certification by the Board of Certification, Inc., or its successors or assigns.

2. The Athletic Trainer who fails to submit his or her renewal application and biennial renewal fee by his or her certification expiration date shall be deemed to have an expired Certification.

3. The Athletic Trainer who submits his or her renewal application, biennial renewal fee, and renewal late fee within three (3) months after his or her certification expired may be reinstated at the Department's discretion. The Athletic Trainer who submits his or her renewal application, biennial renewal fee, and certification restoration fee more than three (3) months after his or her certification expired may be restored at the Department's discretion.

#### 103. Temporary Certification Hold.

The Athletic Trainer who is active duty military service member or spouse may request a temporary hold on his or her certification while actively deployed outside of South Carolina. The Athletic Trainer requesting a temporary certification hold shall submit a written request in a format as determined by the Department including the effective dates of deployment. The Athletic Trainer granted a temporary certification hold shall notify the Department upon return from active duty in a manner determined by the Department.

## 104. Reciprocity. (II)

Certification by Reciprocity. A Certificate may be issued by the Department to any qualified Athletic Trainer holding certification in any other state if such other state recognizes the Certificate of South Carolina in the same manner. Applicants for reciprocal certification shall submit to the Department a completed application, on a form prescribed, prepared, and furnished by the Department prior to certification by reciprocity. The applicant for reciprocity shall submit documentation with the reciprocity application that he or she is currently credentialed as an Athletic Trainer under the laws of another state or territory. (II)

## 105. Change of Name or Address.

A. Change of Name. The Athletic Trainer shall request a change of name from that under which the original Certificate was issued by submitting to the Department a certified copy of a marriage certificate, court order, or documentation of legal name change and payment of the duplicate Certificate fee.

B. Change of Address. The Athletic Trainer shall ensure current information, including name, address, contact information, and other required information by the Department, is maintained in the Department's credentialing information system and submit any changes to the Department within forty-five (45) calendar days of the change.

## 106. Variance.

The Athletic Trainer 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 it determines appropriate.

# **SECTION 200 – ENFORCING REGULATIONS**

## 201. General.

The Department shall utilize Inspections, Investigations, Consultations, and other pertinent documentation regarding an Athletic Trainer to enforce this regulation.

#### 202. Inspections and Investigations.

A. The Department may conduct Inspections and Investigations as deemed appropriate by the Department.

B. Athletic Trainers shall be subject to Inspections and Investigations at any time without prior notice by individuals authorized by the Department.

C. The Athletic Trainer shall grant the Department access to all properties and areas, objects, equipment, records, and documentation. The Athletic Trainer shall provide the Department all requested records and documentation in the manner and within the timeframe specified by the Department. The Athletic Trainer shall provide photos and/or electronic copies of documents requested by the Department in the course of Inspections and Investigations. These copies shall be used for purposes of enforcement of regulations and confidentiality shall be maintained except to verify the identity of individuals in enforcement action proceedings. (I)

D. When there is noncompliance with this regulation, the Athletic Trainer shall submit an acceptable plan of correction in a format determined by the Department. The plan of correction shall be signed by the Athletic Trainer and returned by the date specified by the Department. 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.

## 203. Consultations.

The Department may provide Consultations as requested by the Athletic Trainer or as deemed appropriate by the Department.

# **SECTION 300 – ENFORCEMENT ACTIONS**

# 301. General.

A. The Department may suspend or revoke a Certificate at any time it is determined that the Certificate holder no longer meets the prescribed qualifications set forth by the Department or has failed to provide athletic training services of a quality acceptable by the Department.

B. When the Department determines that an Athletic Trainer is in violation of any statutory provision or regulation relating to the duties therein, the Department may, upon proper notice to the individual, impose a monetary penalty, deny, suspend, and/or revoke his or her certification, or authorization or take other actions deemed appropriate by the Department.

## **302.** Violation Classifications.

A. Violations of standards in this regulation are classified as follows:

1. Class I violations are those that the Department determines to present an imminent danger to the health, safety, or well-being of the persons being served, other employees, or the general public; or a substantial probability that death or serious physical harm could result therefrom. A physical condition or one or more practices, means, methods, operations, or lack thereof may constitute such a violation. Each day such violation exists may be a subsequent violation.

2. Class II violations are those that are not classified as Class I or Class III violations the Department determines to have a negative impact on the health, safety, or well-being of those being served, other employees, or the general public. A physical condition or one or more practices, means, methods, operations, or lack thereof may constitute such a violation. Each day such violation exists may be 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 as interpreted by the Department. A physical condition or one or more practices, means, methods, operations, or lack thereof may constitute such a violation. Each day such violation exists may be 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 Class III violations.

C. Monetary Penalties. When the Department imposes a monetary penalty, the following schedule shall be used as a guide to determine the dollar amount:

FREQUENCY OF VIOLATION	CLASS I	CLASS II	CLASS III
1 <sup>st</sup>	\$300-500	\$100-300	\$50-100
2 <sup>nd</sup>	500-1,500	300-500	100-300
3 <sup>rd</sup>	1,500-5,000	500-1,500	300-800
4 <sup>th</sup> or more	10,000	1,500-5,000	800-1,500

#### **303. Standards of Conduct. (I)**

The Department may deny, suspend, or revoke an Athletic Trainer's Certificate and impose a monetary penalty against an Athletic Trainer for the following:

A. Used a false, fraudulent, or forged statement or document or practiced a fraudulent, deceitful, or dishonest act in connection with any of the certification requirements or official documents required by the Department;

B. Convicted of a felony or another crime involving moral turpitude, drugs, or gross immorality;

C. Addicted to alcohol or drugs to such a degree as to render the Certificate holder unfit to perform as an Athletic Trainer;

D. Sustained a physical or mental disability that renders further practice dangerous to the public;

E. Obtained fees or assisted in the obtaining of such fees under dishonorable, false, or fraudulent circumstances;

F. Disregarded an order by a Physician concerning care or treatment;

G. Refused to administer care or treatment on the grounds of the age, gender, race, religion, creed or national origin of the Patient;

H. After initiating care of a Patient, discontinued such care or abandoned the Patient without the Patient's consent or without providing for the further administration of care by an equal or higher medical authority;

I. Revealed confidences entrusted to him or her in the course of medical attendance, unless such revelation is required by law or is necessary in order to protect the welfare of the Patient or the community;

J. By action or omission, and without mitigating circumstance, contributed to or furthered the injury or illness of a Patient under the care of the Athletic Trainer;

K. Performed skills above the level for which the Athletic Trainer is certified or performed skills for which he or she has no training to perform;

L. Observed the administration of substandard care by another Athletic Trainer or other healthcare provider without documenting the event and notifying a supervisor or Physician;

M. By his or her actions, or inactions, created a substantial possibility that death or serious physical harm could result; or

N. Falsified any documentation as required by the Department.

# SECTION 400 – ATHLETIC TRAINERS' ADVISORY COMMITTEE

A. Organization. The South Carolina Athletic Trainers' Advisory Committee shall consist of nine (9) members appointed by the Board. The terms of the Committee members are for four (4) years or until successors are appointed. The Committee members appointed by the Board shall consist of the following:

1. Two (2) members shall be representatives from the Department;

2. One (1) member shall be from the State Board of Medical Examiners;

3. Four (4) members shall be Athletic Trainers certified by the Department; and

4. Two (2) members shall be from the general public, not certified or licensed in any healthcare field, and not in any way associated with Athletic Trainers.

B. Meetings. The Committee shall meet at least once a year to review the standards and regulations for improving athletic training services and make recommendations to the Department.

# **SECTION 500 – CONTINUING EDUCATION**

Athletic Trainers shall complete the following Continuing Education courses during the two (2) year certification period:

A. A course in cardiopulmonary resuscitation (CPR) offered by the American Red Cross or the American Heart Association or any other cardiopulmonary resuscitation (CPR) course approved by the Department; and

B. Two (2) Continuing Education courses approved by the Department in consultation with the Athletic Trainers' Advisory Committee.

# SECTION 600 – [RESERVED]

# SECTION 700 – PATIENT CARE AND RECORDS. (II)

A. The Athletic Trainer shall render services and treatment under the advice and consent of a licensed Physician including general written or oral standing orders and/or protocols signed by a licensed Physician. (I)

B. The Athletic Trainer shall be responsible for recording details of the Patient's health care status. The Athletic Trainer shall maintain an organized permanent record for each Patient that contains written documentation of all care, treatment, and services provided to the Patient including:

1. Injury and Illness Prevention and Wellness Promotion. The Athletic Trainer shall promote healthy lifestyle behaviors with effective education and communication to enhance wellness and minimize the risk of injury and illness for every Patient to assure the highest quality of care.

2. Immediate and Emergency Care. The Athletic Trainer shall provide immediate and emergency care integrating best practices for optimal outcomes.

3. Examination, Assessment, and Diagnosis. The Athletic Trainer shall assess the Patient's level of function prior to treatment. The Athletic Trainer shall consider the Patient's input as an integral part of the initial assessment. The Athletic Trainer shall implement systematic, evidence-based examinations and assessments to formulate valid clinical diagnoses and determine each Patients' plan of care.

4. Therapeutic Intervention. The Athletic Trainer shall develop the treatment program and determine the appropriate treatment, rehabilitation, and/or reconditioning strategies for each Patient's injuries, illnesses, and general medical conditions. The Athletic Trainer shall ensure the treatment program objectives include long-term and short-term goals and appraisal with the goal of the Patient achieving optimal activity level based on athletic

training core concepts using the applications of therapeutic exercise, modality devices, and manual techniques. The Athletic Trainer shall incorporate and utilize the assessment measure to determine the effectiveness of the treatment program. The Athletic Trainer shall integrate best practices in policy construction and implementation, documentation, and basic business practices to promote optimal Patient care.

C. Program Discontinuation. The Athletic Trainer, with advice and consent of a licensed Physician, shall recommend discontinuation of athletic training services when the Patient has received optimal benefit of the treatment program. The Athletic Trainer shall document and maintain documentation of the final assessment of the Patient's status and the date the Patient was discontinued from the treatment program.

**SECTION 800 – [RESERVED] SECTION 900 – [RESERVED]** SECTION 1000 – [RESERVED] SECTION 1100 – [RESERVED] **SECTION 1200 – [RESERVED]** SECTION 1300 – [RESERVED] **SECTION 1400 – [RESERVED] SECTION 1500 – [RESERVED] SECTION 1600 – [RESERVED] SECTION 1700 – [RESERVED] SECTION 1800 – [RESERVED] SECTION 1900 – [RESERVED] SECTION 2000 – [RESERVED] SECTION 2100 – [RESERVED] SECTION 2200 – [RESERVED]** SECTION 2300 – [RESERVED] **SECTION 2400 – [RESERVED] SECTION 2500 – [RESERVED] SECTION 2600 – [RESERVED]** 

**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 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: 61-96, Athletic Trainers.

Purpose: The Department amends R.61-96 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. The proposed amendments incorporate and revise provisions relating to statutory mandates.

Legal Authority: 1976 Code Sections 44-75-10 et seq.

Plan for Implementation: The DHEC Regulation Development Update (accessible at http://www.scdhec.gov/Agency/RegulationsAndUpdates/RegulationDevelopmentUpdate/) will provide а summary of and link to a copy of the 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 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 Athletic Trainers applying for certification and incorporate provisions delineating requirements in continuing education, documentation, and the incorporation of statutory change allowing for monetary penalties. The amendments revise and incorporate requirements regarding Department inspections and investigations, maintenance of accurate and current contact information, and other requirements for licensure. The amendments also update the structure of the regulation throughout for consistency with other Department regulations.

## 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 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 proposed amendments to R.61-96 seek to support the Department's goals relating to the protection of public health through implementing updated requirements for Athletic Trainers. 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 amendments are 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.61-96. These amendments are necessary to update provisions in accordance with current practices and standards. The amendments include updated language for Athletic Trainers applying for certification and incorporate provisions delineating new requirements for continuing education, patient care, and documentation requirements, and the incorporation of statutory change allowing for monetary penalties. The amendments revise and incorporate requirements regarding Department inspections and investigations, maintenance of accurate and current contact information, and other requirements for licensure.

## Document No. 4975 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 two Environmental Protection Agency ("EPA") rules published in the Federal Register. The EPA has given authorized states, including South Carolina, the discretion to adopt these rules as they will make existing standards less stringent and provide more flexibility to the regulated community. The "Safe Management of Recalled Airbags" interim final rule, published on November 30, 2018, at 83 FR 61552-61563 creates a conditional exemption from Resource Conservation and Recovery Act ("RCRA") requirements for certain entities that collect airbag waste from automobiles. The "Universal Waste Regulations: Addition of Aerosol Cans" final rule published on December 9, 2019, at 84 FR 67202-67220 reduces regulatory burdens on businesses that generate, manage, and dispose of aerosol cans. The Department also revises the R.61-79 to make corrections for clarity and readability, grammar, punctuation, codification, and other such regulatory text improvements.

The Department had a Notice of Drafting published in the April 24, 2020, 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. Section 44-56-30

# Add the following definitions in alphabetical order to 260.10 to read:

"Aerosol can" means a non-refillable receptacle containing a gas compressed, liquefied, or dissolved under pressure, the sole purpose of which is to expel a liquid, paste, or powder and fitted with a self-closing release device allowing the contents to be ejected by the gas.

"Airbag waste" means any hazardous waste airbag modules or hazardous waste airbag inflators.

"Airbag waste collection facility" means any facility that receives airbag waste from airbag handlers subject to regulation under 261.4(j) of this chapter, and accumulates the waste for more than ten (10) days.

"Airbag waste handler" means any person, by site, who generates airbag waste that is subject to regulation under this chapter.

# Revise 260.10 to read:

"Universal Waste" means any of the following hazardous wastes that are managed under the universal waste requirements of 273:

- (1) Batteries as described in 273.2;
- (2) Pesticides as described in 273.3;
- (3) Mercury-containing equipment as described in 273.4;
- (4) Lamps as described in 273.5 of this chapter; and
- (5) Aerosol cans as described in 273.6 of this chapter.

# Revise 260.10 "Universal waste handler" (2)(i) to read:

(i) A person who treats (except under the provisions of 273.13 (a) or (c), or 273.33 (a) or (c)), disposes of, or recycles (except under the provisions of 273.13(e) or 273.33(e)) universal waste; or

# Add Subparts I through CC to R.61-79.261. Table of Contents to read:

SUBPART I: Use and Management of Containers

- 261.170. Applicability.
- 261.171. Condition of containers.
- 261.172. Compatibility of hazardous secondary materials with containers.
- 261.173. Management of containers.
- 261.175. Containment.
- 261.176. Special requirements for ignitable or reactive hazardous secondary material.
- 261.177. Special requirements for incompatible materials.
- 261.179. Air emission standards.

## SUBPART J: Tank Systems

- 261.190. Applicability.
- 261.191. Assessment of existing tank system's integrity.
- 261.192. [Reserved]
- 261.193. Containment and detection of releases.
- 261.194. General operating requirements.
- 261.195. [Reserved]
- 261.196. Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.
- 261.197. Termination of remanufacturing exclusion.
- 261.198. Special requirements for ignitable or reactive materials.
- 261.199. Special requirements for incompatible materials.
- 261.200. Air emission standards.

SUBPART L: [Reserved]

SUBPART M: Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials

261.400. Applicability.

261.410. Preparedness and prevention.

261.411. Emergency procedures for facilities generating or accumulating 6000 kilograms or less of hazardous secondary material.

261.420. Contingency planning and emergency procedures for facilities generating or accumulating more than 6000 kilograms of hazardous secondary material.

SUBPART N-Z: [Reserved]

SUBPART AA: Air Emission Standards for Process Vents

## 261.1030. Applicability.

- 261.1031. Definitions.
- 261.1032. Standards: Process vents.
- 261.1033. Standards: Closed-vent systems and control devices.
- 261.1034. Test methods and procedures.
- 261.1035. Recordkeeping requirements.
- 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]

SUBPART BB: Air Emission Standards for Equipment Leaks

261.1050. Applicability.

261.1051. Definitions.

261.1052. Standards: Pumps in light liquid service.

261.1053. Standards: Compressors.

261.1054. Standards: Pressure relief devices in gas/vapor service.

261.1055. Standards: Sampling connection systems.

261.1056. Standards: Open-ended valves or lines.

261.1057. Standards: Valves in gas/vapor service or in light liquid service.

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.

261.1059. Standards: Delay of repair.

261.1060. Standards: Closed-vent systems and control devices.

261.1061. Alternative standards for valves in gas/vapor service or in light liquid service: percentage of valves allowed to leak.

261.1062. Alternative standards for valves in gas/vapor service or in light liquid service: skip period leak detection and repair.

261.1063. Test methods and procedures.

261.1064. Recordkeeping requirements.

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]
- 261.1075. [Reserved]
- 261.1074. [Reserved]
- 261.1076. [Reserved]
- 261.1077. [Reserved]
- 261.1078. [Reserved]
- 261.1079. [Reserved]

SUBPART CC: Air Emission Standards for Tanks and Containers

- 261.1080. Applicability.
- 261.1081. Definitions.
- 261.1082. Standards: General.
- 261.1083. Material determination procedures.
- 261.1084. Standards: Tanks.
- 261.1085. [Reserved]
- 261.1086. Standards: Containers.
- 261.1087. Standards: Closed-vent systems and control devices.
- 261.1088. Inspection and monitoring requirements.
- 261.1089. Recordkeeping requirements.
- 261.1090. [Reserved]

# Add and reserve 261.4(h) and (i) to read:

- (h) [Reserved]
- (i) [Reserved]

## Add 261.4(j) to read:

(j)(1) Airbag waste at the airbag waste handler or during transport to an airbag waste collection facility or designated facility is not subject to regulation under parts 124, 262 through parts 268, or 270 of this chapter, and is not subject to the notification requirements of section 3010 of RCRA provided that:

(i) The airbag waste is accumulated in a quantity of no more than 250 airbag modules or airbag inflators, for no longer than 180 days;

(ii) The airbag waste is packaged in a container designed to address the risk posed by the airbag waste and labeled "Airbag Waste – Do Not Reuse";

(iii) The airbag waste is sent directly to either:

(A) An airbag waste collection facility in the United States under the control of a vehicle manufacturer or their authorized representative, or under the control of an authorized party administering a remedy program in response to a recall under the National Highway Traffic Safety Administration, or

(B) A designated facility as defined in 260.10;

(iv) The transport of the airbag waste complies with all applicable U.S. Department of Transportation (DOT) regulations in 49 CFR part 171 through 180 during transit;

(v) The airbag waste handler maintains at the handler facility for no less than three (3) years records of all off-site shipments of airbag waste and all confirmations of receipt from the receiving facility. For each shipment, these records must, at a minimum, contain the name of the transporter and date of the shipment; name and address of receiving facility; and the type and quantity of airbag waste (i.e., airbag modules or airbag inflators) in the shipment. Confirmations of receipt must include the name and address of the receiving facility; the type and quantity of the airbag waste (i.e., airbag modules and airbag inflators) received; and the date which it was received. Shipping records and confirmations of receipt must be made available for inspection and may be satisfied by routine business records (e.g., electronic or paper financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt).

(2) Once the airbag waste arrives at an airbag waste collection facility or designated facility, it becomes subject to all applicable hazardous waste regulations, and the facility receiving airbag waste is considered the hazardous waste generator for the purposes of the hazardous waste regulations and must comply with the requirements of part 262.

(3) Reuse in vehicles of defective airbag modules or defective airbag inflators subject to a recall under the National Highway Traffic Safety Administration is considered sham recycling and prohibited under 261.2(g).

#### **Revise 261.6(d) to read:**

(d) Owners or operators of facilities subject to RCRA permitting requirements with hazardous waste management units that recycle hazardous wastes are subject to the requirements of subparts AA and BB of parts 264 or 265 of this chapter.

#### **Revise 261.9 to read:**

The wastes listed in this section are exempt from regulation under parts 262 through 270 except as specified in part 273 and, therefore, are not fully regulated as hazardous waste. The wastes listed in this section are subject to regulation under 273:

- (a) Batteries as described in 273.2;
- (b) Pesticides as described in 273.3;
- (c) Mercury-containing equipment as described in 273.4;
- (d) Lamps as described in 273.5; and
- (e) Aerosol cans as described in 273.6 of this chapter.

## **Revise 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 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.

## Add 262.13(f)(1)(iii) to read:

(iii) If a very small quantity generator's wastes are mixed with used oil, the mixture is subject to R.61-107.279. Any material produced from such a mixture by processing, blending, or other treatment is also regulated under R.61-107.279.

## Add 262.14(a)(5)(ix) through (xi) to read:

- (ix) [Reserved]
- (x) [Reserved]

(xi) For airbag waste, an airbag waste collection facility or a designated facility subject to the requirements of 261.4(j) of this chapter.

#### **Revise 262.21(a)(1) to read:**

(1) A registrant may not print, or have printed, the manifest for use of distribution unless it has received approval from the EPA Director of the Office of Resource Conservation and Recovery to do so under paragraphs (c) and (e) of this section.

## Revise 262.21(b) to read:

(b) A registrant must submit an initial application to the EPA Director of the Office of Resource Conservation and Recovery that contains the following information:

# **Revise 264.1(g)(11) to read:**

(11) Universal waste handlers and universal waste transporters (as defined in R.61-79.260.10) handling the wastes listed below. These handlers are subject to regulation under R.61-79.273, when handling the below listed universal wastes.

- (i) Batteries as described in 273.2;
- (ii) Pesticides as described in 273.3;
- (iii) Mercury-containing equipment as described in 273.4;
- (iv) Lamps as described in 273.5; and
- (v) Aerosol cans as described in 273.6 of this chapter.

## **Revise 264.119(b)(1)(ii) to read:**

(ii) Its use is restricted under R.61-79.264 subpart G; and

#### **Revise 264.151(a)(2) to read:**

(2) Certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in 264.143(a) and 264.145(a) or 265.143(a) and 265.145(a). This document must be worded as noted in 264.151 Appendix A(2) except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

#### **Revise 265.1(c)(14) to read:**

(14) Universal waste handlers and universal waste transporters (as defined in R.61-79.260.10) handling the wastes listed below. These handlers are subject to regulation under R.61-79.273, when handling the below listed universal wastes.

- (i) Batteries as described in 273.2;
- (ii) Pesticides as described in 273.3;
- (iii) Mercury-containing equipment as described in 273.4;
- (iv) Lamps as described in 273.5; and
- (v) Aerosol cans as described in 273.6 of this chapter.

#### Revise 265.195(a) to read:

(a) The owner or operator must inspect, where present, at least once each operating day, data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design.

Note: Section 265.15(c) requires the owner or operator to remedy any deterioration or malfunction he finds. Section 265.196 requires the owner or operator to notify the Department within 24 hours of confirming a release. Also, 40 CFR part 302 may require the owner or operator to notify the National Response Center of a release.

## **Revise 268.1(f) to read:**

(f) Universal waste handlers and universal waste transporters (as defined in 260.10) are exempt from 268.7 and 268.50 for the hazardous wastes listed below. These handlers are subject to regulation under part 273.

- (1) Batteries as described in 273.2;
- (2) Pesticides as described in 273.3;
- (3) Mercury-containing equipment as described in 273.4;
- (4) Lamps as described in 273.5; and
- (5) Aerosol cans as described in 273.6 of this chapter.

## Revise 270.1(c)(2)(viii) to read:

(viii) Universal waste handlers and universal waste transporters (as defined in R.61-79.260.10) managing the wastes listed below. These handlers are subject to regulation under R.61-79.273.

- (A) Batteries as described in 273.2;
- (B) Pesticides as described in 273.3;
- (C) Mercury-containing equipment as described in 273.4;
- (D) Lamps as described in 273.5; and
- (E) Aerosol cans as described in 273.6 of this chapter.

## Revise 270.19(e) to read:

(e) When an owner or operator of a hazardous waste incineration unit becomes subject to RCRA permit requirements after October 12, 2005, or when an owner or operator of an existing hazardous waste incineration unit demonstrates compliance with the air emission standards and limitations in part 63, Subpart EEE, (i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance) under 63.1207(j) and 63.1210(d) documenting compliance with all applicable requirements of Part 63, subpart EEE, the requirements do not apply, except those provisions the Department determines are necessary to ensure compliance with 264.345(a) and 264.345(c) if you elect to comply with 270.235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the Department may apply the provisions, on a case-by-case basis, for purposes of information collection in accordance with 270.10(k), 270.10(l), 270.32(b)(2), and 270.32(b)(3).

# Revise R.61-79.273. Table of Contents to read:

273.6. Applicability—Aerosol Cans.

#### **Revise 273.1(a) to read:**

- (a) This part establishes requirements for managing the following:
  - (1) Batteries as described in 273.2;

- (2) Pesticides as described in 273.3;
- (3) Mercury-containing equipment as described in 273.4;
- (4) Lamps as described in 273.5; and
- (5) Aerosol cans as described in 273.6 of this chapter.

#### Revise 273.3(b)(2) to read:

(2) Pesticides not meeting the conditions set forth in paragraph (a) of this section. These pesticides must be managed in compliance with the hazardous waste regulations in parts 260 through 272, except that aerosol cans as defined in 273.9 that contain pesticides may be managed as aerosol can universal waste under 273.13(e) or 273.33(e);

## Add 273.6 to read:

## 273.6 Applicability—Aerosol Cans.

(a) Aerosol cans covered under this part. The requirements of this part apply to persons managing aerosol cans, as described in 273.9, except those listed in paragraph (b) of this section.

(b) Aerosol cans not covered under this part. The requirements of this part do not apply to persons managing the following types of aerosol cans:

(1) Aerosol cans that are not yet waste under part 261 of this chapter. Paragraph (c) of this section describes when an aerosol can becomes a waste;

(2) Aerosol cans that are not hazardous waste. An aerosol can is a hazardous waste if the aerosol can exhibits one or more of the characteristics identified in part 261 subpart C of this chapter or the aerosol can contains a substance that is listed in part 261 subpart D of this chapter; and

(3) Aerosol cans that meet the standard for empty containers under 261.7 of this chapter.

(c) Generation of waste aerosol cans.

(1) A used aerosol can becomes a waste on the date it is discarded.

(2) An unused aerosol can becomes a waste on the date the handler decides to discard it.

#### Add the following definition in alphabetical order to 273.9 to read:

Aerosol can means a non-refillable receptacle containing a gas compressed, liquefied, or dissolved under pressure, the sole purpose of which is to expel a liquid, paste, or powder and fitted with a self-closing release device allowing the contents to be ejected by the gas.

# Revise 273.9 "Large quantity handler of universal waste" to read:

Large Quantity Handler of Universal Waste means a universal waste handler (as defined in this section) who accumulates 5,000 kilograms or more total of universal waste (batteries, pesticides, mercury-containing equipment, lamps, or aerosol cans, calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which the 5,000-kilogram limit is met or exceeded.

## **Revise 273.9 "Pesticide" to read:**

Pesticide means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

(1) is a new animal drug under FFDCA section 201(w); or

(2) is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug; or

(3) is an animal feed under FFDCA section 201(x) that bears or contains any substances described by paragraph (1) or (2) of this definition.

## Revise 273.9 "Small quantity handler of universal waste" to read:

Small Quantity Handler of Universal Waste means a universal waste handler (as defined in this section) who does not accumulate 5,000 kilograms or more of universal waste (batteries, pesticides, mercury-containing equipment, lamps, or aerosol cans, calculated collectively) at any time.

# Revise 273.9 "Universal waste" to read:

Universal Waste means any of the following hazardous wastes that are subject to the universal waste requirements of part 273:

- (1) Batteries as described in 273.2;
- (2) Pesticides as described in 273.3;
- (3) Mercury-containing equipment as described in 273.4;
- (4) Lamps as described in 273.5; and
- (5) Aerosol cans as described in 273.6 of this chapter.

# Revise 273.9 "Universal waste handler" to read:

Universal Waste Handler:

(1) Means:

(i) A generator (as defined in this section) of universal waste; or

(ii) The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

(2) Does not mean:

(i) A person who treats (except under the provisions of 273.13(a) or (c), or 273.33(a) or (c)), disposes of, or recycles (except under the provisions of 273.13(e) or 273.33(e)) universal waste; or

(ii) A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

#### Revise 273.13(c)(2)(iii) and (iv) to read:

(iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules from that containment device to a container that is subject to all applicable requirements of parts 260 through 272;

(iv) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that is subject to all applicable requirements of parts 260 through 272;

#### Add 273.13(e) to read:

(e) Aerosol cans. A small quantity handler of universal waste must manage universal waste aerosol cans in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) Universal waste aerosol cans must be accumulated in a container that is structurally sound, compatible with the contents of the aerosol cans, lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and is protected from sources of heat.

(2) Universal waste aerosol cans that show evidence of leakage must be packaged in a separate closed container or overpacked with absorbents, or immediately punctured and drained in accordance with the requirements of paragraph (e)(4) of this section.

(3) A small quantity handler of universal waste may conduct the following activities as long as each individual aerosol can is not breached and remains intact:

- (i) Sorting aerosol cans by type;
- (ii) Mixing intact cans in one container;
- (iii) Removing actuators to reduce the risk of accidental release; and

(4) A small quantity handler of universal waste who punctures and drains their aerosol cans must recycle the empty punctured aerosol cans and meet the following requirements while puncturing and draining universal waste aerosol cans:

(i) Conduct puncturing and draining activities using a device specifically designed to safely puncture aerosol cans and effectively contain the residual contents and any emissions thereof.

(ii) Establish and follow a written procedure detailing how to safely puncture and drain the universal waste aerosol can (including proper assembly, operation and maintenance of the unit, segregation of incompatible wastes, and proper waste management practices to prevent fires or releases); maintain a copy of the manufacturer's specification and instruction on site; and ensure employees operating the device are trained in the proper procedures.

(iii) Ensure that puncturing of the can is done in a manner designed to prevent fires and to prevent the release of any component of universal waste to the environment. This manner includes, but is not limited to, locating the equipment on a solid, flat surface in a well-ventilated area.

(iv) Immediately transfer the contents from the waste aerosol can or puncturing device, if applicable, to a container or tank that meets the applicable requirements of 262.14, 262.15, 262.16, or 262.17.

(v) Conduct a hazardous waste determination on the contents of the emptied aerosol can per 262.11. Any hazardous waste generated as a result of puncturing and draining the aerosol can is subject to all applicable requirements of parts 260 through 272. The handler is considered the generator of the hazardous waste and is subject to part 262.

(vi) If the contents are determined to be nonhazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state, or local solid waste regulations.

(vii) A written procedure must be in place in the event of a spill or leak and a spill clean-up kit must be provided. All spills or leaks of the contents of the aerosol cans must be cleaned up promptly.

#### Add 273.14(f) to read:

(f) Universal waste aerosol cans (i.e., each aerosol can), or a container in which the aerosol cans are contained, must be labeled or marked clearly with any of the following phrases: "Universal Waste—Aerosol Can(s)," "Waste Aerosol Can(s)," or "Used Aerosol Can(s)."

#### **Revise 273.32(b)(4) to read:**

(4) A list of all the types of universal waste managed by the handler (e.g., batteries, pesticides, mercury-containing equipment, lamps, and aerosol cans); and

#### Revise 273.33(c)(2)(iii) and (iv) to read:

(iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks of broken ampules from that containment device to a container that is subject to all applicable requirements of parts 260 through 272;

(iv) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that is subject to all applicable requirements of parts 260 through 272;

#### Add 273.33(e) to read:

(e) Aerosol cans. A large quantity handler of universal waste must manage universal waste aerosol cans in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) Universal waste aerosol cans must be accumulated in a container that is structurally sound, compatible with the contents of the aerosol cans, lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and is protected from sources of heat.

(2) Universal waste aerosol cans that show evidence of leakage must be packaged in a separate closed container or overpacked with absorbents, or immediately punctured and drained in accordance with the requirements of paragraph (e)(4) of this section.

(3) A large quantity handler of universal waste may conduct the following activities as long as each individual aerosol can is not breached and remains intact:

- (i) Sorting aerosol cans by type;
- (ii) Mixing intact cans in one container;
- (iii) Removing actuators to reduce the risk of accidental release; and

(4) A large quantity handler of universal waste who punctures and drains their aerosol cans must recycle the empty punctured aerosol cans and meet the following requirements while puncturing and draining universal waste aerosol cans:

(i) Conduct puncturing and draining activities using a device specifically designed to safely puncture aerosol cans and effectively contain the residual contents and any emissions thereof.

(ii) Establish and follow a written procedure detailing how to safely puncture and drain the universal waste aerosol can (including proper assembly, operation and maintenance of the unit, segregation of incompatible wastes, and proper waste management practices to prevent fires or releases); maintain a copy of the manufacturer's specification and instruction on site; and ensure employees operating the device are trained in the proper procedures.

(iii) Ensure that puncturing of the can is done in a manner designed to prevent fires and to prevent the release of any component of universal waste to the environment. This includes, but is not limited to, locating the equipment on a solid, flat surface in a well-ventilated area.

(iv) Immediately transfer the contents from the waste aerosol can or puncturing device, if applicable, to a container or tank that meets the applicable requirements of 262.14, 262.15, 262.16, or 262.17.

(v) Conduct a hazardous waste determination on the contents of the emptied aerosol can per 262.11. Any hazardous waste generated as a result of puncturing and draining the aerosol can is subject to all applicable requirements of parts 260 through 272. The handler is considered the generator of the hazardous waste and is subject to part 262.

(vi) If the contents are determined to be nonhazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state, or local solid waste regulations.

(vii) A written procedure must be in place in the event of a spill or leak and a spill clean-up kit must be provided. All spills or leaks of the contents of the aerosol cans must be cleaned up promptly.

#### Add 273.34(f) to read:

(f) Universal waste aerosol cans (i.e., each aerosol can), or a container in which the aerosol cans are contained, must be labeled or marked clearly with any of the following phrases: "Universal Waste—Aerosol Can(s)," "Waste Aerosol Can(s)," or "Used Aerosol Can(s)."

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

The 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 following EPA regulations published in the Federal Register: "Universal Waste Regulations: Addition of Aerosol Cans," published on December 9, 2019, at 84 FR 67202-67220, and "Safe Management of Recalled Airbags," published on November 30, 2018, at 83 FR 61552-61563.

# Legal Authority: 1976 Code Sections 44-56-10 et seq.

Plan for Implementation: The Department's 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 amendments 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, Hazardous Waste Management Regulations, to adopt EPA interim final rule "Safe Management of Recalled Airbags," published on November 30, 2018, at 83 FR 61552-61563. This rule provides a conditional exemption from the RCRA hazardous waste requirements for entities, including but not limited to, automobile dealerships, automotive salvage and scrap yards, independent repair facilities, and collision centers that collect airbag modules and inflators ("airbag waste") from automobiles as long as certain conditions are met. This rule enables expedited removal of defective airbag inflators.

The Department further amends R.61-79 to adopt the EPA final rule "Universal Waste Regulations: Addition of Aerosol Cans," published on December 9, 2019, at 84 FR 67202-67220. This rule adds hazardous waste aerosol cans to the universal waste program under the federal RCRA regulations. Adopting the rule reduces regulatory burdens on retail stores and other establishments that generate, manage, and dispose of aerosol cans by providing a clear, protective system for handling waste aerosol cans. This will promote the collection and recycling of aerosol cans and encourage the development of municipal and commercial programs to reduce the amount of aerosol can waste going to municipal solid waste landfills or combustors.

# DETERMINATION OF COSTS AND BENEFITS:

There is no anticipated increased cost to the state or its political subdivisions resulting from this revision. The EPA estimates that the "Safe Management of Recalled Airbags" interim final rule will result in industry savings between \$1.7 million and \$13 million (Federal Register, Vol 83, No. 231, page 61561). Similarly, the EPA estimates annual industry cost savings for the "Universal Waste Regulations: Addition of Aerosol Cans" final rule to be between \$5.3 million and \$47.8 million (Federal Register Vol. 84, No. 236, page 67203).

# 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 will 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:

If the regulation is not implemented, there will be detrimental effects on the environment and public health because South Carolina would not be implementing or realizing the benefits of the EPA's "Universal Waste Regulations: Addition of Aerosol Cans" final rule and the "Safe Management of Recalled Airbags" interim final rule described above.

# **Statement of Rationale:**

Below is the Statement of Rationale pursuant to S.C. Code Section 1-23-110(h):

The Department amends R.61-79 to adopt two EPA rules published in the Federal Register. The EPA has given authorized states, including South Carolina, the discretion to adopt these rules as they make existing standards less stringent and provide more flexibility to the regulated community. The "Safe Management of Recalled Airbags" interim final rule, published on November 30, 2018, at 83 FR 61552-61563 creates a conditional exemption from RCRA requirements for certain entities that collect airbag waste from automobiles. The "Universal Waste Regulations: Addition of Aerosol Cans" final rule published on December 9, 2019, at 84 FR 67202-67220 reduces regulatory burdens on businesses that generate, manage, and dispose of aerosol cans.

# Document No. 5036 DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL CHAPTER 61

Statutory Authority: 1976 Code Sections 13-7-40 et seq.

61-63. Radioactive Materials (Title A).

## Synopsis:

Pursuant to S.C. Code Sections 13-7-40 et seq., the Department of Health and Environmental Control ("Department") is responsible for regulatory and licensing standards, disposal, use, reports, storage, and inspections relating to various uses of radioactive materials. The Department amends R.61-63 to incorporate federal law as required to maintain South Carolina's status with the United States Nuclear Regulatory Commission ("NRC") as an Agreement State.

The Administrative Procedures Act, S.C. Code Section 1-23-120(H)(1), exempted these amendments from General Assembly review, as the Department promulgates these amendments for compliance with federal law.

The Department had a Notice of Drafting published in the October 23, 2020, South Carolina State Register.

# Instructions:

Amend R.61-63 pursuant to each instruction provided with the text of the amendments below.

Text:

61-63. Radioactive Materials (Title A).

(Statutory Authority: Section 13-7-40 et seq., as amended, of the 1976 Code, namely the Atomic Energy and Radiation Control Act)

#### Amend the following Table of Contents sections to read:

SUBPART B General Administrative Requirements

RHA

- 4.13 Authority and Responsibilities for the Radiation Protection Program
- 4.14 Radiation Protection Program Changes
- 4.15 Supervision
- 4.17 Written Directives
- 4.18 Procedures for Administrations Requiring a Written Directive
- 4.19 Suppliers for Sealed Sources or Devices for Medical Use

- 4.20 Training for Radiation Safety Officers and Associate Radiation Safety Officer
- 4.21 Training for an Authorized Medical Physicist
- 4.22 Training for an Authorized Nuclear Pharmacist
- 4.23 Training for Experienced Radiation Safety Officer, Teletherapy or Medical Physicist, Authorized User, and Nuclear Pharmacist
- 4.24 Recentness of Training

# SUBPART D Unsealed Radioactive Material-Written Directive Not Required

- RHA
- 4.35 Use of Unsealed Radioactive Material for Uptake, Dilution, and Excretion Studies for Which a Written Directive is not Required
- 4.36 Training for Uptake, Dilution, and Excretion Studies
- 4.37 Use of Unsealed Radioactive Material for Imaging and Localization Studies for Which a Written Directive is not Required
- 4.38 Permissible Molybdenum-99, Strontium-82, and Strontium-85 Concentrations
- 4.39 Training for Imaging and Localization Studies

## SUBPART E Unsealed Radioactive Material-Written Directive Required

- RHA
- 4.40 Use of Unsealed Radioactive Material for Which a Written Directive is Required
- 4.41 Safety Instruction
- 4.42 Safety Precautions
- 4.43 Training for Use of Unsealed Radioactive Material for Which a Written Directive is Required
- 4.44 Training for the Oral Administration of Sodium Iodide I-131 Requiring a Written Directive in Quantities Less Than or Equal to 1.22 Gigabecquerels (33 Millicuries)
- 4.45 Training for the Oral Administration of Sodium Iodide I-131 Requiring a Written Directive in Quantities Greater Than 1.22 Gigabecquerels (33 Millicuries)

# SUBPART F Manual Brachytherapy

- RHA
- 4.46 Use of Sources for Manual Brachytherapy
- 4.47 Surveys After Source Implant and Removal
- 4.48 Brachytherapy Sources Accountability
- 4.49 Safety Instruction
- 4.50 Safety Precautions
- 4.51 Calibration Measurements of Brachytherapy Sources
- 4.52 Strontium-90 Sources for Ophthalmic Treatments
- 4.53 Therapy-Related Computer Systems
- 4.54 Training for Use of Manual Brachytherapy Sources
- 4.55 Training for Ophthalmic Use of Strontium-90

# SUBPART G Sealed Sources for Diagnosis

- RHA 4.56
  - Use of Sealed Sources and Medical Devices for Diagnosis
- 4.57 Training for Use of Sealed Sources for Diagnosis

# SUBPART H Photon Emitting Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic Radiosurgery Units

- RHA
- 4.58 Use of a Sealed Source in a Remote Afterloader Unit, Teletherapy Unit, or Gamma Stereotactic Radiosurgery Unit
- 4.59 Surveys of Patients and Human Research Subjects Treated With a Remote Afterloader Unit
- 4.60 Installation, Maintenance, Adjustment, and Repair

- 4.61 Safety Procedures and Instructions for Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic Radiosurgery Units
- 4.62 Safety Precautions for Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic Radiosurgery Units
- 4.63 Dosimetry Equipment
- 4.64 Full Calibration Measurements on Teletherapy Units
- 4.65 Full Calibration Measurements on Remote Afterloader Units
- 4.66 Full Calibration Measurements on Gamma Stereotactic Radiosurgery Units
- 4.67 Periodic Spot-Checks for Teletherapy Units
- 4.68 Periodic Spot-Checks for Remote Afterloader Units
- 4.69 Periodic Spot-Checks for Gamma Stereotactic Radiosurgery Units
- 4.70 Additional Technical Requirements for Mobile Remote Afterloader Units
- 4.71 Radiation Surveys
- 4.72 Full-inspection Servicing for Teletherapy and Gamma Stereotactic Radiosurgery Units
- 4.73 Therapy-Related Computer Systems
- 4.74 Training for Use of Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic Radiosurgery Units

# SUBPART L Records

# RHA

- 4.89 Records of Authority and Responsibilities for Radiation Protection Programs
- 4.90 Records of Radiation Protection Program Changes
- 4.91 Records of Written Directives
- 4.92 Records For Procedures For Administrations Requiring a Written Directive
- 4.93 Records of Calibrations of Instruments Used to Measure the Activity of Unsealed Radioactive Material
- 4.94 Records of Radiation Survey Instrument Calibrations
- 4.95 Records of Dosages of Unsealed Radioactive Material For Medical Use
- 4.96 Records of Leaks Tests and Inventory of sealed Sources and Brachytherapy Sources
- 4.97 Records of Surveys For Ambient Radiation Exposure Rate
- 4.98 Records of the Release of Individuals Containing Unsealed Radioactive Material or Implants Containing Radioactive Material
- 4.99 Records of Mobile Medical Services
- 4.100 Records of Decay-in-Storage
- 4.101 Records of Molybdenum-99 Concentrations
- 4.102 Records of Safety Instruction
- 4.103 Records of Surveys After Source Implant and Removal
- 4.104 Records of Brachytherapy Source Accountability
- 4.105 Records of Calibration Measurements of Brachytherapy Sources
- 4.106 Records of Decay of Strontium-90 Sources for Ophthalmic Treatments
- 4.107 Records of Installation, Maintenance, Adjustment, and Repair of Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic and Radiosurgery Units
- 4.108 Records of Safety Procedures
- 4.109 Records of Dosimetry Equipment Used with Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic Radiosurgery Units
- 4.110 Records of Teletherapy, Remote Afterloader, and Gamma Stereotactic Radiosurgery Full Calibrations
- 4.111 Records of Periodic Spot-Checks for Teletherapy Units
- 4.112 Records of Periodic Spot-Checks for Remote Afterloader Units
- 4.113 Records of Periodic Spot-Checks for Gamma Stereotactic Radiosurgery Units
- 4.114 Records of Additional Technical Requirements for Mobile Remote Afterloader Units
- 4.115 Records of Surveys of Therapeutic Treatment Units
- 4.116 Records of Full-inspection Servicing for Teletherapy and Gamma Stereotactic Radiosurgery Units SUBPART M Reports

## RHA

- 4.117 Report and Notification of a Medical Event
- 4.118 Report and Notification of a Dose to an Embryo/Fetus or a Nursing Child
- 4.119 Report of a Leaking Source
- 4.120 Report and Notification for an Eluate Exceeding Permissible Molybdenum-99, Strontium-82, and Strontium-85 Concentrations

## Amend 2.7.5.1.4 to read:

2.7.5.1.4 The applicant commits to the following labeling requirements:

## Amend 2.7.5.2.5.1 to read:

2.7.5.2.5.1 A copy of each individual's certification by a specialty board whose certification process has been recognized by the Nuclear Regulatory Commission or an Agreement State as specified in RHA 4.22.1; or

## Amend 2.7.5.4 to read:

2.7.5.4 A licensee shall satisfy the labeling requirements in paragraph 2.7.5.1.4 of this section.

2.7.5.5 Nothing in this section relieves the licensee from complying with applicable FDA, other Federal, and State requirements governing radioactive drugs.

## Amend 2.10.8 to read:

2.10.8 Each licensee preparing technetium-99m radiopharmaceuticals from molybdenum-99/technetium-99m generators or rubidium-82 from strontium-82/rubidium-82 generators shall test the generator eluates for molybdenum-99 breakthrough or strontium-82 and strontium-85 contamination, respectively, in accordance with RHA 4.38. The licensee shall record the results of each test and retain each record for 3 years after the record is made. The licensee shall report the results of any test that exceeds the permissible concentration listed in 4.38.1 of this chapter at the time of generator elution, in accordance with RHA 4.120 of this chapter.

#### Add 2.10.10:

2.10.10 Conditions of licenses.

2.10.10.1 Each license shall contain and be subject to the following conditions:

2.10.10.1.1 [Reserved]

2.10.10.1.2 No right to the special nuclear material shall be conferred by the license except as defined by the license;

2.10.10.1.3 Neither the license nor any right under the license shall be assigned or otherwise transferred in violation of the provisions of the Act;

2.10.10.1.4 [Reserved]

2.10.10.1.5 [Reserved]

2.10.10.1.6 [Reserved]

2.10.10.1.7 [Reserved]

2.10.10.1.8 The license shall be subject to and the licensee shall observe, all applicable rules, regulations, and orders of the Department.

2.10.10.1.9 Notification of Bankruptcy.

2.10.10.1.9.1 Each licensee shall notify the Department, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any Chapter of Title 11 (Bankruptcy) of the United States Code by or against:

2.10.10.1.9.1.1 The licensee;

2.10.10.1.9.1.2 An entity (as that term is defined in 11 U.S.C. 101(14)) controlling the licensee or listing the license or licensee as property of the estate; or

2.10.10.1.9.1.3 An affiliate (as that term is defined in 11 U.S.C. 101(a)) of the licensee.

2.10.10.1.9.2 The notification required in 2.10.10.1.9.1 must indicate:

2.10.10.1.9.2.1 The bankruptcy court in which the petition for bankruptcy was filed; and

2.10.10.1.9.2.2 The date of the filing of the petition.

## Amend 4.2 to read:

4.2.1 "Address of use" means the building or buildings that are identified on the license and where radioactive material may be received, prepared, used, or stored.

4.2.2 "Agreement State" means any State with which the Nuclear Regulatory Commission (hereafter referred to as NRC) or the Atomic Energy Commission has entered into an effective agreement under subsection 274b of the Atomic Energy Act of 1954, as amended.

4.2.3 "Area of use" means a portion of an address of use that has been set aside for the purpose of receiving, preparing, using, or storing radioactive material.

4.2.4 "Associate Radiation Safety Officer" means an individual who-

4.2.4.1 Meets the requirements in RHA 4.20 and RHA 4.24; and

4.2.4.2 Is currently identified as an Associate Radiation Safety Officer for the types of use of radioactive material for which the individual has been assigned duties and tasks by the Radiation Safety Officer on—

4.2.4.2.1 A specific medical use license issued by the Nuclear Regulatory Commission or an Agreement State; or

4.2.4.2.2 A medical use permit issued by a Nuclear Regulatory Commission master material licensee.

4.2.5 "Authorized medical physicist" means an individual who-

4.2.5.1 Meets the requirements in RHA 4.21.1 and RHA 4.24; or

4.2.5.2 Is identified as an authorized medical physicist or teletherapy physicist on-

4.2.5.2.1 A specific medical use license issued by the NRC or an Agreement state;

4.2.5.2.2 A medical use permit issued by an NRC master material licensee;

4.2.5.2.3 A permit issued by an NRC or Agreement State broad scope medical use licensee; or

4.2.5.2.4 A permit issued by an NRC master material license broad scope medical use permittee.

4.2.6 "Authorized nuclear pharmacist" means a pharmacist who-

4.2.6.1 Meets the requirements in RHA 4.22.1 and RHA 4.24; or

4.2.6.2 Is identified as an authorized nuclear pharmacist on—

4.2.6.2.1 A specific license issued by the NRC or Agreement State that authorizes medical use or the practice of nuclear pharmacy; or

4.2.6.2.2 A permit issued by an NRC master material licensee that authorizes medical use or the practice of nuclear pharmacy; or

4.2.6.2.3 A permit issued by an NRC or Agreement State broad scope medical use licensee that authorizes medical use or the practice of nuclear pharmacy; or

4.2.6.2.4 A permit issued by an NRC master material license broad scope medical use permittee that authorizes medical use or the practice of nuclear pharmacy; or

4.2.6.3 Is identified as an authorized nuclear pharmacist by a commercial nuclear pharmacy that has been authorized to identify authorized nuclear pharmacists; or

4.2.6.4 Is designated as an authorized nuclear pharmacist in accordance with RHA 2.7.5.2.4.

4.2.7 "Authorized user" means a physician, dentist, or podiatrist who-

4.2.7.1 Meets the requirements in RHA 4.24 and RHA 4.36.1, RHA 4.39.1, RHA 4.43.1, RHA 4.44.1.1, RHA 4.45.1.1, RHA 4.54.1.1, RHA 4.57.1.1, or RHA 4.74.1.1; or

4.2.7.2 Is identified as an authorized user on-

4.2.7.2.1 An NRC or Agreement State license that authorizes the medical use of radioactive material;

4.2.7.2.2 A permit issued by an NRC master material licensee that is authorized to permit the medical use of radioactive material;

4.2.7.2.3 A permit issued by an NRC or Agreement State specific licensee of broad scope that is authorized to permit the medical use of radioactive material; or

4.2.7.2.4 A permit issued by an NRC master material license broad scope permittee that is authorized to permit the medical use of radioactive material.

4.2.8 "Brachytherapy" means a method of radiation therapy in which sources are used to deliver a radiation dose at a distance of up to a few centimeters by surface, intracavitary, intraluminal, or interstitial application.

4.2.9 "Brachytherapy source" means a radioactive source or a manufacturer-assembled source train or a combination of these sources that is designed to deliver a therapeutic dose within a distance of a few centimeters.

4.2.10 "Client's address" means the area of use or a temporary job site for the purpose of providing mobile medical service in accordance with RHA 4.33.

4.2.11 "Consortium" means an association of medical use licensees and a PET radionuclide production facility in the same geographical area that jointly own or share in the operation and maintenance cost of the PET radionuclide production facility that produces PET radionuclides for use in producing radioactive drugs within the consortium for noncommercial distributions among its associated members for medical use. The PET radionuclide production facility within the consortium must be located at an educational institution or a Federal facility or a medical facility.

4.2.12 "Dedicated check source" means a radioactive source that is used to assure the constant operation of a radiation detection or measurement device over several months or years.

4.2.13 "Dentist" means an individual licensed by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to practice dentistry.

4.2.14 "High dose-rate remote afterloader," as used in this part, means a brachytherapy device that remotely delivers a dose rate in excess of 12 gray (1200 rads) per hour at the point or surface where the dose is prescribed.

4.2.15 "Low dose-rate remote afterloader," as used in this part, means a brachytherapy device that remotely delivers a dose rate of less than or equal to 2 gray (200 rads) per hour at the point or surface where the dose is prescribed.

4.2.16 "Management" means the chief executive officer or other individual having the authority to manage, direct, or administer the licensee's activities, or those persons' delegate or delegates.

4.2.17 "Manual brachytherapy," as used in this part, means a type of brachytherapy in which the brachytherapy sources (e.g., seeds, ribbons) are manually placed topically on or inserted either into the body cavities that are in close proximity to a treatment site or directly into the tissue volume.

4.2.18 "Medical event" means an event that meets the criteria in RHA 4.117.1.

4.2.19 "Medical institution" means an organization in which more than one medical discipline is practiced.

4.2.20 "Medical use" means the intentional internal or external administration of radioactive material or the radiation from radioactive material to patients or human research subjects under the supervision of an authorized user.

4.2.21 "Medium dose-rate remote afterloader," as used in this part, means a brachytherapy device that remotely delivers a dose rate of greater than 2 gray (200 rads), but less than 12 gray (1200 rads) per hour at the point or surface where the dose is prescribed.

4.2.22 "Mobile medical service" means the transportation of radioactive material to and its medical use at the client's address.

4.2.23 "Ophthalmic physicist" means an individual who-

4.2.23.1 Meets the requirements in RHA 4.52.1.2 and RHA 4.24; and

4.2.23.2 Is identified as an ophthalmic physicist on a—

4.2.23.2.1 Specific medical use license issued by the Nuclear Regulatory Commission or an Agreement State;

4.2.23.2.2 Permit issued by a Nuclear Regulatory Commission or Agreement State broad scope medical use licensee;

4.2.23.2.3 Medical use permit issued by a Nuclear Regulatory Commission master material licensee; or

4.2.23.2.4 Permit issued by a Nuclear Regulatory Commission master material licensee broad scope medical use permittee.

4.2.24 "Output" means the exposure rate, dose rate, or a quantity related in a known manner to these rates from a brachytherapy source or a teletherapy, remote afterloader, or gamma stereotactic radiosurgery unit for specified set of exposure conditions.

4.2.25 "Patient intervention" means actions by the patient or human research subject, whether intentional or unintentional, such as dislodging or removing treatment devices or prematurely terminating the administration.

4.2.26 "Pharmacist" means an individual licensed by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to practice pharmacy.

4.2.27 "Physician" means a medical doctor or doctor of osteopathy licensed by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to prescribe drugs in the practice of medicine.

4.2.28 "Podiatrist" means an individual licensed by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to practice podiatry.

4.2.29 "Positron Emission Tomography (PET) radionuclide production facility" means a facility operating a cyclotron or accelerator for the purpose of producing PET radionuclides.

4.2.30 "Preceptor" means an individual who provides, directs or verifies the training and experience required for an individual to become an authorized user, an authorized medical physicist, an authorized nuclear pharmacist, or a Radiation Safety Officer.

4.2.31 "Prescribed dosage" means the specified activity or range of activity of unsealed radioactive material as documented—

4.2.31.1 In a written directive; or

4.2.31.2 In accordance with the directions of the authorized user for procedures performed pursuant to RHA 4.35 and 4.37.

4.2.32 "Prescribed dose" means—

4.2.32.1 For gamma stereotactic radiosurgery, the total dose as documented in the written directive;

4.2.32.2 For teletherapy, the total dose and dose per fraction as documented in the written directive;

4.2.32.3 For manual brachytherapy, either the total source strength and exposure time or the total dose, as documented in the written directive; or

4.2.32.4 For remote brachytherapy afterloaders, the total dose and dose per fraction as documented in the written directive.

4.2.33 "Pulsed dose-rate remote afterloader," as used in this part, means a special type of remote afterloading brachytherapy device that uses a single source capable of delivering dose rates in the "high dose-rate" range, but—

4.2.33.1 Is approximately one-tenth of the activity of typical high dose-rate remote afterloader sources; and

4.2.33.2 Is used to simulate the radiobiology of a low dose-rate treatment by inserting the source for a given fraction of each hour.

4.2.34 "Radiation Safety Officer" means an individual who-

4.2.34.1 Meets the requirements in RHA 4.20.1 or 4.20.3 and RHA 4.24; or

4.2.34.2 Is identified as a Radiation Safety Officer on-

4.2.34.2.1 A specific medical use license issued by the NRC or Agreement State; or

4.2.34.2.2 A medical use permit issued by an NRC master material licensee.

4.2.35 "Sealed source" means any radioactive material that is encased in a capsule designed to prevent leakage or escape of the radioactive material.

4.2.36 "Sealed Source and Device Registry" means the national registry that contains all the registration certificates, generated by both NRC and the Agreement States, that summarize the radiation safety information for the sealed sources and devices and describe the licensing and use conditions approved for the product.

4.2.37 "Stereotactic radiosurgery" means the use of external radiation in conjunction with a stereotactic guidance device to very precisely deliver a therapeutic dose to a tissue volume.

4.2.38 "Structured educational program" means an educational program designed to impart particular knowledge and practical education through interrelated studies and supervised training.

4.2.39 "Teletherapy," as used in this part, means a method of radiation therapy in which collimated gamma rays are delivered at a distance from the patient or human research subject.

4.2.40 "Temporary job" means a location where mobile medical services are conducted other than those location(s) of use authorized on the license.

4.2.41 "Therapeutic dosage" means a dosage of unsealed radioactive material that is intended to deliver a radiation dose to a patient or human research subject for palliative or curative treatment.

4.2.42 "Therapeutic dose" means a radiation dose delivered from a source containing radioactive material to a patient or human research subject for palliative or curative treatment.

4.2.43 "Treatment site" means the anatomical description of the tissue intended to receive a radiation dose, as described in a written directive.

4.2.44 "Type of use" means use of radioactive material under RHA 4.35, 4.37, 4.40, 4.46, 4.56 4.58 or 4.88.

4.2.45 "Unit dosage" means a dosage prepared for medical use for administration as a single dosage to a patient or human research subject without any further manipulation of the dosage after it is initially prepared.

4.2.46 "Written directive" means an authorized user's written order for the administration of radioactive material or radiation from radioactive material to a specific patient or human research subject, as specified in RHA 4.17.

#### Amend 4.7.2.1 to read:

4.7.2.1 Filing an original of DHEC Form 0813, "Application for Radioactive Material License," that includes the facility diagram, equipment, and training and experience qualifications of the Radiation Safety Officer, Associate Radiation Safety Officer(s), authorized user(s), authorized medical physicist(s), ophthalmic physicist(s), and authorized nuclear pharmacist(s); and

## Amend 4.7.3.1.2 to read:

4.7.3.1.2 A letter containing all information required by DHEC Form 0813; and

## Amend 4.7.4 to read:

4.7.4 In addition to the requirements in RHA 4.7.2 and 4.7.3 of this section an application for a license or amendment for medical use of radioactive material as described in RHA 4.88 must also include:

4.7.4.1 Any additional aspects of the medical use of the material that are applicable to radiation safety that are not addressed in, or differ from, subparts A through C, L, and M of this part;

4.7.4.2 Identification of and commitment to follow the applicable radiation safety program requirements in subparts D through H of this part that are appropriate for the specific RHA 4.88 medical use;

4.7.4.3 Any additional specific information on --

4.7.4.3.1 Radiation safety precautions and instructions;

4.7.4.3.2 Methodology for measurement of dosages or doses to be administered to patients or human research subjects; and

4.7.4.3.3 Calibration, maintenance, and repair of instruments and equipment necessary for radiation safety; and

4.7.4.4 Any other information requested by the Department in its review of the application.

#### Amend 4.8 to read:

A licensee shall apply for and must receive a license amendment-

4.8.1 Before it receives, prepares, or uses radioactive material for a type of use that is permitted under this part, but that is not authorized on the licensee's current license issued under this part;

4.8.2 Before it permits anyone to work as an authorized user, authorized medical physicist, ophthalmic physicist, or authorized nuclear pharmacist under the license, except—

4.8.2.1 For an authorized user, an individual who meets the requirements in RHA 4.24, 4.36.1, 4.39.1, 4.43.1, 4.44.1.1, 4.45.1.1, 4.54.1.1, 4.57.1.1, and 4.74.1.1;

4.8.2.2 For an authorized nuclear pharmacist, an individual who meets the requirements in RHA 4.22.1 and RHA 4.24;

4.8.2.3 For an authorized medical physicist, an individual who meets the requirements in RHA 4.21.1 and RHA 4.24;

4.8.2.4 An individual who is identified as an authorized user, an authorized nuclear pharmacist, authorized medical physicist, or an ophthalmic physicist—

4.8.2.4.1 On an NRC or Agreement State license or other equivalent permit or license recognized by the Department that authorizes the use of radioactive material in medical use or in the practice of nuclear pharmacy;

4.8.2.4.2 On a license issued by an NRC or Agreement State specific license of broad scope that is authorized to permit the use of radioactive material in medical use or in the practice of nuclear pharmacy;

4.8.2.4.3 On a license issued by an NRC master material licensee that is authorized to permit the use of radioactive material in medical use or in the practice of nuclear pharmacy; or

4.8.2.4.4 By a commercial nuclear pharmacy that has been authorized to identify authorized nuclear pharmacists.

4.8.3 Before it changes Radiation Safety Officers, except as provided in RHA 4.13.3;

4.8.4 Before it permits anyone to work as an Associate Radiation Safety Officer, or before the Radiation Safety Officer assigns duties and tasks to an Associate Radiation Safety Officer that differ from those for which this individual is authorized on the license;

4.8.5 Before it receives radioactive material in excess of the amount or in a different form, or receives a different radionuclide than is authorized on the license;

4.8.6 Before it adds to or changes the areas of use identified in the application or on the license, except for areas of use where radioactive material is used only in accordance with either RHA 4.35 or 4.37;

4.8.7 Before it changes the address(es) of use identified in the application or on the license;

4.8.8 Before it revises procedures required by RHA 4.61, 4.67, 4.68 and 4.69, as applicable, where such revision reduces radiation safety; and

4.8.9 Before it receives a sealed source from a different manufacturer or of a different model number than authorized by its license unless the sealed source is used for manual brachytherapy, is listed in the Sealed Source and Device Registry, and is in a quantity and for an isotope authorized by the license.

#### Amend 4.9 to read:

4.9.1 A licensee shall provide the Department, no later than 30 days after the date that the licensee permits an individual to work under the provisions of RHA 4.8.2 as an authorized user, authorized medical physicist, ophthalmic physicist, or authorized nuclear pharmacist—

4.9.1.1 A copy of the board certification and, as appropriate, verification of completion of:

4.9.1.1.1 Training for the authorized medical physicist under RHA 2.21.4;

4.9.1.1.2 Any additional case experience required in RHA 4.43.2.2.7 for an authorized user under RHA 4.40; or

4.9.1.1.3 Device specific training in RHA 4.74.1.5 for the authorized user under RHA 4.58; or

4.9.2 A copy of the Nuclear Regulatory Commission or Agreement State license, the permit issued by a Nuclear Regulatory Commission master material licensee, the permit issued by a Nuclear Regulatory Commission or Agreement State licensee of broad scope, the permit issued by a Nuclear Regulatory Commission master material license broad scope permittee, or documentation that only accelerator-produced radioactive materials, discrete sources of radium-226, or both, were used for medical use or in the practice of nuclear pharmacy at a Government agency or Federally recognized Indian Tribe before November 30, 2007, or at all other locations of use before August 8, 2009, or an earlier date as noticed by the Nuclear Regulatory Commission for each individual whom the licensee permits to work under the provisions of this section.

4.9.2.1 A licensee shall notify the Department no later than 30 days after:

4.9.2.1.1 An authorized user, an authorized nuclear pharmacist, a Radiation Safety Officer, an Associate Radiation Safety Officer, an authorized medical physicist, or ophthalmic physicist permanently discontinues performance of duties under the license or has a name change;

4.9.2.1.2 The licensee permits an individual qualified to be a Radiation Safety Officer under RHA 4.20 and 4.24 to function as a temporary Radiation Safety Officer and to perform the functions of a Radiation Safety Officer in accordance with RHA 4.13.3;

4.9.2.1.3 The licensee's mailing address changes;

4.9.2.1.4 The licensee's name changes, but the name change does not constitute a transfer of control of the license as described in RHA 2.10.2.1 of this chapter;

4.9.2.1.5 The licensee has added to or changed the areas of use identified in the application or on the license where radioactive material is used in accordance with either RHA 4.35 or RHA 4.37 if the change does not include addition or relocation of either an area where PET radionuclides are produced or a PET radioactive drug delivery line from the PET radionuclide/PET radioactive drug production area; or

4.9.2.1.6 The licensee obtains a sealed source for use in manual brachytherapy from a different manufacturer or with a different model number than authorized by its license for which it did not require a license amendment as provided in RHA 4.8.9. The notification must include the manufacturer and model number of the sealed source, the isotope, and the quantity per sealed source.

4.9.3 The licensee shall send the documents required in this section to the appropriate address identified in RHA 1.13.

#### Amend 4.10.3 and 4.10.5 to read:

4.10.3 The provisions of RHA 4.8.6 regarding additions to or changes in the areas of use at the addresses identified in the application or on the license;

4.10.5 The provisions of RHA 4.9.2.1.1 for an authorized user, an authorized nuclear pharmacist, authorized medical physicist, or an ophthalmic physicist;

## Amend 4.13.2 and 4.13.3 to read:

4.13.2 A licensee's management shall appoint a Radiation Safety Officer, who agrees, in writing, to be responsible for implementing the radiation protection program. The licensee, through the Radiation Safety Officer, shall ensure that radiation safety activities are being performed in accordance with licensee-approved procedures and regulatory requirements. A licensee's management may appoint, in writing, one or more Associate Radiation Safety Officers to support the Radiation Safety Officer. The Radiation Safety Officer, with written agreement of the licensee's management, must assign the specific duties and tasks to each Associate Radiation Safety Officer. These duties and tasks are restricted to the types of use for which the Associate Radiation Safety Officer is listed on a license. The Radiation Safety Officer may delegate duties and tasks to the Associate Radiation Safety Officer but shall not delegate the authority or responsibilities for implementing the radiation protection program.

4.13.3 For up to 60 days each year, a licensee may permit an individual qualified to be a Radiation Safety Officer, under RHA 4.20 and 4.24, to function as a temporary Radiation Safety Officer and to perform the functions of a Radiation Safety Officer, as provided in RHA 4.13.7 of this section, if the licensee takes the actions required in RHA 4.13.2, 4.13.3, 4.13.7 and 4.13.8 of this section and notifies the Department in accordance with RHA 4.9.2.

## Amend 4.17.2.5 and 4.17.2.6 to read:

4.17.2.5 For high dose-rate remote afterloading brachytherapy: the radionuclide, treatment site, dose per fraction, number of fractions, and total dose;

4.17.2.6 For permanent implant brachytherapy:

4.17.2.6.1 Before implantation: The treatment site, the radionuclide, and the total source strength; and

4.17.2.6.2 After implantation but before the patient leaves the post-treatment recovery area: The treatment site, the number of sources implanted, the total source strength implanted, and the date; or

4.17.2.7 For all other brachytherapy, including low, medium, and pulsed dose rate remote afterloaders:

4.17.2.7.1 Before implantation: The treatment site, radionuclide, and dose; and

4.17.2.7.2 After implantation but before completion of the procedure: the radionuclide, treatment site, number of sources, and total source strength and exposure time (or the total dose), and date.

#### Amend 4.18.2 to read:

4.18.2 At a minimum, the procedures required by RHA 4.18.1 must address the following items that are applicable to the licensee's use of radioactive material—

4.18.2.1 Verifying the identity of the patient or human research subject;

4.18.2.2 Verifying that the administration is in accordance with the treatment plan, if applicable, and the written directive;

4.18.2.3 Checking both manual and computer-generated dose calculations;

4.18.2.4 Verifying that any computer-generated dose calculations are correctly transferred into the consoles of therapeutic medical units authorized by RHA 4.58 or RHA 4.88;

4.18.2.5 Determining if a medical event, as defined in RHA 4.117, has occurred; and

4.18.2.6 Determining, for permanent implant brachytherapy, within 60 calendar days from the date the implant was performed, the total source strength administered outside of the treatment site compared to the total source strength documented in the post-implantation portion of the written directive, unless a written justification of patient unavailability is documented.

#### Amend 4.20 to read:

## RHA 4.20. Training for Radiation Safety Officers and Associate Radiation Safety Officer

Except as provided in RHA 4.23, the licensee shall require an individual fulfilling the responsibilities of the Radiation Safety Officer or an individual assigned duties and tasks as an Associate Radiation Safety Officer as provided in RHA 4.13 to be an individual who—

4.20.1 Is certified by a specialty board whose certification process has been recognized by the Nuclear Regulatory Commission or an Agreement State and who meets the requirements in paragraphs 4.20.4 and 4.20.5 of this section. The names of board certifications that have been recognized by the Nuclear Regulatory Commission or an Agreement State are posted on the NRC's Medical Uses Licensee Toolkit web page.

4.20.1.1 To have its certification process recognized, a specialty board shall require all candidates for certification to:

4.20.1.1.1 Hold a bachelor's or graduate degree from an accredited college or university in physical science or engineering or biological science with a minimum of 20 college credits in physical science;

4.20.1.1.2 Have 5 or more years of professional experience in health physics (graduate training may be substituted for no more than 2 years of the required experience) including at least 3 years in applied health physics; and

4.20.1.1.3 Pass an examination administered by diplomats of the specialty board, which evaluates knowledge and competence in radiation physics and instrumentation, radiation protection, mathematics pertaining to the use and measurement of radioactivity, radiation biology, and radiation dosimetry; or

4.20.1.2.1 Hold a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university;

4.20.1.2.2 Have 2 years of full-time practical training and/or supervised experience in medical physics:

4.20.1.2.2.1 Under the supervision of a medical physicist who is certified in medical physics by a specialty board recognized by the Nuclear Regulatory Commission or an Agreement State; or

4.20.1.2.2.2 In clinical nuclear medicine facilities providing diagnostic or therapeutic services under the direction of physicians who meet the requirements for authorized users in RHA 4.23, 4.39 or RHA 4.43; and

4.20.1.2.3 Pass an examination, administered by diplomats of the specialty board, that assesses knowledge and competence in clinical diagnostic radiological or nuclear medicine physics and in radiation safety; or

4.20.2 Has completed a structured educational program consisting of both:

4.20.2.1 200 hours of classroom and laboratory training in the following areas-

4.20.2.1.1 Radiation physics and instrumentation;

4.20.2.1.2 Radiation protection;

4.20.2.1.3 Mathematics pertaining to the use and measurement of radioactivity;

4.20.2.1.4 Radiation biology; and

4.20.2.1.5 Radiation dosimetry; and

4.20.2.2 One year of full-time radiation safety experience under the supervision of the individual identified as the Radiation Safety Office on Nuclear Regulatory Commission or Agreement State license or on a permit issued by an Nuclear Regulatory Commission master material licensee that authorizes similar type(s) of use(s) of radioactive material. An Associate Radiation Safety Officer may provide supervision for those areas for which the Associate Radiation Safety Officer is authorized on a Nuclear Regulatory Commission or an Agreement State license or permit issued by a Nuclear Regulatory Commission master material licensee. The full-time radiation safety experience must involve the following—

4.20.2.2.1 Shipping, receiving, and performing related radiation surveys;

4.20.2.2.2 Using and performing checks for proper operation of instruments used to determine the activity of dosages, survey meters, and instruments used to measure radionuclides;

4.20.2.2.3 Securing and controlling radioactive material;

4.20.2.2.4 Using administrative controls to avoid mistakes in the administration of radioactive material;

4.20.2.2.5 Using procedures to prevent or minimize radioactive contamination and using proper decontamination procedures;

4.20.2.2.6 Using emergency procedures to control radioactive material; and

4.20.2.2.7 Disposing of radioactive material; and

4.20.2.3 This individual must obtain a written attestation, signed by a preceptor Radiation Safety Officer or Associate Radiation Safety Officer who has experience with the radiation safety aspects of similar types of use of radioactive material for which the individual is seeking approval as a Radiation Safety Officer or an Associate Radiation Safety Officer. The written attestation must state that the individual has satisfactorily completed the requirements in paragraphs RHA 4.20.2 and RHA 4.20.4 of this section, and is able to independently fulfill the radiation safety-related duties as a Radiation Safety Officer or as an Associate Radiation Safety Officer for a medical use license; or

4.20.3 Is a medical physicist who has been certified by a specialty board whose certification process has been recognized by the Nuclear Regulatory Commission or an Agreement State under RHA 4.21.1, has experience with the radiation safety aspects of similar types of use of radioactive material for which the licensee seeks the approval of the individual as Radiation Safety Officer or an Associate Radiation Safety Officer, and meets the requirements in paragraph 4.20.4 of this section; or

4.20.3.1 Is an authorized user, authorized medical physicist, or authorized nuclear pharmacist identified on a Nuclear Regulatory Commission or an Agreement State license, a permit issued by a Nuclear Regulatory Commission or an Agreement State license of broad scope, or a permit issued by a Nuclear Regulatory Commission master material license by a Nuclear Regulatory Commission master material license broad scope permittee, has experience with the radiation safety aspects of similar types of use of radioactive material for which the licensee seeks the approval of the individual as the Radiation Safety Officer or Associate Radiation Safety Officer, and meets the requirements in paragraph 4.20.4 of this section; or

4.20.3.2 Has experience with the radiation safety aspects of the types of use of radioactive material for which the individual is seeking simultaneous approval both as the Radiation Safety Officer and the authorized user on the same new medical use license or new medical use permit issued by a Nuclear Regulatory Commission master material license. The individual must also meet the requirements in paragraph 4.20.4 of this section.

4.20.4 Has training in the radiation safety, regulatory issues, and emergency procedures for the types of use for which a licensee seeks approval. This training requirement may be satisfied by completing training that is supervised by a Radiation Safety Officer, an Associate Radiation Safety Officer, authorized medical physicist, authorized nuclear pharmacist, or authorized user, as appropriate, who is authorized for the type(s) of use for which the licensee is seeking approval.

## Amend 4.21 to read:

Except as provided in RHA 4.23, the licensee shall require the authorized medical physicist to be an individual who—

4.21.1 Is certified by a specialty board whose certification process has been recognized by the Nuclear Regulatory Commission or an Agreement State and who meets the requirements in paragraph 4.21.4 of this section. The names of board certifications that have been recognized by the Nuclear Regulatory Commission or an Agreement State are posted on the NRC's Medical Uses Licensee Toolkit web page. To have its certification process recognized, a specialty board shall require all candidates for certification to:

4.21.1.1 Hold a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university.

4.21.1.2 Have 2 years of full-time practical training and/or supervised experience in medical physics—

4.21.1.2.1 Under the supervision of a medical physicist who is certified in medical physics by a specialty board whose certification process has been recognized under this section by the Nuclear Regulatory Commission or an Agreement State; or

4.21.1.2.2 In clinical radiation facilities providing high-energy, external beam therapy (photons and electrons with energies greater than or equal to 1 million electron volts) and brachytherapy services under the direction of physicians who meet the requirements for authorized users in RHA 4.23, 4.54 or 4.74; and

4.21.1.3 Pass an examination, administered by diplomats of the specialty board, that assesses knowledge and competence in clinical radiation therapy, radiation safety, calibration, quality assurance, and treatment planning for external beam therapy, brachytherapy, and stereotactic radiosurgery; or

4.21.2 Holds a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university; and has completed 1 year of full-time training in medical physics and an additional year of full-time work experience under the supervision of an individual who meets the requirements for an authorized medical physicist for the type(s) of use for which the individual is seeking authorization. This training and work experience must be conducted in clinical radiation facilities that provide high-energy, external beam therapy (photons and electrons with energies greater than or equal to 1 million electron volts) and brachytherapy services and must include:

4.21.2.1 Performing sealed source leak tests and inventories;

4.21.2.2 Performing decay corrections;

4.21.2.3 Performing full calibration and periodic spot checks of external beam treatment units, stereotactic radiosurgery units, and remote afterloading units as applicable; and

4.21.2.4 Conducting radiation surveys around external beam treatment units, stereotactic radiosurgery units, and remote afterloading units as applicable; and

4.21.2.5 Has obtained written attestation that the individual has satisfactorily completed the requirements in RHA 4.21.2 and 4.21.3 of this section, and is able to independently fulfill the radiation safety-related duties as an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status. The written attestation must be signed by a preceptor authorized medical physicist who meets the requirements in RHA 4.21 or 4.23, or equivalent Nuclear Regulatory Commission or Agreement State requirements for an authorized medical physicist status.

4.21.3 Has training for the type(s) of use for which authorization is sought that includes hands-on device operation, safety procedures, clinical use, and the operation of a treatment planning system. This training requirement may be satisfied by satisfactorily completing either a training program provided by the vendor or by training supervised by an authorized medical physicist authorized for the type(s) of use for which the individual is seeking authorization.

#### Amend 4.22.1 and 4.22.3 to read:

4.22.1 Is certified by a specialty board whose certification process has been recognized by the Nuclear Regulatory Commission or an Agreement State. The names of board certifications that have been recognized by the Nuclear Regulatory Commission or an Agreement State are posted on the NRC's Medical Uses Licensee Toolkit webpage. To have its certification process recognized, a specialty board shall require all candidates for certification to:

4.22.3 Has obtained written attestation signed by a preceptor authorized nuclear pharmacist, that the individual has satisfactorily completed the requirements in RHA 4.22.2 of this section and is able to independently fulfill the radiation safety-related duties as an authorized nuclear pharmacist.

#### Amend 4.23 to read:

# RHA 4.23. Training for Experienced Radiation Safety Officer, Teletherapy or Medical Physicist, Authorized Medical Physicist, Authorized User, Nuclear Pharmacist, and Authorized Nuclear Pharmacist.

4.23.1 Training for Experienced Radiation Safety Officer, Teletherapy or Medical Physicist, and Nuclear Pharmacist.

4.23.1.1 An individual identified on a Nuclear Regulatory Commission or an Agreement State license or a permit issued by a Nuclear Regulatory Commission or an Agreement State broad scope licensee or master material license permit or by a master material license permittee of broad scope as a Radiation Safety Officer, a teletherapy or medical physicist, an authorized medical physicist, a nuclear pharmacist or an authorized nuclear pharmacist on or before January 14, 2019, need not comply with the training requirements of RHA 4.20, RHA 4.21, or RHA 4.22, respectively, except the Radiation Safety Officers and authorized medical physicists identified in this paragraph must meet the training requirements in RHA 4.20.4 or RHA 4.21.3, as appropriate, for any material or uses for which they were not authorized prior to this date.

4.23.1.2 Any individual certified by the American Board of Health Physics in Comprehensive Health Physics; American Board of Radiology; American Board of Nuclear Medicine; American Board of Science in Nuclear Medicine; Board of Pharmaceutical Specialties in Nuclear Pharmacy; American Board of Medical Physics in radiation oncology physics; Royal College of Physicians and Surgeons of Canada in nuclear medicine; American Osteopathic Board of Radiology; or American Osteopathic Board of Nuclear Medicine on or before October 24, 2005, need not comply with the training requirements of RHA 4.20 to be identified as a Radiation

Safety Officer or as an Associate Radiation Safety Officer on a Nuclear Regulatory Commission or an Agreement State license or Nuclear Regulatory Commission master material license permit for those materials and uses that these individuals performed on or before October 24, 2005.

4.23.1.3 Any individual certified by the American Board of Radiology in therapeutic radiological physics, Roentgen ray and gamma ray physics, x-ray and radium physics, or radiological physics, or certified by the American Board of Medical Physics in radiation oncology physics, on or before October 24, 2005, need not comply with the training requirements for an authorized medical physicist described in RHA 4.21, for those materials and uses that these individuals performed on or before October 24, 2005.

4.23.1.4 A Radiation Safety Officer, a medical physicist, or a nuclear pharmacist, who used only accelerator-produced radioactive materials, discrete sources of radium-226, or both, for medical uses or in the practice of nuclear pharmacy at a Government agency or Federally recognized Indian Tribe before November 30, 2007, or at all other locations of use before August 8, 2009, or an earlier date as noticed by the Nuclear Regulatory Commission, need not comply with the training requirements of RHA 4.20, RHA 4.21, or RHA 4.22, respectively, when performing the same uses. A nuclear pharmacist, who prepared only radioactive drugs containing accelerator-produced radioactive materials, or a medical physicist, who used only accelerator-produced radioactive materials, or a medical physicist, respectively, for those materials and uses performed before these dates, for the purposes of this chapter.

4.23.2 Training for Experienced Authorized User

4.23.2.1 Physicians, dentists, or podiatrists identified as authorized users for the medical use of radioactive material on a license issued by the Nuclear Regulatory Commission or an Agreement State, a permit issued by a Nuclear Regulatory Commission or an Agreement State broad scope licensee, or a permit issued by a Nuclear Regulatory Commission master material license by a Nuclear Regulatory Commission master material licensee, or a permit issued by a Nuclear Regulatory Commission master material license broad scope permittee on or before January 14, 2019, who perform only those medical uses for which they were authorized on or before that date need not comply with the training requirements of subparts D through H of this part.

4.23.2.2 Physicians, dentists, or podiatrists not identified as authorized users for the medical use of radioactive material on a license issued by the Nuclear Regulatory Commission or an Agreement State, a permit issued by a Nuclear Regulatory Commission master material licensee, a permit issued by a Nuclear Regulatory Commission master material licensee, or a permit issued by a Nuclear Regulatory Commission master material license of broad scope on or before October 24, 2005, need not comply with the training requirements of subparts D through H of this part for those materials and uses that these individuals performed on or before October 24, 2005, as follows:

4.23.2.2.1 For uses authorized under RHA 4.35 or RHA 4.37, or oral administration of sodium iodide I– 131 requiring a written directive for imaging and localization purposes, a physician who was certified on or before October 24, 2005, in nuclear medicine by the American Board of Nuclear Medicine; diagnostic radiology by the American Board of Radiology; diagnostic radiology or radiology by the American Osteopathic Board of Radiology; nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or American Osteopathic Board of Nuclear Medicine in nuclear medicine;

4.23.2.2.2 For uses authorized under RHA 4.40, a physician who was certified on or before October 24, 2005, by the American Board of Nuclear Medicine; the American Board of Radiology in radiology, therapeutic radiology, or radiation oncology; nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or the American Osteopathic Board of Radiology after 1984;

4.23.2.2.3 For uses authorized under RHA 4.46 or RHA 4.58, a physician who was certified on or before October 24, 2005, in radiology, therapeutic radiology or radiation oncology by the American Board of

Radiology; radiation oncology by the American Osteopathic Board of Radiology; radiology, with specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology"; or therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; and

4.23.2.2.4 For uses authorized under RHA 4.56, a physician who was certified on or before October 24, 2005, in radiology, diagnostic radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology; nuclear medicine by the American Board of Nuclear Medicine; diagnostic radiology or radiology by the American Osteopathic Board of Radiology; or nuclear medicine by the Royal College of Physicians and Surgeons of Canada.

4.23.2.3 Physicians, dentists, or podiatrists who used only accelerator-produced radioactive materials, discrete sources of radium-226, or both, for medical uses performed at a Government agency or Federally recognized Indian Tribe before November 30, 2007, or at all other locations of use before August 8, 2009, or an earlier date as noticed by the Nuclear Regulatory Commission, need not comply with the training requirements of subparts D through H of this part when performing the same medical uses. A physician, dentist, or podiatrist, who used only accelerator-produced radioactive materials, discrete sources of radium-226, or both, for medical uses at the locations and time period identified in this paragraph, qualifies as an authorized user for those materials and uses performed before these dates, for the purposes of this chapter.

## Amend 4.28 to read:

Any person authorized by RHA 4.6 for medical use of radioactive material may receive, possess, and use any of the following radioactive material for check, calibration, transmission, and reference use.

4.28.1 Sealed sources, not exceeding 1.11 GBq (30 mCi) each, manufactured and distributed by a person licensed under RHA 2.7.7 of this chapter or equivalent NRC or Agreement State regulations.

4.28.2 Sealed sources, not exceeding 1.11 GBq (30 mCi) each, redistributed by a licensee authorized to redistribute the sealed sources manufactured and distributed by a person licensed under RHA 2.7.7 of this chapter or equivalent Nuclear Regulatory Commission or Agreement State regulations, providing the redistributed sealed sources are in the original packaging and shielding and are accompanied by the manufacturer's approved instructions.

4.28.3 Any radioactive material with a half-life not longer than 120 days in individual amounts not to exceed 0.56 GBq (15 mCi).

4.28.4 Any radioactive material with a half-life longer than 120 days in individual amounts not to exceed the smaller of 7.4 MBq (200 uCi) or 1000 times the quantities in Appendix C, RHA 3.54, of Part III of these regulations.

4.28.5 Technetium-99m in amounts as needed.

4.28.6 Radioactive material in sealed sources authorized by this provision shall not be:

4.28.6.1 Used for medical use as defined in RHA 4.2 except in accordance with the requirements in RHA 4.56 or

4.28.6.2 Combined (i.e., bundled or aggregated) to create an activity greater than the maximum activity of any single sealed source authorized under this section.

4.28.6.3 A licensee using calibration, transmission, and reference sources in accordance with the requirements in this section need not list these sources on a specific medical use license.

## Amend the title of 4.35 to read:

# RHA 4.35. Use of Unsealed Radioactive Material for Uptake, Dilution, and Excretion Studies for Which a Written Directive is not Required.

#### Amend 4.36 to read:

Except as provided in RHA 4.23, the licensee shall require an authorized user of unsealed radioactive material for the uses authorized under RHA 4.35 to be a physician who—

4.36.1 Is certified by a medical specialty board whose certification process has been recognized by the Nuclear Regulatory Commission or an Agreement State. The names of board certifications that have been recognized by the NRC or an Agreement State are posted on the NRC's Medical Uses Licensee Toolkit web page. To have its certification process recognized, a specialty board shall require all candidates for certification to:

4.36.1.1 Complete 60 hours of training and experience in basic radionuclide handling techniques and radiation safety applicable to the medical use of unsealed radioactive material for uptake, dilution, and excretion studies that includes the topics listed in paragraphs 4.36.3 through 4.36.3.2.6 of this section; and 4.36.1.2 Pass an examination, administered by diplomats of the specialty board, that assesses knowledge and competence in radiation safety, radionuclide handling, and quality control; or

4.36.2 Is an authorized user under RHA 4.39 or 4.43 or equivalent NRC requirements; or 4.36.3-

4.36.3 Has completed 60 hours of training and experience, including a minimum of 8 hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material for uptake, dilution, and excretion studies. The training and experience must include—

4.36.3.1 Classroom and laboratory training in the following areas—

4.36.3.1.1 Radiation physics and instrumentation;

4.36.3.1.2 Radiation protection;

4.36.3.1.3 Mathematics pertaining to the use and measurement of radioactivity;

4.36.3.1.4 Chemistry of radioactive material for medical use; and

4.36.3.1.5 Radiation biology; and

4.36.3.2 Work experience, under the supervision of an authorized user who meets the requirements in RHA 4.23, 4.36, 4.39 or 4.43 or equivalent NRC requirements, involving—

4.36.3.2.1 Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

4.36.3.2.2 Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

4.36.3.2.3 Calculating, measuring, and safely preparing patient or human research subject dosages;

4.36.3.2.4 Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

4.36.3.2.5 Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and

4.36.3.2.6 Administering dosages of radioactive drugs to patients or human research subjects; and

4.36.3.3 Has obtained written attestation that the individual has satisfactorily completed the requirements in paragraph 4.36.3 of this section and is able to independently fulfill the radiation safety-related duties as an authorized user for the medical uses authorized under 4.35. The attestation must be obtained from either:

4.36.3.3.1 A preceptor authorized user who meets the requirements in RHA 4.23, 4.36, 4.39, or 4.43, or equivalent Agreement State requirements; or

4.36.3.3.2 A residency program director who affirms in writing that the attestation represents the consensus of the residency program faculty where at least one faculty member is an authorized user who meets the requirements in RHA 4.23, 4.36, 4.39, or 4.43, or equivalent Agreement State requirements, and concurs with the attestation provided by the residency program director. The residency training program must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Council on Postdoctoral Training of the American Osteopathic Association and must include training and experience specified in paragraph 4.36.3 of this section.

#### Amend 4.38 to read:

## RHA 4.38. Permissible Molybdenum-99, Strontium-82, and Strontium-85 Concentrations.

4.38.1 A licensee may not administer to humans a radiopharmaceutical that contains:

4.38.1.1 More than 0.15 kilobecquerel of molybdenum-99 per megabecquerel of technetium-99m (0.15 microcurie of molybdenum-99 per millicurie of technetium-99m); or

4.38.1.2 More than 0.02 kilobecquerel of strontium-82 per megabecquerel of rubidium-82 chloride injection (0.02 microcurie of strontium-82 per millicurie of rubidium-82 chloride); or more than 0.2 kilobecquerel of strontium-85 per megabecquerel of rubidium-82 chloride injection (0.2 microcurie of strontium-85 per millicurie of rubidium-82 chloride injection (0.2 microcurie of strontium-85 per millicurie of rubidium-82 chloride).

4.38.2 A licensee that uses molybdenum-99/technetium-99m generators for preparing a technetium-99m radiopharmaceutical shall measure the molybdenum-99 concentration in each eluate from a generator to demonstrate compliance with RHA 4.38.1.

4.38.3 A licensee that uses a strontium-82/rubidium-82 generator for preparing a rubidium-82 radiopharmaceutical shall, before the first patient use of the day, measure the concentration of radionuclides strontium-82 and strontium-85 to demonstrate compliance with RHA 4.38.1.

4.38.4 If a licensee is required to measure the molybdenum-99 concentration, the licensee shall retain a record of each measurement in accordance with RHA 4.101.

4.38.5 The licensee shall report any measurement that exceeds the limits in RHA 4.38.1 of this section at the time of generator elution, in accordance with RHA 4.120.

## Amend 4.39 to read:

Except as provided in RHA 4.23, the licensee shall require an authorized user of unsealed radioactive material for the uses authorized under RHA 4.37 to be a physician who—

4.39.1 Is certified by a medical specialty board whose certification process has been recognized by the Nuclear Regulatory Commission or an Agreement State. The names of board certifications that have been recognized by the Nuclear Regulatory Commission or an Agreement State are posted on the NRC's Medical Uses Licensee Toolkit Web page. To have its certification process recognized, a specialty board shall require all candidates for certification to:

4.39.1.1 Complete 700 hours of training and experience in basic radionuclide handling techniques and radiation safety applicable to the medical use of unsealed radioactive material for imaging and localization studies that includes the topics listed in paragraphs RHA 4.39.3 through 4.39.3.2.7; and

4.39.1.2 Pass an examination, administered by diplomats of the specialty board, which assesses knowledge and competence in radiation safety, radionuclide handling, and quality control; or

4.39.2 Is an authorized user under RHA 4.43 and meets the requirements in RHA 4.39.3.2.7 or equivalent NRC requirements; or

4.39.3 Has completed 700 hours of training and experience, including a minimum of 80 hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material for imaging and localization studies. The training and experience must include, at a minimum,-

4.39.3.1 Classroom and laboratory training in the following areas-

4.39.3.1.1 Radiation physics and instrumentation;

4.39.3.1.2 Radiation protection;

4.39.3.1.3 Mathematics pertaining to the use and measurement of radioactivity;

4.39.3.1.4 Chemistry of radioactive material for medical use;

4.39.3.1.5 Radiation biology; and

4.39.3.2 Work experience, under the supervision of an authorized user who meets the requirements in RHA 4.23, 4.39 or 4.43 and 4.39.3.2.7 or equivalent NRC or Agreement State requirements. An authorized nuclear pharmacist who meets the requirements in RHA 4.22 or RHA 4.23 may provide the supervised work experience for paragraph 4.39.3.2.7 of this section. Work experience must involve—

4.39.3.2.1 Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

4.39.3.2.2 Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

4.39.3.2.3 Calculating, measuring, and safely preparing patient or human research subject dosages;

4.39.3.2.4 Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

4.39.3.2.5 Using procedures to safely contain spilled radioactive material and using proper decontamination procedures;

4.39.3.2.6 Administering dosages of radioactive drugs to patients or human research subjects; and

4.39.3.2.7 Eluting generator systems appropriate for preparation of radioactive drugs for imaging and localization studies, measuring and testing the eluate for radionuclidic purity, and processing the eluate with reagent kits to prepare labeled radioactive drugs; and

4.39.3.3 Has obtained written attestation that the individual has satisfactorily completed the requirements in paragraph 4.39.3 of this section and is able to independently fulfill the radiation safety-related duties as an authorized user for the medical uses authorized under RHA 4.35 and 4.37. The attestation must be obtained from either:

4.39.3.3.1 A preceptor authorized user who meets the requirements in RHA 4.23, RHA 4.39, or RHA 4.43 and RHA 4.39.3.2.7, or equivalent Nuclear Regulatory Commission or Agreement State requirements; or

4.39.3.3.2 A residency program director who affirms in writing that the attestation represents the consensus of the residency program faculty where at least one faculty member is an authorized user who meets the requirements in RHA 4.23, RHA 4.39, or RHA 4.43 and RHA 4.39.3.2.7, or equivalent Nuclear Regulatory Commission or Agreement State requirements, and concurs with the attestation provided by the residency program director. The residency training program must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Council on Postdoctoral Training of the American Osteopathic Association and must include training and experience specified in paragraph 4.39.3 of this section.

#### Amend the title of Subpart E to read:

#### SUBPART E Unsealed Radioactive Material–Written Directive Required

#### Amend the title and introductory paragraph of 4.40 to read:

#### RHA 4.40. Use of Unsealed Radioactive Material for Which a Written Directive is Required.

A licensee may use any unsealed radioactive material identified in RHA 4.43.2.2.7 prepared for medical use and for which a written directive is required that is—

#### Amend 4.43 to read:

Except as provided in RHA 4.23, the licensee shall require an authorized user of unsealed radioactive material for the uses authorized under RHA 4.40 to be a physician who—

4.43.1 Is certified by a medical specialty board whose certification process has been recognized by the Nuclear Regulatory Commission or an Agreement State and who meets the requirements in paragraphs 4.43.2.2.7 of this section. The names of board certifications that have been recognized by the Nuclear Regulatory Commission or an Agreement State are posted on the NRC's Medical Uses Licensee Toolkit Web page. To be recognized, a specialty board shall require all candidates for certification to:

4.43.1.1 Successfully complete residency training in a radiation therapy or nuclear medicine training program or a program in a related medical specialty. These residency training programs must include 700 hours of training and experience as described in paragraphs 4.43.2.1 through 4.43.2.2.5 of this section. Eligible training programs must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education, the Royal College of Physicians and Surgeons of Canada, or the Committee on Post-Graduate Training of the American Osteopathic Association; and

4.43.1.2 Pass an examination, administered by diplomats of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, quality assurance, and clinical use of unsealed radioactive material for which a written directive is required; or

4.43.2 Has completed 700 hours of training and experience, including a minimum of 200 hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material requiring a written directive. The training and experience must include—

4.43.2.1 Classroom and laboratory training in the following areas-

4.43.2.1.1 Radiation physics and instrumentation;

4.43.2.1.2 Radiation protection;

4.43.2.1.3 Mathematics pertaining to the use and measurement of radioactivity;

4.43.2.1.4 Chemistry of radioactive material for medical use; and

4.43.2.1.5 Radiation biology; and

4.43.2.2 Work experience, under the supervision of an authorized user who meets the requirements in RHA 4.23, 4.43, or equivalent NRC requirements. A supervising authorized user, who meets the requirements in RHA 4.43.2, must also have experience in administering dosages in the same dosage category or categories (i.e., RHA 4.43.2.2.7) as the individual requesting authorized user status. The work experience must involve—

4.43.2.2.1 Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

4.43.2.2.2 Performing quality control procedures on instruments used to determine the activity of dosages, and performing checks for proper operation of survey meters;

4.43.2.2.3 Calculating, measuring, and safely preparing patient or human research subject dosages;

4.43.2.2.4 Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

4.43.2.2.5 Using procedures to contain spilled radioactive material safely and using proper decontamination procedures;

4.43.2.2.6 [Reserved]

4.43.2.2.7 Administering dosages of radioactive drugs to patients or research subjects from the three categories in this paragraph. Radioactive drugs containing radionuclides in categories not included in this paragraph are regulated under RHA 4.88. This work experience must involve a minimum of three cases in each of the following categories for which the individual is requesting authorized user status--

4.43.2.2.7.1 Oral administration of less than or equal to 1.22 gigabecquerels (33 millicuries) of sodium iodide I-131, for which a written directive is required;

4.43.2.2.7.2 Oral administration of greater than 1.22 gigabecquerels (33 millicuries) of sodium iodide I-131;<sup>2</sup>

4.43.2.2.7.3 Parenteral administration of any radioactive drug that contains a radionuclide that is primarily used for its electron emission, beta radiation characteristics, alpha radiation characteristics, or photon energy of less than 150 keV, for which a written directive is required; and

4.43.2.3 Has obtained written attestation that the individual has satisfactorily completed the requirements in paragraph 4.43.2 of this section and is able to independently fulfill the radiation safety-related duties as an authorized user for the medical uses authorized under RHA 4.40 for which the individual is requesting authorized user status. The attestation must be obtained from either:

4.43.2.3.1 A preceptor authorized user who meets the requirements in 4.23, 4.43, or equivalent Nuclear Regulatory Commission or Agreement State requirements and has experience in administering dosages in the same dosage category or categories as the individual requesting authorized user status; or

4.43.2.3.2 A residency program director who affirms in writing that the attestation represents the consensus of the residency program faculty where at least one faculty member is an authorized user who meets the requirements in 4.23, 4.43, or equivalent Nuclear Regulatory Commission or Agreement State requirements, has experience in administering dosages in the same dosage category or categories as the individual requesting authorized user status, and concurs with the attestation provided by the residency program director. The residency training program must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Council on Postdoctoral Training of the American Osteopathic Association and must include training and experience specified in paragraph 4.43.2 of this section.

4.43.3 Training for the parenteral administration of unsealed byproduct material requiring a written directive.

4.43.3.1 Except as provided in RHA 4.23, the licensee shall require an authorized user for the parenteral administration requiring a written directive, to be a physician who—

4.43.3.1.1 Is an authorized user under RHA 4.43 uses listed in RHA 4.43.2.2.7.3 or equivalent NRC or Agreement State requirements; or

4.43.3.1.2 Is an authorized user under RHA 4.54, 4.74, or equivalent NRC or Agreement State requirements and who meets the requirements in RHA 4.43.3.2 of this section; or

4.43.3.1.3 Is certified by a medical specialty board whose certification process has been recognized by the NRC or an Agreement State under RHA 4.54 or 4.74, and who meets the requirements in RHA 4.43.3.2 of this section.

4.43.3.2 The Physician--

4.43.3.2.1 Has successfully completed 80 hours of classroom and laboratory training, applicable to parenteral administrations, listed in RHA 4.43.2.2.7.3. The training must include—

4.43.3.2.1.1 Radiation physics and instrumentation;

4.43.3.2.1.2 Radiation protection;

4.43.3.2.1.3 Mathematics pertaining to the use and measurement of radioactivity;

4.43.3.2.1.4 Chemistry of radioactive material for medical use; and

4.43.3.2.1.5 Radiation biology; and

4.43.3.2.2 Has work experience, under the supervision of an authorized user who meets the requirements in RHA 4.23, 4.43, 4.43.3 or equivalent NRC or Agreement State requirements, in the parenteral administration listed in RHA 4.43.2.2.7.3. A supervising authorized user who meets the requirements in RHA 4.43, 4.43.3, or equivalent Nuclear Regulatory Commission or Agreement State requirements must have experience in administering dosages in the same category or categories as the individual requesting authorized user status. The work experience must involve—

4.43.3.2.2.1 Ordering, receiving, and unpacking radioactive materials safely, and performing the related radiation surveys;

4.43.3.2.2.2 Performing quality control procedures on instruments used to determine the activity of dosages, an performing checks for proper operation of survey meters;

4.43.3.2.2.3 Calculating, measuring, and safely preparing patient or human research subject dosages;

4.43.3.2.2.4 Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

4.43.3.2.2.5 Using procedures to contain spilled radioactive material safely, and using proper decontamination procedures; and

4.43.3.2.2.6 Administering dosages to patients or human research subjects, that include at least three cases of parenteral administrations as specified in RHA 4.43.2.2.7.3; and

4.43.3.3 Has obtained written attestation that the individual has satisfactorily completed the requirements in paragraphs 4.43.3.2.1 and 4.43.3.2.2 of this section, and is able to independently fulfill the radiation safety-related duties as an authorized user for the parenteral administration of unsealed radioactive material requiring a written directive. The attestation must be obtained from either:

4.43.3.3.1 A preceptor authorized user who meets the requirements in RHA 4.23, RHA 4.43, RHA 4.43.3, or equivalent Nuclear Regulatory Commission or Agreement State requirements. A preceptor authorized user who meets the requirements in RHA 4.43, RHA 4.43.3, or equivalent Nuclear Regulatory Commission or Agreement State requirements, must have experience in administering dosages in the same category or categories as the individual requesting authorized user status; or

4.43.3.3.2 A residency program director who affirms in writing that the attestation represents the consensus of the residency program faculty where at least one faculty member is an authorized user who meets the requirements in RHA 4.23, RHA 4.43, RHA 4.43.3, or equivalent Nuclear Regulatory Commission or Agreement State requirements, has experience in administering dosages in the same dosage category or categories as the individual requesting authorized user status, and concurs with the attestation provided by the residency program director. The residency training program must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Council on Postdoctoral Training of the American Osteopathic Association and must include training and experience specified in paragraphs 4.43.3.2.1 and 4.43.3.2.2 of this section.

<sup>2</sup>Experience with at least three cases in RHA 4.43.2.2.7.2 also satisfies the requirement in RHA 4.43.2.2.7.1.

#### Amend 4.44 to read:

Except as provided in RHA 4.23, the licensee shall require an authorized user for the oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 1.22 Gigabecquerels (33 millicuries), to be a physician who—

4.44.1 Is certified by a medical specialty board whose certification process includes all of the requirements in paragraphs 4.44.1.3 and 4.44.1.4 of this section and whose certification process has been recognized by the Nuclear Regulatory Commission or an Agreement State. The names of board certifications that have been recognized by the Nuclear Regulatory Commission or an Agreement State are posted on the NRC's Medical Uses Licensee Toolkit Web page; or

4.44.2 Is an authorized user under RHA 4.43, for uses listed in RHA 4.43.2.2.7.1 or 4.43.2.2.7.2, RHA 4.45, or equivalent NRC requirements; or

4.44.3 Has successfully completed 80 hours of classroom and laboratory training, applicable to the medical use of sodium iodide I-131 for procedures requiring a written directive. The training must include—

4.44.3.1 Radiation physics and instrumentation;

4.44.3.2 Radiation protection;

4.44.3.3 Mathematics pertaining to the use and measurement of radioactivity;

4.44.3.4 Chemistry of radioactive material for medical use; and

4.44.3.5 Radiation biology; and

4.44.3.6 Has work experience, under the supervision of an authorized user who meets the requirements in RHA 4.23, 4.43, RHA 4.44, RHA 4.45, or equivalent NRC requirements. A supervising authorized user who meets the requirements in RHA 4.43.2 must have experience in administering dosages as specified in RHA 4.43.2.2.7.1 or 4.43.2.2.7.2. The work experience must involve—

4.44.3.6.1 Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

4.44.3.6.2 Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation for survey meters;

4.44.3.6.3 Calculating, measuring, and safely preparing patient or human research subject dosages;

4.44.3.6.4 Using administrative controls to prevent a medical event involving the use of radioactive material;

4.44.3.6.5 Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and

4.44.3.6.6 Administering dosages to patients or human research subjects, that includes at least 3 cases involving the oral administration of less than or equal to 1.22 Gigabecquerels (33 millicuries) of sodium iodide I-131; and

4.44.3.7 Has obtained written attestation that the individual has satisfactorily completed the requirements in paragraphs 4.44.3 of this section, and is able to independently fulfill the radiation safety-related duties as an authorized user for oral administration of less than or equal to 1.22 gigabecquerels (33 millicuries) of sodium iodide I–131 for medical uses authorized under RHA 4.40. The attestation must be obtained from either:

4.44.3.7.1 A preceptor authorized user who meets the requirements in RHA 4.23, RHA 4.43, RHA 4.44, RHA 4.45, or equivalent Nuclear Regulatory Commission or Agreement State requirements and has experience in administering dosages as specified in RHA 4.43.2.2.7.1 or RHA 4.43.2.2.7.2; or

4.44.3.7.2 A residency program director who affirms in writing that the attestation represents the consensus of the residency program faculty where at least one faculty member is an authorized user who meets the requirements in RHA 4.23, RHA 4.43, RHA 4.44, RHA 4.45, or equivalent Agreement State requirements, has experience in administering dosages as specified in RHA 4.43.2.2.7.1 or RHA 4.43.2.2.7.2, and concurs with the attestation provided by the residency program director. The residency training program must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Council on Postdoctoral Training of the American Osteopathic Association and must include training and experience specified in paragraphs 4.44.1.3 and 4.44.1.4 of this section.

#### Amend 4.45 to read:

Except as provided in RHA 4.23, the licensee shall require an authorized user for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 1.22 Gigabecquerels (33 millicuries), to be a physician who—

4.45.1 Is certified by a medical specialty board whose certification process includes all of the requirements in paragraphs 4.45.1.3 and 4.45.1.4 of this section, and whose certification has been recognized by the Nuclear Regulatory Commission or an Agreement State. The names of board certifications that have been recognized by the Nuclear Regulatory Commission or an Agreement State are posted on the NRC's Medical Uses Licensee Toolkit Web page; or

4.45.2 Is an authorized user under RHA 4.43.1, 4.43.2 for uses listed in RHA 4.43.2.2.7.2, or equivalent NRC requirements; or

4.45.3 Has successfully completed 80 hours of classroom and laboratory training, applicable to the medical use of sodium iodide I-131 for procedures requiring a written directive. The training must include—

4.45.3.1 Radiation physics and instrumentation;

4.45.3.2 Radiation protection;

4.45.3.3 Mathematics pertaining to the use and measurement of radioactivity;

4.45.3.4 Chemistry of radioactive material for medical use; and

4.45.3.5 Radiation biology; and

4.45.3.6 Has work experience, under the supervision of an authorized user who meets the requirements in RHA 4.23, 4.43, 4.45, or equivalent NRC requirements. A supervising authorized user, who meets the requirements in RHA 4.43.2, must also have experience in administering dosages as specified in RHA 4.43.2.2.7.2. The work experience must involve—

4.45.3.6.1 Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

4.45.3.6.2 Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation for survey meters;

4.45.3.6.3 Calculating, measuring, and safely preparing patient or human research subject dosages;

4.45.3.6.4 Using administrative controls to prevent a medical event involving the use of radioactive material;

4.45.3.6.5 Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and

4.45.3.6.6 Administering dosages to patients or human research subjects, that includes at least 3 cases involving the oral administration of greater than 1.22 Gigabecquerels (33 millicuries) of sodium iodide I-131; and

4.45.3.7 Has obtained written attestation that the individual has satisfactorily completed the requirements in paragraphs 4.45.3 of this section, and is able to independently fulfill the radiation safety-related duties as an authorized user for oral administration of greater than or equal to 1.22 gigabecquerels (33 millicuries) of sodium iodide I–131 for medical uses authorized under RHA 4.40. The attestation must be obtained from either:

4.45.3.7.1 A preceptor authorized user who meets the requirements in RHA 4.23, 4.43, 4.45, or equivalent Nuclear Regulatory Commission or Agreement State requirements and has experience in administering dosages as specified in 4.43.2.2.7.2; or

4.45.3.7.2 A residency program director who affirms in writing that the attestation represents the consensus of the residency program faculty where at least one faculty member is an authorized user who meets the requirements in RHA 4.23, 4.43, 4.45, or equivalent Nuclear Regulatory Commission or Agreement State requirements, has experience in administering dosages as specified in 4.43.2.2.7.2, and concurs with the attestation provided by the residency program director. The residency training program must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Council on Postdoctoral Training of the American Osteopathic Association and must include training and experience specified in paragraphs 4.45.3 of this section.

#### Amend 4.46 to read:

4.46.1 A licensee must use only brachytherapy sources:

4.46.1.1 Approved in the Sealed Source and Device Registry for manual brachytherapy medical use. The manual brachytherapy sources may be used for manual brachytherapy uses that are not explicitly listed in the Sealed Source and Device Registry, but must be used in accordance with the radiation safety conditions and limitations described in the Sealed Source and Device Registry; or

4.46.1.2 In research to deliver therapeutic doses for medical use in accordance with an active Investigational Device Exemption (IDE) application accepted by the U.S. Food and Drug Administration provided the requirements of RHA 4.19.1 are met.

## Amend 4.52 to read:

#### RHA 4.52. Strontium-90 Sources for Ophthalmic Treatments.

4.52.1 Licensees who use strontium-90 for ophthalmic treatments must ensure that certain activities as specified in 4.52.2 of this section are performed by either:

4.52.1.1 An authorized medical physicist; or

4.52.1.2 An individual who:

4.52.1.2.1 Is identified as an ophthalmic physicist on a specific medical use license issued by the Nuclear Regulatory Commission or an Agreement State; permit issued by a Nuclear Regulatory Commission or Agreement State broad scope medical use licensee; medical use permit issued by a Nuclear Regulatory Commission master material licensee; or permit issued by a Nuclear Regulatory Commission master medical use permit issued by a Nuclear Regulatory Commission master material licensee; or permit issued by a Nuclear Regulatory Commission master material licensee broad scope medical use permittee; and

4.52.1.2.2 Holds a master's or doctor's degree in physics, medical physics, other physical sciences, engineering, or applied mathematics from an accredited college or university; and

4.52.1.2.3 Has successfully completed 1 year of full-time training in medical physics and an additional year of full-time work experience under the supervision of a medical physicist; and

4.52.1.2.4 Has documented training in:

4.52.1.2.4.1 The creation, modification, and completion of written directives;

4.52.1.2.4.2 Procedures for administrations requiring a written directive; and

4.52.1.2.4.3 Performing the calibration measurements of brachytherapy sources as detailed in RHA 4.51.

4.52.2 The individuals who are identified in 4.52.1 of this section must:

4.52.2.1 Calculate the activity of each strontium-90 source that is used to determine the treatment times for ophthalmic treatments. The decay must be based on the activity determined under RHA 4.51; and

4.52.2.2 Assist the licensee in developing, implementing, and maintaining written procedures to provide high confidence that the administration is in accordance with the written directive. These procedures must include the frequencies that the individual meeting the requirements in 4.52.1 of this section will observe treatments, review the treatment methodology, calculate treatment time for the prescribed dose, and review records to verify that the administrations were in accordance with the written directives.

4.52.3 Licensees must retain a record of the activity of each strontium-90 source in accordance with RHA 4.106.

#### Amend 4.54 to read:

Except as provided in RHA 4.23, the licensee shall require an authorized user of a manual brachytherapy source for the uses authorized under RHA 4.46 to be a physician who—

4.54.1 Is certified by a medical specialty board whose certification process has been recognized by the Nuclear Regulatory Commission or an Agreement State. The names of board certifications that have been recognized by the Nuclear Regulatory Commission or an Agreement State are posted on the NRC's Medical Uses Licensee Toolkit Web page. To have its certification process recognized, a specialty board shall require all candidates for certification to:

4.54.1.1 Successfully complete a minimum of 3 years of residency training in a radiation oncology program approved by the Residency Review committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Post-Graduate Training of the American Osteopathic Association; and

4.54.1.2 Pass an examination, administered by diplomats of the specialty board, that tests knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of manual brachytherapy; or

4.54.2 Has completed a structured educational program in basic radionuclide handling techniques applicable to the use of manual brachytherapy sources that includes—

4.54.2.1 200 hours of classroom and laboratory training in the following areas:

4.54.2.1.1 Radiation physics and instrumentation;

4.54.2.1.2 Radiation protection;

4.54.2.1.3 Mathematics pertaining to the use and measurement of radioactivity; and

4.54.2.1.4 Radiation biology; and

4.54.2.2 500 hours of work experience, under the supervision of an authorized user who meets the requirements in RHA 4.23, 4.54, or equivalent NRC or Agreement State requirements at a medical facility authorized to use radioactive material under RHA 4.46, involving—

4.54.2.2.1 Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

4.54.2.2.2 Checking survey meters for proper operation;

4.54.2.2.3 Preparing, implanting, and removing brachytherapy sources;

4.54.2.2.4 Maintaining running inventories of material on hand;

4.54.2.2.5 Using administrative controls to prevent a medical event involving the use of radioactive material;

4.54.2.2.6 Using emergency procedures to control radioactive material; and

4.54.2.3 Has completed 3 years of supervised clinical experience in radiation oncology, under an authorized user who meets the requirements in RHA 4.23, 4.54 or equivalent NRC requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by RHA 4.54.2.2; and

4.54.2.4 Has obtained written attestation that the individual has satisfactorily completed the requirements in paragraphs 4.54.2.1 and 4.54.2.2 of this section and is able to independently fulfill the radiation safety-related duties as an authorized user of manual brachytherapy sources for the medical uses authorized under RHA 4.46. The attestation must be obtained from either:

4.54.2.4.1 A preceptor authorized user who meets the requirements in RHA 4.23, RHA 4.54, or equivalent Nuclear Regulatory Commission or Agreement State requirements; or

4.54.2.4.2 A residency program director who affirms in writing that the attestation represents the consensus of the residency program faculty where at least one faculty member is an authorized user who meets the requirements in RHA 4.23, RHA 4.54, or equivalent Agreement State requirements, and concurs with the attestation provided by the residency program director. The residency training program must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Council on Postdoctoral Training of the American

Osteopathic Association and must include training and experience specified in paragraphs 4.54.2.1 and 4.54.2.2 of this section.

## Amend 4.55 to read:

Except as provided in RHA 4.23, the licensee shall require the authorized user of strontium-90 for ophthalmic radiotherapy to be a physician who—

4.55.1 Is an authorized user under RHA 4.54 or equivalent NRC requirements; or

4.55.2 Has completed 24 hours of classroom and laboratory training applicable to the medical use of strontium-90 for ophthalmic radiotherapy. The training must include—

4.55.2.1 Radiation physics and instrumentation;

4.55.2.2 Radiation protection;

4.55.2.3 Mathematics pertaining to the use and measurement of radioactivity; and

4.55.2.4 Radiation biology; and

4.55.3 Supervised clinical training in ophthalmic radiotherapy under the supervision of an authorized user at a medical institution that includes the use of strontium-90 for the ophthalmic treatment of five individuals. This supervised clinical training must involve—

4.55.3.1 Examination of each individual to be treated;

4.55.3.2 Calculation of the dose to be administered;

4.55.3.3 Administration of the dose; and

4.55.3.4 Follow up and review of each individual's case history; and

4.55.4 Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in RHA 4.23, 4.54, 4.55, or equivalent NRC or Agreement State requirements, that the individual has satisfactorily completed the requirements in paragraphs 4.55.2 and 4.55.3 of this section and is able to independently fulfill the radiation safety-related duties as an authorized user of strontium-90 for ophthalmic use.

#### Amend 4.56 to read:

## RHA 4.56. Use of Sealed Sources and Medical Devices for Diagnosis.

4.56.1 A licensee must use only sealed sources that are not in medical devices for diagnostic medical uses if the sealed sources are approved in the Sealed Source and Device Registry for diagnostic medicine. The sealed sources may be used for diagnostic medical uses that are not explicitly listed in the Sealed Source and Device Registry but must be used in accordance with the radiation safety conditions and limitations described in the Sealed Source and Device Registry.

4.56.2 A licensee must only use medical devices containing sealed sources for diagnostic medical uses if both the sealed sources and medical devices are approved in the Sealed Source and Device Registry for diagnostic medical uses. The diagnostic medical devices may be used for diagnostic medical uses that are not explicitly listed in the Sealed Source and Device Registry but must be used in accordance with the radiation safety conditions and limitations described in the Sealed Source and Device Registry.

4.56.3 Sealed sources and devices for diagnostic medical uses may be used in research in accordance with an active Investigational Device Exemption (IDE) application accepted by the U.S. Food and Drug Administration provided the requirements of RHA 4.19.1 are met.

## Amend 4.57 to read:

## RHA 4.57. Training for Use of Sealed Sources and Medical Devices for Diagnosis.

Except as provided in RHA 4.23, the licensee shall require the authorized user of a diagnostic sealed source for use in a device authorized under RHA 4.56 to be a physician, dentist, or podiatrist who—

4.57.1 Is certified by a medical specialty board whose certification process includes all of the requirements in RHA 4.57.3 and 4.57.4 of this section and whose certification has been recognized by the Nuclear Regulatory Commission or an Agreement State. The names of board certifications that have been recognized by the Nuclear Regulatory Commission or an Agreement State are posted on the NRC's Medical Uses Licensee Toolkit Web page; or

4.57.2 Is an authorized user for uses listed in RHA 4.37 or equivalent Nuclear Regulatory Commission or Agreement State requirements; or

4.57.3 Has had 8 hours of classroom and laboratory training in basic radionuclide handling techniques specifically applicable to the use of the device. The training must include—

4.57.3.1 Radiation physics and instrumentation;

4.57.3.2 Radiation protection;

4.57.3.3 Mathematics pertaining to the use and measurement of radioactivity;

4.57.3.4 Radiation biology; and

4.57.4 Has completed training in the use of the device for the uses requested.

#### Amend 4.58 to read:

4.58.1 A licensee must only use sealed sources:

4.58.1.1 Approved and as provided for in the Sealed Source and Device Registry in photon emitting remote afterloader units, teletherapy units, or gamma stereotactic radiosurgery units to deliver therapeutic doses for medical uses: or

4.58.1.2 In research involving photon-emitting remote afterloader units, teletherapy units, or gamma stereotactic radiosurgery units in accordance with an active Investigational Device Exemption (IDE) application accepted by the U.S. Food and Drug Administration provided the requirements of RHA 4.19.1 are met.

4.58.2 A licensee must use photon-emitting remote afterloader units, teletherapy units, or gamma stereotactic radiosurgery units:

4.58.2.1 Approved in the Sealed Source and Device Registry to deliver a therapeutic dose for medical use. These devices may be used for therapeutic medical treatments that are not explicitly provided for in the Sealed Source and Device Registry, but must be used in accordance with radiation safety conditions and limitations described in the Sealed Source and Device Registry; or

4.58.2.2 In research in accordance with an active Investigational Device Exemption (IDE) application accepted by the FDA provided the requirements of RHA 4.19.1 are met.

## Amend 4.61.4 to read:

4.61.4 Training and Instructions.

4.61.4.1 Prior to the first use for patient treatment of a new unit or an existing unit with a manufacturer upgrade that affects the operation and safety of the unit, a licensee shall ensure that vendor operational and safety training is provided to all individuals who will operate the unit. The vendor operational and safety training must be provided by the device manufacturer or by an individual certified by the device manufacturer to provide the operational and safety training.

4.61.4.2 A licensee shall provide operational and safety instructions initially and at least annually to all individuals who operate the unit at the facility, as appropriate to the individual's assigned duties. The instructions shall include instruction in—

4.61.4.2.1 The procedures identified in paragraph 4.61.1.4 of this section; and

4.61.4.2.2 The operating procedures for the unit.

## Amend 4.61.7 to read:

4.61.7 A licensee shall retain a copy of the procedures required by RHA 4.61.1.4 and 4.61.4.2.2 of this section in accordance with RHA 4.108.

## Amend the title of 4.72 to read:

## RHA 4.72. Full-inspection Servicing for Teletherapy and Gamma Stereotactic Radiosurgery Units.

## Amend 4.72.1 to read:

4.72.1 A licensee shall have each teletherapy unit and gamma stereotactic radiosurgery unit fully inspected and serviced during each source replacement to assure proper functioning of the source exposure mechanism and other safety components. The interval between each full-inspection servicing shall not exceed 5 years for each teletherapy unit and shall not exceed 7 years for each gamma stereotactic radiosurgery unit.

#### Amend 4.74 to read:

Except as provided in RHA 4.23, the licensee shall require an authorized user of a sealed source for a use authorized under RHA 4.58 to be a physician who—

4.74.1 Is certified by a medical specialty board whose certification process has been recognized by the Nuclear Regulatory Commission or an Agreement State and who meets the requirements in paragraph 4.74.3 of this section. The names of board certifications that have been recognized by the Nuclear Regulatory Commission or an Agreement State are posted on the NRC's Medical Uses Licensee Toolkit Web page. To have its certification process recognized, a specialty board shall require all candidates for certification to:

4.74.1.1 Successfully complete a minimum of 3 years of residency training in radiation therapy program approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physician and Surgeons of Canada or the Committee on Post-Graduate Training of the American Osteopathic Association; and

4.74.1.2 Pass an examination, administered by diplomats of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of stereotactic radiosurgery, remote afterloaders and external beam therapy; or

4.74.2 Has completed a structured educational program in basic radionuclide techniques applicable to the use of a sealed source in a therapeutic medical unit that includes—

4.74.2.1 200 hours of classroom and laboratory training in the following areas-

4.74.2.1.1 Radiation physics and instrumentation;

4.74.2.1.2 Radiation protection;

4.74.2.1.3 Mathematics pertaining to the use and measurement of radioactivity; and

4.74.2.1.4 Radiation biology; and

4.74.2.2 500 hours of work experience, under the supervision of an authorized user who meets the requirements in RHA 4.23, 4.74, or equivalent NRC or Agreement State requirements at a medical facility that is authorized to use radioactive materials in RHA 4.58, involving—

4.74.2.2.1 Reviewing full calibration measurements and periodic spot-checks;

4.74.2.2.2 Preparing treatment plans and calculating treatment doses and times;

4.74.2.2.3 Using administrative controls to prevent a medical event involving the use of radioactive material;

4.74.2.2.4 Implementing emergency procedures to be followed in the event of the abnormal operation of the medical unit or console;

4.74.2.2.5 Checking and using survey meters; and

4.74.2.2.6 Selecting the proper dose and how it is to be administered; and

4.74.2.3 Has completed 3 years of supervised clinical experience in radiation therapy, under an authorized user who meets the requirements in RHA 4.23, 4.74, or equivalent NRC or Agreement State requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by RHA 4.74.2.2; and

4.74.2.4 Has obtained written attestation that the individual has satisfactorily completed the requirements in paragraphs 4.74.2.1, 4.74.2.2, 4.74.2.3, and 4.74.3 of this section; and is able to independently fulfill the radiation safety-related duties as an authorized user of each type of therapeutic medical unit for which the individual is requesting authorized user status. The attestation must be obtained from either:

4.74.2.4.1 A preceptor authorized user who meets the requirements in RHA 4.23, 4.74, or equivalent Nuclear Regulatory Commission or Agreement State requirements for the type(s) of therapeutic medical unit for which the individual is requesting authorized user status; or

4.74.2.4.2 A residency program director who affirms in writing that the attestation represents the consensus of the residency program faculty where at least one faculty member is an authorized user who meets

the requirements in RHA 4.23, 4.74, or equivalent Nuclear Regulatory Commission or Agreement State requirements, for the type(s) of therapeutic medical unit for which the individual is requesting authorized user status, and concurs with the attestation provided by the residency program director. The residency training program must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Council on Postdoctoral Training of the American Osteopathic Association and must include training and experience specified in paragraphs 4.74.2.1, 4.74.2.2, and 4.74.2.3 of this section.

4.74.3 Has received training in device operation, safety procedures, and clinical use for the type(s) of use for which authorization is sought. This training requirement may be satisfied by satisfactory completion of a training program provided by the vendor for new users or by receiving training supervised by an authorized user or authorized medical physicist, as appropriate, who is authorized for the type(s) of use for which the individual is seeking authorization.

## Add 4.89.3 to read:

4.89.3. For each Associate Radiation Safety Officer appointed under RHA 4.13.2, the licensee shall retain, for 5 years after the Associate Radiation Safety Officer is removed from the license, a copy of the written document appointing the Associate Radiation Safety Officer signed by the licensee's management.

## Amend 4.102 to read:

A licensee shall maintain a record of safety instructions required by RHA 4.41, 4.49, and the operational and safety instructions required by RHA 4.61 for 3 years. The record must include a list of the topics covered, the date of the instruction, the name(s) of the attendee(s), and the name(s) of the individual(s) who provided the instruction.

## Amend the title of 4.116 to read:

# RHA 4.116. Records of Full-inspection Servicing for Teletherapy and Gamma Stereotactic Radiosurgery Units.

## Amend 4.116.1 to read:

4.116.1 A licensee shall maintain a record of the full-inspection and servicing for teletherapy and gamma stereotactic radiosurgery units required by RHA 4.72 for the duration of use of the unit.

## Amend 4.117.1 to read:

4.117.1 A licensee shall report any event as a medical event, except for an event that results from patient intervention, in which

4.117.1.1 The administration of radioactive material or radiation from radioactive material, except permanent implant brachytherapy, results in –

4.117.1.1.1 A dose that differs from the prescribed dose or dose that would have resulted from the prescribed dosage by more than 0.05 Sv (5 rem) effective dose equivalent, 0.5 Sv (50 rem) to an organ or tissue, or 0.5 Sv (50 rem) shallow dose equivalent to the skin; and

4.117.1.1.1 The total dose delivered differs from the prescribed dose by 20 percent or more; or

4.117.1.1.2 The total dosage delivered differs from the prescribed dosage by 20 percent or more or falls outside the prescribed dosage range; or

4.117.1.1.1.3 The fractionated dose delivered differs from the prescribed dose, for a single fraction, by 50 percent or more.

4.117.1.1.2 A dose that exceeds 0.05 Sv (5 rem) effective dose equivalent, 0.5 Sv (50 rem) to an organ or tissue, or 0.5 Sv (50 rem) shallow dose equivalent to the skin from any of the following—

4.117.1.1.2.1 An administration of a wrong radioactive drug containing radioactive material; or

4.117.1.1.2.2 An administration of a radioactive drug containing radioactive material by the wrong route of administration; or

4.117.1.1.2.3 An administration of a dose or dosage to the wrong individual or human research subject; or

4.117.1.1.2.4 An administration of a dose or dosage delivered by the wrong mode of treatment; or

4.117.1.1.2.5 A leaking sealed source.

4.117.1.1.3 A dose to the skin or an organ or tissue other than the treatment site that exceeds by:

 $4.117.1.1.3.1\ 0.5\ Sv\ (50\ rem)$  or more the expected dose to that site from the procedure if the administration had been given in accordance with the written directive prepared or revised before administration; and

4.117.1.1.3.2 50 percent or more the expected dose to that site from the procedure if the administration had been given in accordance with the written directive prepared or revised before administration.

4.117.1.2 For permanent implant brachytherapy, the administration of radioactive material or radiation from radioactive material (excluding sources that were implanted in the correct site but migrated outside the treatment site) that results in—

4.117.1.2.1 The total source strength administered differing by 20 percent or more from the total source strength documented in the post-implantation portion of the written directive;

4.117.1.2.2 The total source strength administered outside of the treatment site exceeding 20 percent of the total source strength documented in the post-implantation portion of the written directive; or

4.117.1.2.3 An administration that includes any of the following:

4.117.1.2.3.1 The wrong radionuclide;

4.117.1.2.3.2 The wrong individual or human research subject;

4.117.1.2.3.3 Sealed source(s) implanted directly into a location discontiguous from the treatment site, as documented in the post-implantation portion of the written directive; or

4.117.1.2.3.4 A leaking sealed source resulting in a dose that exceeds 0.5 Sv (50 rem) to an organ or tissue.

## Amend 4.117.7.1.2 to read:

4.117.7.1.2 Identification number or if no other identification number is available, the social security number of the individual who is the subject of the event; and

## Amend 4.118.6.1.2 to read:

4.118.6.1.2 Identification number or if no other identification number is available, the social security number of the individual who is the subject of the event; and

#### Add 4.120 to read:

RHA 4.120 Report and Notification for an Eluate Exceeding Permissible Molybdenum-99, Strontium-82, and Strontium-85 Concentrations.

4.120.1 The licensee shall notify by telephone the Department and the distributor of the generator within 7 calendar days after discovery that an eluate exceeded the permissible concentration listed in 4.38.1 at the time of generator elution. The telephone report to the Department must include the manufacturer, model number, and serial number (or lot number) of the generator; the results of the measurement; the date of the measurement; whether dosages were administered to patients or human research subjects, when the distributor was notified, and the action taken.

4.120.2 By an appropriate method listed in RHA 1.13 of this chapter, the licensee shall submit a written report to the Department within 30 calendar days after discovery of an eluate exceeding the permissible concentration at the time of generator elution. The written report must include the action taken by the licensee; the patient dose assessment; the methodology used to make this dose assessment if the eluate was administered to patients or human research subjects; and the probable cause and an assessment of failure in the licensee's equipment, procedures or training that contributed to the excessive readings if an error occurred in the licensee's breakthrough determination; and the information in the telephone report as required by 4.120.1 of this section.

## Amend 5.14 to read:

5.14.1 The licensee may not permit any individual to act as a radiographer or a radiographer's assistant unless, at all times during radiographic operations, each individual wears, on the trunk of the body, a direct reading dosimeter, an operating alarm rate meter and a personnel dosimeter. At permanent radiography facilities where other appropriate alarming or warning devices are in routine use, the wearing of an alarming rate meter is not required. Pocket dosimeters must have a range from zero to at least 200 milliroentgens and must be recharged at the start of each shift. Electronic personal dosimeters may only be used in place of ion-chamber pocket dosimeters. Each personnel dosimeter must be assigned to and worn by only one individual. Film badges must be replaced at least monthly and all other personnel dosimeters that require replacement must be replaced at least quarterly. All personnel dosimeters must be evaluated at least quarterly or promptly after replacement, whichever is more frequent.

5.14.2 Pocket dosimeters or electronic personal dosimeters must be read and exposures recorded at the beginning and end of each shift. The licensee shall retain each record of these exposures in accordance with RHA 5.14.7.1.

5.14.3 Pocket dosimeters or electronic personal dosimeters shall be checked at periods not to exceed one year for correct response to radiation. Acceptable dosimeters shall read within plus or minus 20 percent of the true radiation exposure. Records must be maintained in accordance with RHA 5.14.7.1.

5.14.4 If an individual's pocket chamber is found to be off scale, or if his or her electronic personal dosimeter reads greater than 2 millisieverts (200 millirems), and the possibility of radiation exposure cannot be ruled out

as the cause, the individual's personnel dosimeter must be sent for processing within 24 hours. For personnel dosimeters that do not require processing, evaluation of the dosimeter must be started within 24 hours. In addition, the individual may not resume work associated with licensed material use until a determination of the individual's radiation exposure has been made. This determination must be made by the RSO or the RSO's designee. The results of this determination must be included in records to be maintained by the licensee until the Department terminates the license.

If the personnel dosimeter that is required by RHA 5.14.1 is lost or damaged, the worker shall cease work immediately until a replacement personnel dosimeter meeting the requirements is provided and the exposure is calculated for the time period from issuance to loss or damage of the personnel dosimeter. The results of the calculated exposure and the time period for which the personnel dosimeter was lost or damaged must be included in the records to be maintained until the Department terminates the license.

5.14.5 Dosimetry results must be retained in accordance with RHA 5.14.7.

5.14.6 Each alarm rate meter must:

5.14.6.1 Be checked to ensure that the alarm functions properly (sounds) prior to use at the start of each shift;

5.14.6.2 Be set to give an alarm signal at a preset dose rate of 500 mR/hr.;

5.14.6.3 Require special means to change the preset alarm function; and

5.14.6.4 Be calibrated at periods not to exceed one year for correct response to radiation: Acceptable rate meters must alarm within plus or minus 20 percent of the true radiation dose rate. Records of these calibrations must be maintained in accordance with RHA 5.14.7.2.

5.14.7 Each licensee shall maintain the following exposure records specified in RHA 5.14:

5.14.7.1 Direct reading dosimeter readings and yearly operability checks required by RHA 5.14.2 and 5.14.3 for 3 years after the record is made.

5.14.7.2 Records of alarm ratemeter calibrations for 3 years after the record is made.

5.14.7.3 Personnel dosimeter results must be retained until the Department terminates the license.

5.14.7.4 Records of estimates of exposures as a result of: off-scale personal direct reading dosimeters, or lost or damaged personnel dosimeters until the Department terminates the license.

#### Amend 8.21.1 to read:

8.21.1 The licensee may not permit an individual to act as a logging supervisor or logging assistant unless that person wears a personnel dosimeter at all times during the handling of radioactive materials. Each personnel dosimeter must be assigned to and worn by only one individual. Film badges must be replaced at least monthly and other personnel dosimeters that require replacement must be replaced at least quarterly. All personnel dosimeters must be evaluated at least quarterly or promptly after replacement, whichever is more frequent.

#### Amend 11.20.1 to read:

11.20.1 Irradiator operators shall wear a personnel dosimeter while operating a panoramic irradiator or while in the area around the pool of an underwater irradiator. The personnel dosimeter processor must be capable of detecting high energy photons in the normal and accident dose ranges. Each personnel dosimeter must be

assigned to and worn by only one individual. Film badges must be processed at least monthly, and other personnel dosimeters must be processed at least quarterly. All personnel dosimeters must be evaluated at least quarterly or promptly after replacement, whichever is more frequent.

#### Amend 12.5.2.2 to read:

12.5.2.2 Each licensee shall name one or more individuals to be reviewing officials. After completing the background investigation on the reviewing official, the licensee shall provide under oath or affirmation, a certification that the reviewing official is deemed trustworthy and reliable by the licensee. Licensees shall provide oath or affirmation certificates to the Department. The fingerprints of the named reviewing official must be taken by a law enforcement agency, Federal or State agencies that provide fingerprinting services to the public, or commercial fingerprinting services authorized by a State to take fingerprints. The licensee shall recertify that the reviewing official is deemed trustworthy and reliable every ten (10) years in accordance with RHA 12.6.3.

## Amend 12.7.3 to read:

12.7.3.1 For the purpose of complying with this subpart, Department licensees shall use an appropriate method listed in 10 CFR 37.7 to submit to the U.S. Nuclear Regulatory Commission, Director Division of Physical and Cyber Security Policy, 11545 Rockville Pike, ATTN: Criminal History Program, Mail Stop T-8B20, Rockville, MD 20852, one completed, legible standard fingerprint card (Form FD-258, ORIMDNRCOOOZ), electronic fingerprint scan or, where practicable, other fingerprint record for each individual requiring unescorted access to Category 1 or Category 2 quantities of radioactive material. Copies of these forms may be obtained by e-mailing *MAILSVS.Resource@nrc.gov*. Guidance on submitting electronic fingerprints can be found at https://www.nrc.gov/security/chp.html.

12.7.3.2 Fees for the processing of fingerprint checks are due upon application. Licensees shall submit payment with the application for the processing of fingerprints through corporate check, certified check, cashier's check, money order, or electronic payment, made payable to "U.S. NRC." (For guidance on making electronic payments, contact the Division of Physical and Cyber Security Policy by e-mailing Crimhist.Resource@nrc.gov.) Combined payment for multiple applications is acceptable. The Commission publishes the amount of the fingerprint check application fee on the NRC's public Web site. (To find the current fee amount, go to the Licensee & Criminal History Records Check Firearms Background Check information page at https://www.nrc.gov/security/chp.html and see the link for How do I determine how much to pay for the request?).

12.7.3.3 The U.S. Nuclear Regulatory Commission will forward to the submitting Department licensee all data received from the FBI as a result of the licensee's application(s) for criminal history records checks.

## Amend 12.12.4 to read:

12.12.4 Protection of information.

12.12.4.1 Licensees authorized to possess Category 1 or Category 2 quantities of radioactive material shall limit access to and unauthorized disclosure of their security plan, implementing procedures, and the list of individuals that have been approved for unescorted access.

12.12.4.2 Efforts to limit access shall include the development, implementation, and maintenance of written policies and procedures for controlling access to, and for proper handling and protection against unauthorized disclosure of, the security plan, implementing procedures, and the list of individuals that have been approved for unescorted access.

12.12.4.3 Before granting an individual access to the security plan, implementing procedures, or the list of individuals that have been approved for unescorted access, licensees shall:

12.12.4.3.1 Evaluate an individual's need to know the security plan, implementing procedures, or the list of individuals that have been approved for unescorted access; and

12.12.4.3.2 If the individual has not been authorized for unescorted access to Category 1 or Category 2 quantities of radioactive material, safeguards information, or safeguards information modified handling, the licensee must complete a background investigation to determine the individual's trustworthiness and reliability. A trustworthiness and reliability determination shall be conducted by the reviewing official and shall include the background investigation elements contained in RHA 12.6.1.2 through 12.6.1.7.

12.12.4.4 Licensees need not subject the following individuals to the background investigation elements for protection of information:

12.12.4.4.1 The categories of individuals listed in RHA 12.8.1.1 through 12.8.1.13; or

12.12.4.4.2 Security service provider employees, provided written verification that the employee has been determined to be trustworthy and reliable, by the required background investigation in RHA 12.6.1.2 through 12.6.1.7, has been provided by the security service provider.

12.12.4.5 The licensee shall document the basis for concluding that an individual is trustworthy and reliable and should be granted access to the security plan, implementing procedures, or the list of individuals that have been approved for unescorted access.

12.12.4.6 Licensees shall maintain a list of persons currently approved for access to the security plan, implementing procedures, or the list of individuals that have been approved for unescorted access. When a licensee determines that a person no longer needs access to the security plan, implementing procedures, or the list of individuals that have been approved for unescorted access or no longer meets the access authorization requirements for access to the information, the licensee shall remove the person from the approved list as soon as possible, but no later than 7 working days, and take prompt measures to ensure that the individual is unable to obtain the security plan, implementing procedures, or the list of individuals that have been approved for unescorted access.

12.12.4.7 When not in use, the licensee shall store its security plan, implementing procedures, and the list of individuals that have been approved for unescorted access in a manner to prevent unauthorized access. Information stored in nonremovable electronic form must be password protected.

12.12.4.8 The licensee shall retain as a record for 3 years after the document is no longer needed:

12.12.4.8.1 A copy of the information protection procedures; and

12.12.4.8.2 The list of individuals approved for access to the security plan, implementing procedures, or the list of individuals that have been approved for unescorted access.

#### Amend 12.23.1.1 to read:

12.23.1.1 The notification must be made to the Department and to the office of each appropriate governor or governor's designee. The contact information, including telephone numbers and mailing addresses, of governors and governors' designees, is available on the NRC's Web site at https://scp.nrc.gov/special/designee.pdf. A list of the contact information is also available upon request from the Director, Division of Materials Safety, Security, State, and Tribal Programs, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. The notification to the Department may be made by email to RAMQC\_shipments@dhec.sc.gov or by fax to 803-898-0391. Notifications to the

Department must be to the Director, Division of Land & Waste Management, Bureau of Waste Management, 2600 Bull Street, Columbia, SC 29201.

## 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: 61-63, Radioactive Materials (Title A).

Purpose: The Department proposes amending R.61-63 to incorporate federal law as required to maintain South Carolina's status with the United States Nuclear Regulatory Commission ("NRC") as an Agreement State.

Legal Authority: 1976 Code Sections 13-7-40 et seq.

Plan for Implementation: The amendments will take legal effect upon publication in the State Register. Department personnel will then take appropriate steps to inform the regulated community of the amendments. Additionally, a copy of the regulation will be posted on the Department's website, accessible at <u>www.scdhec.gov/regulations-table</u>. Printed copies may also be requested, for a fee, from the Department's Freedom of Information Office.

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

The amendments are required to be implemented for South Carolina to maintain its status through the NRC as an Agreement State and to ensure compatibility with federal regulations as required by Section 274 of the Atomic Energy Act of 1954. The amendments include revisions to medical event definitions, training and experience, individual monitoring devices, social security number fraud prevention, and general overall clarifications, miscellaneous corrections, and organization.

## DETERMINATION OF COSTS AND BENEFITS:

Neither the state nor its political subdivisions will incur additional costs through implementation of these amendments. Existing staff and resources will be utilized to implement the revisions to the regulation. The amendments will not create any significant additional cost to the regulated community since requirements or changes to the regulations will be substantially consistent with the current guidelines and review guidelines utilized by the Department.

#### UNCERTAINTIES OF ESTIMATES:

None.

## EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH:

These amendments seek to ensure an effective regulatory program for radioactive material users under state jurisdiction, and protection of the public and workers from unnecessary exposure to ionizing radiation.

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

There is no anticipated detrimental effect on the environment.

#### Document No. 4979 **DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL** CHAPTER 61 Statutory Authority: 1976 Code Sections 44-1-140(11), 44-1-150, 44-55-825, 44-55-827, and 48-1-10 et seq.

61-55. Septic Tank Site Evaluation Fees.

61-56. Onsite Wastewater Systems.

61-56.1. License to Construct or Clean Onsite Sewage Treatment and Disposal Systems and Self-Contained Toilets.

61-56.2. Licensing of Onsite Wastewater Systems Master Contractors.

## Synopsis:

Pursuant to R.61-56, the Department of Health and Environmental Control ("Department") provides oversight for safe treatment and disposal of domestic wastewater to protect the health of families and communities. In accordance with R.61-55, R.61-56, R.61-56.1, and R.61-56.2, the Department issues onsite wastewater contractor licenses, permits to construct, and approvals to operate for individual onsite wastewater treatment systems (septic systems).

The Department amends R.61-56, Onsite Wastewater Systems, to add new system standards, clarify and amend definitions, and clarify and update selected sections. The amendments modernize the regulation and streamline permitting procedures to address needed updates in administering the Onsite Wastewater program.

The Department also amends provisions of R.61-56.1 and R.61-56.2 and merges R.61-56.1 and R.61-56.2 into R.61-56 to improve efficiency and clarity for regulated entities and the public. This entails repealing R.61-56.1 and R.61-56.2 and simultaneously adding their provisions, as amended, to R.61-56. The amendments include changes to licensing requirements for pumpers and haulers currently under R.61-56.1. The amendments revise provisions currently contained in R.61-56.2 to implement a tiered licensing program to establish improved competency of onsite wastewater system contractors/installers. This approach includes new requirements for examination and continuing education. In addition, because R.61-56.1 and R.61-56.2 are being combined with R.61-56, previously separate enforcement provisions are also consolidated and updated for clarity and to improve administration of the Onsite Wastewater program.

The revisions expand existing site evaluation options and allow more streamlined permit processing by allowing an applicant to submit a proposed system layout from a licensed Professional Soil Classifier ("PSC") or other licensed person qualified by statute to practice professional soil classifying. Under this regulation, applicants desiring to install systems for a subdivision will be required to submit third-party soils work from a PSC or other licensed person qualified by statute to practice professional soil classifying. That person would then have the option to either submit a proposed system layout under one of the system standards established within R.61-56 or give the soils report to a Registered Professional Engineer to design a specialized septic system through the 610 Standard. Subdivision permit applicants may incur additional costs for the third-party work performed under this process. Outside of the subdivision context, applicants for conventional systems will retain the option to use a qualified third party or allow the Department to conduct a soil evaluation and prepare a system layout. The expanded options and enhanced involvement of third-party contractors serve to streamline and expedite the permit process for the Department and the regulated community.

In the interest of efficiency, the Department is also repealing R.61-55 and adding its provisions to R.61-56. The amendments related to R.61-55 include amendments to definitions and other changes as necessary to facilitate merging this regulation into R.61-56.

The Department has also made other corrections for clarity and readability, grammar, punctuation, codification, and regulation text improvement.

The Department had a Notice of Drafting published in the March 27, 2020, South Carolina State Register.

Changes made at the request of the Senate Medical Affairs Committee by letter dated April 15, 2021:

Section 101.1. Addition of a Variance definition to accompany Section 104.4.

Section 102.1(2)(c). Revised language to clarify that the license professional must confirm with their licensing board that they are qualified to practice soil classifying.

Section 104.4. Addition of language allowing the Department to approve and issue a variance or exemption from R.61-56.

Appendix Q(1)(b)(ii). Revised setback to ordinary high-water elevation within the banks of non-tidal, environmentally sensitive waters from one hundred twenty-five feet to seventy-five feet.

## Instructions:

Repeal R.61-55, R.61-56.1, and R.61-56.2 in their entirety from the South Carolina Code of Regulations; replace R.61-56 in its entirety with this amendment.

## Text:

61-55. [Repealed].

61-56. Onsite Wastewater Systems.

(Statutory Authority: S.C. Code Sections 44-1-140(11), 44-1-150, 44-55-825, 44-55-827, and 48-1-10 et seq.)

## TABLE OF CONTENTS:

- 100. Purposes and Scope.
- 101. Definitions and References.
- 102. Onsite Wastewater System Site Evaluation and Fees.
- 103. Onsite Wastewater Systems.
- 104. Application, Permit, Final Inspection and Approval, and Variances and Exemptions.
- 200. Minimum Site Conditions for Onsite Wastewater Systems.
- 201. Minimum Requirements for Onsite Wastewater System Primary Treatment.
- 202. Minimum Requirements for Onsite Wastewater System Final Treatment and Disposal Systems.
- 203. Onsite Wastewater System Construction Criteria.
- 204. Evaluation of Alternative Infiltration Trench Products.
- 300. Wastewater Treatment Facility Accessibility.
- 301. Discharge of Waste.
- 302. Changes in Use That Impact Existing Onsite Wastewater Systems.
- 400. Appendices of Standards for Permitted Systems.
- Appendix A System Standard 100/101 Conventional with 14-Inch Aggregate Depth.
- Appendix B System Standard 150 Large (greater than 1500 gpd) and Community Systems.
- Appendix C System Standard 210/211 Shallow Placement with 9-Inch Aggregate Depth.
- Appendix D System Standard 220/221 Shallow Placement with 6-Inch Aggregate Depth.
- Appendix E System Standard 230/231 Shallow Placement with 14-Inch Aggregate Depth with Fill Cap.
- Appendix F System Standard 240/241 Ultra-Shallow Placement with 6-Inch Aggregate Depth with Fill Cap.
- Appendix G System Standard 250/251 Reservoir Infiltration System for Soils with Expansive Clay.
- Appendix H System Standard 260/261 9-Inch Shallow Placement System with Fill Cap.
- Appendix I System Standard 270/271 Alternative Trench Width and Depth Systems.
- Appendix J System Standard 280/281 Reservoir Infiltration System for Soils with Expansive Clay Shallow Rock Formations.
- Appendix K System Standard 290/291 Alternative Trench Width and Depth Systems with Fill Cap.

Appendix L - System Standard 370/371 - Shallow Placement with Fill Cap for Sites with Shallow Class IV Soil.

- Appendix M System Standard 380/381 Double Aggregate Depth Wastewater Infiltration Trenches.
- Appendix N System Standard 420/421 Mounded Infiltration System.
- Appendix O System Standard 431 Mounded Fill System.
- Appendix P System Standard 601 Elevated Infiltration System.
- Appendix Q System Standard 610 Specialized Onsite Wastewater System Designs (less than 1500 gpd).
- Appendix R Curtain Drain Standard.
- Appendix S Nonwater-Carried Sewage Treatment Systems.
- Appendix T Wastewater Combustion Systems.
- Appendix U Gray Water Subsurface Reuse Systems.
- 500. Long-Term Acceptance Rate Standard for Onsite Wastewater Systems.
- 501. Peak Sewage Flow Rate Standard.
- 502. Onsite Wastewater Pump System Standard.
- 503. Minimum Design Standards for Tank Construction.
- 504. Fiberglass Reinforced Plastic Tanks Standard.
- 505. Thermoplastic Tanks Standard.
- 600. License to Clean Onsite Wastewater Systems, Self-Contained Toilets, and Other Sewage Holding Systems
- (i.e., Licensing of Pumper/Haulers).
- 601. Vehicles, Equipment, and Practices.
- 602. Records of Operation.
- 700. License to Construct or Repair Onsite Wastewater Systems (i.e., Licensing of Installers).
- 701. Continuing Education and Training.
- 702. Practice, Procedure, and Quality Control.
- 703. Bonding and Insurance Requirements: Tier 3 Installers.
- 704. Transition to Tiered Licensure.
- 800. Enforcement.
- 801. Severability Clause.

## 100. Purposes and Scope.

(1) A major factor influencing the health of individuals where public wastewater treatment facilities are not available is the proper onsite treatment and disposal of domestic wastewater. Diseases such as dysentery, cholera, infectious hepatitis, typhoid, and paratyphoid are transmitted through the fecal contamination of food, water, and the land surface largely due to the improper treatment and disposal of domestic wastewater. For this reason, every effort should be made to prevent such hazards and to treat and dispose of all domestic wastewater through the practical application of the most effective technology available.

(2) Safe treatment and disposal of domestic wastewater is necessary to protect the health of families and communities, and to prevent the occurrence of public health nuisances. Domestic wastewater can be rendered ecologically safe and public health can be protected if such wastes are disposed of so that:

(a) They will not contaminate any drinking water supply.

(b) They will not give rise to a public health hazard by being accessible to insects, rodents, or other possible carriers, which may come into contact with food or drinking water.

(c) They will not give rise to a public health hazard by being accessible to children or adults.

(d) They will not violate federal and state laws or regulations governing water pollution or sewage disposal.

- (e) They will not pollute or contaminate any waters of the state.
- (f) They will not give rise to a public health nuisance.

(3) Where the installation of an onsite wastewater system is necessary, the basic principles of design, construction, installation, operation and maintenance shall be followed.

## 101. Definitions and References.

101.1. Definitions.

Accessibility - S.C. Code Sections 44-55-1410 and 5-31-2010 authorizes county and municipal governments to determine if a wastewater treatment facility is accessible to properties. Where annexation or easements to cross adjacent property are required to connect to a wastewater treatment facility, the wastewater treatment facility shall not be considered accessible.

Alternative System - A system incorporating design modifications of the proposed subsurface wastewater infiltration trench area (drain field) or absorption trench geometry for the purpose of achieving compliance with required setbacks and offset to the zone of saturation and/or restrictive horizons. No such system shall be utilized unless the Department has established a specific standard.

Alternative Infiltration Trench Products - Products specifically designed to replace or eliminate the aggregate typically utilized in subsurface infiltration trenches. Such products must be approved for use by the Department and must adhere to required equivalency values established herein.

Applicant - A property owner, general contractor or agent representing the property owner, or developer who seeks a permit to construct and operate an onsite wastewater system.

Bond - A sum of money set aside (Surety Bond) to insure completion of work under a contract.

Campground - An organized camp in which campsites are provided for use by the general public or certain groups.

Canal - An artificial waterway used for navigation, drainage, or irrigation.

Cleaning - The removal and transportation of septage from an onsite wastewater system, self-contained toilet, or other sewage holding system to an approved disposal location.

Color Charts (Munsell System or equivalent) - Charts bearing various color chips established by a recognized color system which uses three elements—hue, value, and chroma—to make up a specific color notation. The notation is recorded in the form of hue, value, and chroma (e.g., 10YR 5/6). The three attributes of color are arranged in the system in orderly scales of equal visual steps, which are used to measure and describe color accurately under standard conditions of illumination by comparing soil samples to color chips on various charts.

Construction - The installation, upgrade, or expansion of an onsite wastewater system.

Conventional System - An onsite wastewater system that utilizes a network of conventional wastewater infiltration trenches installed in the naturally occurring soil for the treatment and disposal of domestic wastewater.

Critical Area - S. C. Code Section 48-39-10(J) defines critical area as the following: 1) coastal waters; 2) tidelands; 3) beaches; 4) beach/dune systems which are the areas from the mean high-water mark to the setback line as determined in S. C. Code Section 48-39-280.

Curtain Drain - A subsurface interceptor drain that is installed to collect and redirect groundwater as it flows through the soil profile to an appropriate discharge point.

Department - The South Carolina Department of Health and Environmental Control.

Ditch - A long narrow excavation intended for the purpose of drainage and/or irrigation.

Domestic Wastewater - The untreated liquid and solid human body waste and the liquids generated by water-using fixtures and appliances, including those associated with food service operations. For the purposes of this regulation, domestic wastewater shall not include industrial process wastewater.

Dwelling - A self-contained unit used by one (1) or more households as a home, such as a house, apartment, mobile home, house boat, tiny house, park model RV, RV or camper, or other substantial structure that provides living facilities for one (1) or more persons, including permanent or semi-permanent provisions for living, sleeping, eating, cooking, and sanitation.

Effluent - The liquid discharged from a septic tank, effluent pump station, or other sewage treatment device.

Embankment - A bank of soil with at least two (2) feet of vertical height from top to bottom.

Environmentally Sensitive Waters - Outstanding resource waters (ORW), Shellfish Harvesting Waters (SFH), and Trout-Natural Waters (TN) as defined in R.61-68 and classified in R.61-69, and including lakes greater than forty (40) acres in size and the Atlantic Ocean, regardless of their classifications in R.61-69.

Existing System - An onsite wastewater system, which has received final construction approval or has been serving a legally occupied dwelling or structure.

Expansive Soils - Soils containing significant amounts of expansible-layer clay minerals (smectites) as evidenced in the field by classifications of "Very Sticky," "Very Plastic" and where "Slickensides" are present when evaluated in accordance with the Field Book. Such soil horizons are considered to be restrictive for onsite wastewater systems.

Failing Onsite Wastewater System - An onsite wastewater system that is discharging effluent in an improper manner or has ceased to function properly.

Fiberglass Reinforced Plastic - A fibrous glass and plastic mixture that exhibits a high strength to weight ratio and is highly resistant to corrosion.

Field Book for Describing and Sampling Soils (Field Book) - A field guide published by the U.S. Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) for making or reading soil descriptions and for sampling soils, as presently practiced in the USA.

Final Treatment and Disposal - Ultimate disposition of the effluent from a septic tank or other treatment device into the soil.

Flexural Modulus of Elasticity - A measure of stiffness of a material.

Flexural Strength - A measure of the ability of a material to withstand rupture when subjected to bend loading.

Gel Coating - A specially formulated polyester resin, which is pigmented and contains filler materials, the purpose of which is to provide a smooth, pore-free, watertight surface for fiberglass reinforced plastic parts.

Gleying - Bluish, greenish, or grayish colors in the soil profile that are indicative of markedly reduced conditions due to prolonged saturation. This condition can occur in both mottled and unmottled soils, and can be determined by using the gley page of the soil color charts.

Gray Water - Domestic wastewater that is generated by water-using fixtures and appliances such as sinks (excluding kitchen sinks), showers, and laundry but that does not come into direct contact with human excreta or solid organic matter.

Gray Water Subsurface Reuse Systems - A system designed to separately collect and treat gray water and subsequently dispose of gray water by reusing it as part of a subsurface irrigation system. This definition does not include any system designed to reuse gray water for any purpose, or by any means, other than subsurface irrigation. This definition also does not include any system that reuses or recirculates gray water within the confines of (i.e., via the plumbing within) a dwelling unit, building, business, or other structure.

Grease Trap - A device designed to separate and store the oil and grease component of wastewater discharged from facilities that prepare food.

Industrial Process Wastewater - Non-domestic wastewater generated in a commercial or industrial operation that may or may not be combined with domestic wastewater.

License - The official document issued by the Department authorizing a person to be responsible for the construction, repair, or cleaning of onsite wastewater systems, self-contained toilets, and other sewage holding systems.

Licensed Onsite Wastewater System Installer (Installer) - A person authorized under this regulation to construct or repair onsite wastewater systems. The specific scope of activities authorized depends on the installer's tier of licensure, as follows:

(1) Tier 1 - May install all gravity-fed residential onsite wastewater systems. This level is not authorized to conduct repairs on existing onsite wastewater systems.

(2) Tier 2 - May install all Tier 1 systems plus pumps, grease traps, systems with curtain drains, elevated infiltration systems, mounded systems, and all commercial onsite wastewater systems, large onsite wastewater systems, and community onsite wastewater systems. This level is also authorized to conduct repairs on existing onsite wastewater systems.

(3) Tier 3 - May install all Tier 1 and 2 systems plus all Standard 610 - Specialized Onsite Wastewater Systems. This level is also authorized to conduct repairs on existing onsite wastewater systems.

Long-Term Acceptance Rate (LTAR) - The long-term rate, typically expressed in gallons per day (gpd) per square foot of trench bottom area, at which a mature onsite wastewater system can continue to accept effluent without hydraulic failure occurring. This flow rate is a result of the interaction between unsaturated soil hydraulic conductivity and biomat resistance.

Mottling - Morphological features of the soil revealed as spots or blotches of different color or shades of color interspersed with the dominant matrix color.

NSF Standard #14 - A National Sanitation Foundation Standard relating to thermoplastics which have been tested and found satisfactory for potable water supply uses, drains, waste, and vent applications.

Nonwater-Carried Sewage Treatment System - A self-contained system for waste treatment (such as a biological, composting, or incinerating toilet) that stores, treats, and renders human urine and feces inert without the use of water and that is designed to not discharge into the soil, onto the soil surface, into bodies of water, or other external media.

Onsite Wastewater (OSWW) System - A system, generally consisting of a collection sewer, septic tank(s), and subsurface wastewater infiltration area, designed to treat and dispose of domestic wastewater through a

combination of natural processes that ultimately result in effluent being transmitted through the soil, renovated, and ultimately discharged to groundwater. An onsite wastewater system shall also include an onsite wastewater system, as described above, for the treatment and disposal of gray water.

(1) Small Onsite Wastewater System - An individual system serving an individually deeded dwelling or business that generates less than fifteen hundred (1500) gpd of domestic wastewater. Management and maintenance of each system is the responsibility of the individual property owner.

(2) Large Onsite Wastewater System (General) - An individual system that treats and disposes of domestic wastewater discharges in excess of fifteen hundred (1500) gpd.

(a) Privately Owned Large System - A large onsite wastewater collection and treatment system that serves one (1) piece of deeded property such as a school, adult residential care facility, rental apartment complex, shopping center, campground, mobile home park, office complex, etc. Management and maintenance of the system is the responsibility of the individual property owner.

(b) Community (Cluster) System - A wastewater collection and treatment system that provides shared collection, treatment, and disposal of domestic wastewater from multiple parcels or multiple units of individually deeded property. Such a system might serve a small subdivision or a condominium complex. It is imperative with such systems that some form of common ownership and management be established and approved by the Department.

(c) Commercial Onsite Wastewater System - An onsite wastewater system generating domestic wastewater or sewage that serves a facility, other than a private dwelling, intended for the engagement of commerce.

Operation and Maintenance - Activities including tests, measurements, adjustments, replacements, and repairs that are intended to maintain all functional units of the onsite wastewater system in a manner that will allow the system to function as designed.

Other Sewage Holding System - Components of a sewer system or holding tank not related to an onsite wastewater system, including grease traps.

Parent Material - The unconsolidated and chemically weathered mineral or organic matter from which the column of soils is developed by pedogenic processes.

Perched Zone of Saturation (Episaturation) - A zone of saturation above an unsaturated zone.

Permit - A written document or documents issued by the Department authorizing the construction and operation of an onsite wastewater system, nonwater-carried sewage treatment system, wastewater combustion system, or gray water subsurface reuse system under this regulation. The term "permit" includes the permit to construct and the approval to operate, both of which are required prior to operation of a system under this regulation. Upon installation of a permitted system and Department issuance of an approval to operate, the construction and operation permit remains in effect for the life of the onsite wastewater system that it authorizes.

Plasticity - The degree to which "puddled" or reworked soil can be permanently deformed without rupturing. The evaluation is made in accordance with the Field Book by forming a roll (wire) of soil at a water content where the maximum plasticity is expressed.

Primary Treatment - The initial process to separate solids from the liquid, digest organic matter, and store digested solids through a period of detention and biological conditioning of liquid waste.

Professional Soil Classifier ("PSC") - A person who, by reason of special knowledge of the physical, chemical, and biological sciences applicable to soils as natural bodies and of the methods and principles of soil classification as acquired by soils education and soil classification experience in the formation, morphology, description, and mapping of soils, is qualified to practice soil classifying and has been duly licensed by the South Carolina Soil Classifiers Advisory Council as a Professional Soil Classifier in South Carolina.

Public Entity - Any organizations such as a city, town county, municipality, or special purpose sewer district.

Public Water System - Any publicly or privately owned waterworks system that provides drinking water for human consumption as defined in R.61-58, State Primary Drinking Water Regulations.

Pump Chamber - A watertight, covered receptacle designed and constructed to receive and store the discharge from a septic tank until such time that the effluent is pumped to a final treatment and disposal site.

Pumping and Transporting Vehicle - A vehicle approved by the Department for the cleaning of onsite wastewater systems, self-contained toilets, and other sewage holding systems and the transporting of septage and sewage to an approved disposal site.

Receptor - Any water well or surface water of the state, including estuaries.

Redox Depletions - Morphological features that are formed by the processes of reduction and translocation of iron and manganese oxides in saturated soils. These features may be revealed as spots, blotches, or streaks and are lighter shades of color compared with the dominant matrix color.

Redoximorphic Features - Morphological features that are formed by the processes of reduction, translocation, and oxidation of iron and manganese oxides in saturated soils. These include redox concentrations, redox depletions, and reduced matrices.

Registered Professional Engineer - A person licensed as a Professional Engineer by the South Carolina State Board of Registration for Professional Engineers and Surveyors who, by reason of special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design, acquired by professional education and practical experience, is qualified to practice engineering as attested by the person's license and registration as a Professional Engineer in South Carolina.

Remote Subsurface Wastewater Infiltration Area - A subsurface wastewater infiltration area that is not situated within the legal boundaries of the primary lot or tract that it serves.

Repair - Any work performed on an existing onsite wastewater system for the purposes of correcting a system failure, malfunction, or unauthorized discharge, enhancing system performance, or relocation or replacement of the entire system or system components, provided there are no changes in use that would impact the existing system.

Repair or Replacement Area - An area identified on the permit to construct reserved for the installation of additional wastewater infiltration trenches.

Restrictive Horizon - A soil horizon that is capable of severely retarding the movement of groundwater or effluent and may be brittle and cemented with iron, aluminum, silica, organic matter, or other compounds. Restrictive horizons may occur as fragipans, iron pans, organic pans, or shallow rock formations and are recognized by their resistance in excavation and auger boring.

Resin - Any number of commercially available polyester products used in the manufacture of fiberglass reinforced products which serve to contribute mechanical strength, determine chemical and thermal performance, and prevent abrasion of fibers, and which must be physically and/or chemically determined to be acceptable for the environment, and free from inert filler materials.

Revocation - The permanent withdrawal of rights and privileges granted by a license or an onsite wastewater system permit or approval, as applicable.

Rippable Rock - The rippability of rock material is a measure of its ability to be excavated with conventional excavation equipment (e.g., rubber-tired backhoe or mini excavator).

Saprolite - Soft, friable, thoroughly decomposed rock that has formed in place by chemical weathering, retaining the fabric and structure of the parent rock, and being devoid of expansive clay. Unconsolidated saprolite can be dug using a hand auger or knife. Consolidated saprolite cannot be penetrated with a hand auger or similar tool, and must be dug with a backhoe or other powered equipment.

Sealant - A bonding agent specifically designed to bond joining sections of fiberglass reinforced plastic products to each other in such a manner to create a durable, long-lasting, watertight seal, which does not alter the structural integrity or strength of the two (2) joined fiberglass products.

Self-Contained Toilet - A single or multiple-unit toilet and holding tank combination.

Septage - The mixture of solids and liquids removed during cleaning of a septic tank, grease trap, any other part of an onsite wastewater system, self-contained toilet, or other sewage holding system which receives domestic sewage; this includes the liquid, solid, and semi-solid materials which settle to the bottom of transport containers.

Septic Tank - A watertight, covered receptacle designed and constructed to receive the discharge of domestic wastewater from a building sewer, separate solids from the liquid, digest organic matter, store digested solids through a period of detention and biological conditioning of liquid waste, and allow the effluent to discharge for final treatment and disposal.

Serial Distribution - A method for effluent distribution on sloping terrain that utilizes drop boxes or earthen dams to affect total sequential flow from upper to lower wastewater infiltration trenches.

Sewage - Any liquid waste containing human, animal, vegetable, or chemical matter in suspension or solution from water closets, urinals, lavatories, bathtubs, laundry tubs or devices, floor drains, drinking fountains, or other water-using fixtures.

Site - The area or plot of land identified by a plat, deed, or other legal document specifying lot size and its boundaries that is submitted for evaluation by an applicant in an onsite wastewater system permit application.

Site Evaluation - Evaluation of the soil, geology, zone of saturation, surface waters, topography, structures, and property lines of the proposed location of the onsite wastewater system. The evaluation can be conducted directly by certified Department personnel or the Department may conduct an evaluation through the review of information submitted by a licensed person meeting the criteria of Section 102.1(2)(b) or (c).

Soils Report - A report prepared by a licensed person meeting the criteria of Section 102.1(2)(b) or (c) describing soil and site conditions for the purpose of designing an onsite wastewater system.

Soil Structure - The aggregation of primary soil particles (i.e., sand, silt, and clay) into compound particles or clusters of primary particles which are separated from the adjoining aggregates by surfaces of weakness. In soils with platy structure, the aggregates are plate-like and overlap one another to severely impair permeability. A massive condition can occur in soils containing considerable amounts of clay when a portion of the colloidal material, including clay particles, tends to fill the pore spaces making the soil very dense.

Soil Texture - The relative proportions of the three soil separates (sand, silt, and clay) in a given sample of soil. The percentages of each separate are used to determine which class a particular sample falls into by plotting the

intersection of these three values on the U.S. Department of Agriculture (USDA) Natural Resource Conservation Service (NRCS) Textural Triangle.

Standard 610 - Specialized Onsite Wastewater System Design (less than 1500 gpd) - An onsite wastewater system that is certified to function satisfactorily and in accordance with all requirements of this regulation by virtue of it having been designed by a Registered Professional Engineer (PE) licensed in South Carolina with technical input from a licensed person meeting the criteria of Section 102.1(2)(b) or (c). Such systems have limited application and can only be utilized when the required engineering design, certification, and technical soils documentation have been provided to and accepted by the Department.

Standard - A group of requirements developed by the Department that specifies the minimum site conditions and design criteria necessary for the approval of a specific type of onsite wastewater system. A standard may also address minimum design criteria for certain components of onsite wastewater systems as well as methodologies for determining system sizing.

Stickiness - The capacity of soil to adhere to other objects. Stickiness is estimated in accordance with the Field Book at the moisture content that displays the greatest adherence when pressed between the thumb and forefinger.

Subdivision - Means all divisions of a tract or parcel of land into two (2) or more lots, building sites, or other divisions, for the purpose, whether immediate or future, of sale or building development, and includes all division of land involving a new street or a change in existing streets, and includes resubdivision. This definition shall apply whether the lots are to be sold, rented, or leased. This definition shall not apply when the division or partition of the land, or the conveyance of property is pursuant to a will, an intestacy statute, or an order by a probate judge.

Subsurface Wastewater Infiltration Area (Drain Field) - A specific area where a network of wastewater infiltration trenches or other devices of sewage application are installed to provide the final treatment and disposal of effluent.

Suspension - The temporary or indefinite withdrawal or cessation of rights and privileges granted by a license or onsite wastewater system permit or approval, as applicable.

Third-Party - A qualified person or entity, as determined by the Department, that is independent of the parties involved.

Ultimate Tensile Strength - A measure of the resistance of a material to longitudinal stress, measured by the minimum longitudinal stress required to rupture the material.

Upgrade/Expansion - Any work performed on an existing onsite wastewater system for the purposes of increasing the capacity of the system above its original design and/or accommodating wastes of a different character than was originally approved.

Variance - Means a written document issued by the Department that authorizes a modification or waiver of one or more requirements of this regulation, if in the opinion of the Department, a health hazard or nuisance will not result from the modification or waiver.

Wastewater Characteristics - The physical, chemical, and biological parameters and characteristics of domestic wastewater. Physical characteristics include turbidity, color, odor, total suspended solids (TSS), temperature and fats, oils and grease (FOG). Chemical characteristics include the presence and extent of chemical oxygen demand (COD), total organic carbon (TOC), Total Kjeldahl Nitrogen (TKN), nitrogen, phosphorous, chlorides, sulfates, alkalinity, pH, heavy metals, trace elements, and priority pollutants identified by the U.S. Environmental Protection Agency (EPA). Biological characteristics include biological oxygen demand (BOD),

oxygen required for nitrification and microbial population. High strength wastewater is characterized as meeting one (1) or more of the following levels: BOD > 350 mg/l, TSS > 100 mg/l, TKN > 100 mg/l, FOG > 30 mg/l.

Wastewater Combustion System - A self-contained system for wastewater treatment that uses water as a medium for transport and storage. It treats and renders wastewater inert using maceration and incineration.

Wastewater Infiltration Trench - A trench installed in the naturally occurring soil that is utilized for the treatment and disposal of domestic wastewater.

Wastewater Treatment Facility - An accessible publicly or privately owned system of structures, equipment, and related appurtenances that treat, store, or manage wastewater.

Zone of Saturation - Any zone in the soil profile that has soil water pressures that are zero or positive at some time during the year. For the purpose of this regulation, the beginning of such a zone shall be utilized in determining all required vertical separations from the deepest point of effluent application. This zone shall be defined as the shallowest of those points at which either redox depletions of value four (4) or more and chroma two (2) or less appear or gleying is first observed; or, in the absence of other field identification methods, the maximum groundwater elevation as determined by wet season monitoring performed in accordance with criteria approved by the Department.

## 101.2. References.

The following manufacturing and procedural standards referenced in this regulation are those in force on the effective date of this revision:

- (1) American Society of Agronomy (ASA)
- (2) ASTM International C
- (3) ASTM International D
- (4) CSA Group
- (5) Crop Science Society of America (CSSA)
- (6) International Association of Plumbing and Mechanical Officials (IAPMO)
- (7) National Building Specification (NBS) Voluntary Product Standard PS 15-69
- (8) National Electrical Manufacturers Association (NEMA)
- (9) Soil Science Society of America (SSSA)

#### 102. Onsite Wastewater System Site Evaluation and Fees.

102.1. Site Evaluations.

(1) An applicant for a permit to construct an onsite wastewater system, nonwater-carried sewage treatment system, wastewater combustion system, or gray water subsurface reuse system shall, at the time an application for a permit to construct is submitted to the Department, pay to the Department the site evaluation fee set forth in Section 102.2.

- (2) Soil evaluations shall be conducted only by:
  - (a) A certified Department staff member;
  - (b) A licensed Professional Soil Classifier; or

(c) Another licensed person qualified to practice professional soil classifying under S.C. Code Section 40-65-40(7), provided that the burden of documenting qualification under S.C. Code Section 40-65-40(7) is on the licensed professional. The licensed professional shall provide to the Department verification of licensure and

confirmation from their licensing board that the person is qualified to practice professional soil classifying within the scope of their license. The Department will disallow a soil evaluation from any person not able to provide verification to the Department's satisfaction.

(3) Except as provided in Section 102.1(4) and 102.1(5), an onsite wastewater system layout in accordance with Section 400, Appendices of Standards for Permitted Systems, may be prepared by:

(a) A certified Department staff member;

(b) A Registered Professional Engineer licensed in South Carolina; or

(c) The same licensed person under Section 102.1(2)(b) or (c) who conducted the soil evaluation for the site.

(4) Only a Registered Professional Engineer may design a system and prepare a system layout for Standard 610/611 – Specialized Onsite Wastewater Systems, Standard 150 – Large and Community Onsite Wastewater Systems, nonwater-carried sewage treatment systems, wastewater combustion systems, and gray water subsurface reuse systems.

(5) The Department will not perform a soil evaluation or prepare a system layout for any subdivision or portion of a subdivision. Soil evaluations for any lots that are part of a subdivision must be conducted by a licensed person meeting the criteria of Section 102.1(2)(b) or (c). Proposed system layouts for any lots that are part of a subdivision must be prepared by a third-party Registered Professional Engineer or Professional Soil Classifier meeting the criteria under Section 102.1(3)(c). The Soils Report and proposed system layout must be submitted with the onsite wastewater system permit application for the purpose of the Department review and issuance of a permit to construct.

#### 102.2. Fees.

The Department shall charge a fee of one hundred and fifty dollars (\$150.00) to evaluate the site of a proposed onsite wastewater system, nonwater-carried sewage treatment system, wastewater combustion system, or gray water subsurface reuse system.

102.3. Other.

Funds derived from these fees shall be used only for the provision of services and accompanying expenses associated with the Department's Bureau of Environmental Health Services programs.

## 103. Onsite Wastewater Systems.

103.1. General.

(1) Each dwelling, business, or other structure occupied for more than two (2) hours per day shall be provided with an approved method for the treatment and disposal of domestic wastewater.

(2) It shall be the responsibility of the property owner to ensure that a permit to construct and operate any new, upgraded, or expanded onsite wastewater system, nonwater-carried sewage treatment system, wastewater combustion system, or gray water subsurface reuse system is obtained from the Department prior to construction and operation of the system.

(3) No person shall begin construction of a dwelling, business, or other structure to be served by an onsite wastewater system, nonwater-carried sewage treatment system, wastewater combustion system, or gray water subsurface reuse system until a permit to construct and operate such a system is issued by the Department.

Mobile or modular structures intended for occupancy shall not be moved onto the site until the permit to construct and operate an onsite wastewater system has been issued.

(4) The property owner shall be required to properly operate and maintain in good working order all onsite wastewater system(s) and their parts and to comply with all terms and conditions of a previously issued permit. System parts may include, but are not limited to, sealed watertight tanks, lid(s), piping, aggregate, pump, and pump components.

(5) An onsite wastewater system serving more than one (1) piece of deeded property shall be considered as a community or cluster collection and treatment system and shall comply with the following:

(a) A permit activity will not occur that is inconsistent with a plan or plan amendment approved under section 208(b) of the Clean Water Act unless the Department finds such variance necessary to protect the public's health, safety, and welfare.

(b) If a public entity owns the system, the entity shall be responsible for the operation, maintenance, and replacement of all components unless otherwise approved by the Department. The Department may consider a request from a private entity or person; however, such proposals must be evaluated on a case-by-case basis. The Department will evaluate the capability of long-term, reliable system operation in its evaluation of a permit request.

(c) If the project is owned by a private entity or person, the Department shall require financial assurances for the operation, maintenance, and replacement of the tank(s) and subsurface wastewater infiltration area system and relevant collection/pumping components.

(d) Sufficient area meeting the minimum requirements for large onsite wastewater systems shall be provided for at least one hundred (100) percent repair or replacement of the primary subsurface wastewater infiltration area.

(e) The collection sewer and pumping portions of a community onsite wastewater system shall receive a separate Construction Permit under R.61-67.300, Standards for Wastewater Facility Construction.

103.2. Large (greater than 1500 gpd) and community onsite wastewater systems incorporating advanced treatment methods, including but not limited to aerobic pre-treatment, lagoons, surface or subsurface drip irrigation, low pressure pipe distribution and other maintenance intensive methods, shall be required to obtain a Land Application Permit under R.61-9, Water Pollution Control Permits.

103.3. Facilities that generate industrial process or any other non-domestic wastewater shall not be granted a permit under this regulation unless the Department determines that the proposed discharge would not pose a significant environmental risk. In such a determination, the Bureau of Water would determine if the waste may cause a violation of any drinking water standard under R.61-58, State Primary Drinking Water Regulations, or may otherwise adversely affect the health of persons regardless of whether or not the wastewater is to be discharged continuously or intermittently to the onsite wastewater system. Plumbing appurtenances that facilitate the transport of such wastewater, including floor drains, trench drains, utility sinks, equipment drains, or any other conduit shall not be installed in facilities served by onsite wastewater systems unless specifically approved by the Department as a result of the above-described determination.

103.4. Campgrounds.

(1) Onsite wastewater systems serving campgrounds shall comply with all applicable requirements of this regulation. Such campgrounds shall be provided with adequate toilet and bathing facilities, except in those cases where all campsites are furnished with individual sewer service connections, and each site is exclusively designated for use by camping units equipped to access such connections.

(2) Individual sewer service connections shall be part of an approved sewage collection system and shall be equipped with removable, tight fitting covers.

(3) Where individual sewer service connections are not furnished at all campsites, an approved sanitary dump station(s) shall be provided at a convenient location(s) within the campground at the ratio of one (1) dump station per one hundred (100) campsites or fractions thereof.

(a) A dump station shall consist of one (1) or more trapped four (4) inch sewer risers surrounded by a concrete apron having a diameter of at least two (2) feet and sloped to drain. Sewer risers must be equipped with removable, tight fitting covers.

(b) Each dump station shall be equipped with pressurized water to be used for washing the concrete apron. The water outlet shall be protected from back siphonage by a vacuum breaker installed at its highest point, or by other approved means. A sign shall be placed at this water outlet stating: THIS WATER IS FOR CLEANING PURPOSES ONLY.

## 104. Application, Permit, Final Inspection and Approval, and Variances and Exemptions.

104.1. Application.

(1) The applicant shall furnish, in a format as identified by the Department, complete and accurate information necessary for determining the feasibility of an onsite wastewater system.

(2) The application shall include written permission from the property owner or their legal representative, using a form identified by the Department, for Department representatives to access the property.

(3) A boundary plat, deed, or other legal document specifying the lot size shall be furnished by the applicant. The applicant shall provide a legal description that specifies lot boundary lengths for lots two (2) acres or smaller in size and upon request for any lot greater than two (2) acres in size. When a dwelling or facility is to be served by a remote subsurface wastewater infiltration area, the applicant must provide appropriate easement(s). An appropriate easement must allow ingress and egress for construction, operation, maintenance, replacement and repair and must run with the land.

(4) Soil boring descriptions, backhoe pits, and soils classifications from specifically identified locations, including other tests or information, shall be required when deemed necessary by the Department.

(5) Backhoe pits shall be required above the Fall Line that separates the Piedmont area from the Coastal Plain as defined by the South Carolina Geological Survey.

(6) Before a site evaluation of the lot is performed by the Department, the applicant shall be required to: clear and mark pertinent property boundary lines and corners; post an identification marker in the front center of the lot; place stakes at the corners of the proposed building; mark the proposed point of stub-out and septic tank as well as proposed drain field area; locate the proposed or existing well location; and identify the proposed location of any additional structures or facilities on the property that may influence the placement and configuration of the onsite wastewater system. A site sketch shall be included on the application or as a separate attachment that reflects the items above and any other items specified on the application. The applicant may be required to clear underbrush from the property in order to facilitate the evaluation.

(7) The Department will not issue a permit if it determines that site conditions are unsuitable for the system layout or permit requested, or if issuance of the permit would otherwise be inconsistent with the requirements of this regulation. The Department also reserves the right to modify a proposed system layout submitted by a licensed person under Section 102.1(3)(c) when deemed appropriate.

104.2. Permit.

(1) It shall be unlawful to construct, upgrade, expand, or operate an onsite wastewater system, nonwater-carried sewage treatment system, wastewater combustion system, or gray water subsurface reuse system unless the Department has issued a permit to construct and approval to operate for the specific construction and operation proposed. The system shall be constructed and operated in accordance with the permit, and the Department must authorize any changes prior to the construction and operation of the system. The applicant shall be required to make a written request for any desired permit modifications. The applicant shall submit a new application with a new site evaluation fee for permit modifications that require an additional site evaluation. The Department may also require a permit to construct and approval to operate for the repair, relocation, or replacement of an onsite wastewater system or its components when deemed necessary, irrespective of whether any change in use impacting the existing onsite wastewater system would occur. The property owner or their legal representative shall notify the Department before relocating or replacing an onsite wastewater system or its components will be required.

(2) The permitted system shall be constructed and operated according to the specifications and conditions of the permit and in compliance with this regulation.

(3) Permits issued after the effective date of this regulation shall remain valid for a period of five (5) years from the date of issuance, provided the physical character of the property has not changed and the conditions of the original permit can be met. Exceptions may be granted for those permits addressed by other statutes.

104.3. Final Inspections and Approval.

(1) Except in the case of systems designed by a Registered Professional Engineer, all installers shall arrange with the Department in advance a time for a final inspection of an onsite wastewater system that is being installed. It shall be considered a violation of this regulation to cover a system that has not been subject to final Department inspection or installer self-inspection in accordance with this regulation.

(2) Final inspections of onsite wastewater systems to determine compliance with a Department-issued permit to construct shall be conducted by certified Department staff except as follows:

(a) Registered Professional Engineers licensed in South Carolina must conduct final inspections on all systems they design.

(b) Except as provided in 104.3(2)(a), Tier 3 installers may self-inspect systems they install. Tier 3 installers shall comply with Section 702.2 in its entirety.

(c) Except as provided in Section 104.3(2)(a), the Department may, in its discretion, direct Tier 1 and Tier 2 installers with no pending enforcement actions or prior Department findings of violation under Section 800 of this regulation to self-inspect systems they have installed using a process and form directed by the Department. Tier 1 and Tier 2 installers allowed to conduct self-inspections shall comply with Section 702.2 in its entirety. The Department reserves the right to withdraw any direction to Tier 1 and Tier 2 installers to conduct self-inspections at any time.

(3) Documentation of system installations, including certified as-built plans where required, shall be submitted in a Department-approved format within two (2) business days of completing the system installation or within two (2) business days of the installer self-inspection, where applicable.

(4) The licensed system installer shall also sign a statement certifying that the onsite wastewater system was installed as specified in the Department issued permit.

(5) Following final inspection and upon review of all required documentation, the Department will issue an approval to operate for a system installed in compliance with the issued permit to construct and all applicable requirements of this regulation. The Department will not issue an approval to operate if it determines that the system installation is inconsistent with the issued permit to construct or inconsistent with any requirement of this regulation.

104.4 Variances and Exemptions.

(1) The Department may, on a case-by-case basis, approve and issue a variance or exemption from one or more requirements of this regulation upon a finding that:

(a) The granting of the variance or exemption will not compromise protection to human health and the environment.

(b) Because of the characteristics of the site, it is not practical or feasible for the onsite wastewater system to meet the requirements of this regulation without taking into account the current science and best technology available.

(2) A request for variance or exemption must be in writing and include the following:

(a) A detailed description of the regulatory requirements for which the variance or exemption is sought.

(b) Sufficient data to demonstrate to the satisfaction of the Department that compliance with the regulatory requirement will not be practical or feasible.

(3) The Department may request additional information to evaluate the request. If approved, the variance or exemption will be issued in writing and may contain conditions. The Department may revoke issued variances as it deems appropriate.

#### 200. Minimum Site Conditions for Onsite Wastewater Systems.

200.1. Soil texture, depth of soil to restrictive horizons, and depth to the zone of saturation shall meet minimum standards approved by the Department. These characteristics shall be determined using accepted methodologies in the field of soil science.

200.2. Soils exhibiting massive or platy structure, and soils which have been identified as having substantial amounts of expansible layer clay minerals or smectites, are unsuitable for onsite wastewater systems.

200.3. Where the estimated peak sewage flow will not exceed fifteen hundred (1500) gpd, the minimum vertical separation between the deepest point of effluent application and the zone of saturation shall be at least six (6) inches.

200.4. Where the estimated peak sewage flow will exceed fifteen hundred (1500) gpd, the depth to the zone of saturation shall be at least thirty-six (36) inches below the naturally occurring soil surface, and at least six (6) inches below the deepest point of effluent application.

200.5. Depth to rock and other restrictive horizons shall be greater than twelve (12) inches below the deepest point of effluent application.

200.6. Setbacks.

(1) The area of the lot or plot of ground where the onsite wastewater system is to be installed shall be of sufficient size so that no part of the system, excluding solid pipes, will be:

(a) Within five (5) linear feet of a building, or under a driveway or parking area;

(b) Within seventy-five (75) linear feet of a private well;

(c) Within one hundred (100) linear feet of a public well;

(d) Within seventy-five (75) linear feet of the delineated critical area line (tidal waters of coastal waters and tidelands critical areas) as determined by the Department's coastal division; or within seventy-five (75) linear feet of the mean high water (within the banks) elevation (nontidal waters, beach/dune systems and beach critical areas) of an impounded or natural body of water, including streams, canals, and retention ponds;

(e) Within ten (10) feet of upslope and twenty-five (25) feet of downslope curtain drains;

(f) Within twenty-five (25) feet of a drainage ditch or stormwater treatment system including any detention ponds (determined by maximum water elevation);

(g) Within fifteen (15) feet of piped drainage ditches;

(h) Within fifteen (15) feet of an inground pool;

(i) Within twenty-five (25) feet upslope of a basement; and within fifteen (15) feet of the sides of a basement, except that if foundation drains are present and the elevation of the foundation drain is at the same elevation or lower than the elevation of the trench bottom for the subsurface wastewater infiltration area or repair area, then a twenty-five (25) foot setback from the sides of a basement applies. These setbacks do not apply to a septic tank/pump chamber location or where trench installations are downslope of a basement;

(j) Within fifteen (15) feet of the top of the slope of embankments or cuts of two (2) feet or more vertical height when any part of the wastewater infiltration trench is to be placed higher in elevation than the invert of the cut or embankment;

(k) Within five (5) feet of a property line.

(2) Greater protective offsets shall be required when utilizing certain system standards contained within this regulation.

(3) Prior to permitting the onsite wastewater system, jurisdictional determination of any affected wetlands may be required. Should any part of the proposed onsite wastewater system be located in wetlands, approval from the appropriate permitting agency(s) (e.g., U.S. Army Corps of Engineers, SCDHEC Ocean and Coastal Resource Management, etc.) shall be received, and proof of such provided to the Department.

200.7. In addition to the minimum space required in Section 200.6, minimum repair area shall be set aside as follows:

(1) Any new site meeting the minimum design criteria for an onsite wastewater system shall have a usable repair or replacement area equivalent to at least fifty (50) percent of the size of the original system. Where community onsite wastewater systems are utilized, there must be at least one hundred (100) percent repair or replacement area.

(2) Usable repair or replacement area shall be demonstrated to include suitable soil conditions, and shall be free of impervious materials, buildings, or other improvements, setbacks, easements, and other encroachments that would prevent system construction. The undisturbed area between the wastewater infiltration trenches shall not be credited towards this requirement.

200.8. Multiple, individually owned remote subsurface wastewater infiltration areas may be considered for mass installation in a defined area where the wastewater infiltration trenches will be adjacently located to each other, provided that the combined peak wastewater loading is less than fifteen hundred (1500) gpd. In such cases, each subsurface wastewater infiltration area plot shall be sized such that there is sufficient area for one hundred (100) percent subsurface wastewater infiltration area replacement. Each plot shall be deeded, with all appropriate easements, as a lot in conjunction with the specific unit that it serves, and required protective offsets, as described in Section 200.6, shall apply to each individual remote subsurface wastewater infiltration area. A plan shall be prepared by a Registered Professional Engineer licensed in South Carolina that illustrates the overall plan; specifies the route and identification of effluent sewers and/or force mains; specifies the entity responsible for perpetual maintenance of the sewer lines and mass subsurface wastewater infiltration area; specifies the configuration and identification of the individual subsurface wastewater infiltration area parcels; and specifies the manner in which ingress and egress will be provided to the individual subsurface wastewater infiltration area parcels. When the combined peak wastewater loading of the adjacently loading subsurface wastewater infiltration area will exceed fifteen hundred (1500) gpd, the project shall be considered as a public (community) collection and treatment system, and the onsite wastewater system must comply with the requirements in Section 103.1(5).

# 201. Minimum Requirements for Onsite Wastewater System Primary Treatment.

201.1. Septic Tanks.

(1) All persons or firms manufacturing septic tanks for use in South Carolina shall submit detailed plans for each size tank to the Department and shall receive written approval for such tanks prior to their installation in the state.

(2) The design and construction of each septic tank shall be in accordance with minimum standards contained within this regulation.

(3) No septic tank shall be installed which has a net liquid capacity of less than one thousand (1000) gallons. Such tanks shall be sufficient to serve dwellings of four (4) bedrooms or less. Two hundred fifty (250) gallons additional capacity shall be required for each bedroom over four (4).

(4) When multiple dwellings share a common onsite wastewater system, each dwelling unit shall either have its own properly sized septic tank or it must discharge to a larger tank(s) that provides the combined total of the minimum septic tank capacities required for each contributing unit. Exception may be granted when a public entity, or private entity with financial assurances, is approved by the Department to provide operation and maintenance of the system. In such cases, the formula in Section 201.1(5) may be considered.

(5) Septic tanks serving establishments other than individual dwellings shall be sized according to actual peak flow data, when available, or by estimates of peak sewage flow, as set forth in standards established by the Department. For those septic tanks receiving peak flows less than fifteen hundred (1500) gpd, the net liquid capacity shall be calculated by multiplying 1.5 times the peak flow expressed in (gpd). For those septic tanks receiving peak flows between fifteen hundred (1500) and forty-five hundred (4500) gpd, the net liquid capacity shall be calculated as follows:

Volume (V) = 1125 gal. plus (0.75 x Peak Flow(gpd)).

For those septic tanks receiving peak flows in excess of forty-five hundred (4500) gpd, the net liquid capacity shall be at least equal to the peak flow:

Volume (V) = Peak Flow (gpd)

(6) The minimum liquid capacity requirements shall be met by the use of a single septic tank or two (2) or more tanks installed in series. Septic tanks joined in series shall be interconnected by an upper effluent pipe(s) with a minimum diameter of four (4) inches and a lower sludge pipe(s) with a minimum diameter of twelve (12) inches. The upper connection(s) shall be installed level from tank to tank, and the lower sludge pipe connection(s) shall be placed twelve (12) inches above the bottoms of the tanks. The lower sludge pipe connection(s) can be eliminated if the first tank in series contains at least two-thirds (2/3) of the total required liquid capacity. There shall be no more than two (2) inches of fall from the inlet invert of the first tank to the outlet invert of the last tank in series.

201.2. Grease Traps.

(1) Any new food service facilities permitted under R.61-25, Retail Food Establishments, and served by an onsite wastewater system that is permitted after the effective date of this regulation shall be required to have a properly sized grease trap. This requirement may also apply to new facilities not requiring a food service permit under R.61-25. Exception may be granted in cases where a permitted retail food service establishment performs limited food preparation and/or cooking.

(2) Any existing food service establishment that does not have a grease trap, but experiences an onsite wastewater malfunction as a result of grease accumulation, shall be required to immediately comply with all portions of Section 201 as if it were a new food service facility.

(3) Any food service facility requiring a grease trap shall provide two (2) separate plumbing stub-outs, one serving the food preparation area and the other serving the restrooms. The stub-out from the restrooms shall discharge directly into the main building septic tank. The stub-out from the food preparation area shall discharge directly into the grease trap with the effluent then directed to the main building septic tank. In order to enhance grease separation while the liquids are hot, the grease trap shall be placed as close as possible to the source of wastewater. Garbage grinders shall not be allowed to discharge to such systems.

(4) All grease traps must be directly accessible from the surface and must be equipped with an extended outlet sanitary tee terminating six (6) to twelve (12) inches above the tank bottom. The minimum access opening shall be eighteen (18) inches in diameter.

(5) All grease traps serving facilities from which the peak sewage flow exceeds fifteen hundred (1500) gpd shall either be dual chambered or individual tanks in series. If dual chambered, both the dividing wall and the second chamber must be equipped with a sanitary tee terminating six (6) to twelve (12) inches above the tank bottom.

(6) It shall be the responsibility of the owner/manager to ensure that the grease trap(s) is cleaned by a licensed septage pumper at frequent intervals to prevent the carryover of grease into other parts of the onsite wastewater system.

(7) Determination of Minimum Net Liquid Capacity

(a) No grease trap used as part of an onsite wastewater system shall have a net liquid capacity of less than one thousand (1000) gallons. Commercial interior-type grease interceptors shall not be utilized in lieu of a properly sized exterior grease trap.

(b) Minimum net liquid capacities of grease traps shall be determined as follows:

NLC = GPD x LF x RF, where NLC = Net Liquid Capacity of Grease Trap (gallons) GPD = Total Maximum Estimated Sewage Flow (gpd)

LF = Loading Factor (the approximate portion of the total maximum daily flow generated in food preparation areas)

0.3 - Schools and Other Institutions

- 0.4 Restaurants
- 0.5 Retail Food Stores

RF = Minimum Retention and Storage Factor of 2.5 for Onsite Wastewater Systems

201.3. Other Primary Treatment Methods.

The Department, at its discretion, may consider other methods of primary treatment requested by a Registered Professional Engineer where conditions are warranted.

## 202. Minimum Requirements for Onsite Wastewater System Final Treatment and Disposal Systems.

(1) All pipe utilized in onsite wastewater systems shall meet applicable ASTM standards. All piping utilized in the connection of a septic tank to a subsurface wastewater infiltration area, including that which is utilized in the connection of adjacent wastewater infiltration trenches, whether they be level or serially fed, shall be non-perforated Schedule 40 PVC pipe. Such pipe, excluding force mains, shall be a minimum of three (3) inches in diameter. The connecting pipe shall not be surrounded by aggregate.

(2) At least seven (7) feet of undisturbed earth shall exist between wastewater infiltration trenches.

(3) The aggregate used in onsite wastewater systems shall be a material approved by the Department and shall range in size from one-half (1/2) inch to two and one-half  $(2 \ 1/2)$  inches. Fines shall be prohibited. Tire chips shall range in size from one-half (1/2) inch to four (4) inches in size, and wire strands shall not protrude more than one-half (1/2) inch from the sides.

(4) Drop boxes shall be utilized when deemed necessary by the Department. When required, they shall be surrounded and stabilized by at least two (2) feet of undisturbed or manually compacted earth, and the wastewater infiltration trenches shall be fed with non-perforated Schedule 40 PVC pipe. The invert of the drop box overflow pipe shall be at the same elevation as the top of the aggregate in the trenches fed by that box, and the top of the aggregate shall be level throughout the trench run. Other methods that affect serial distribution shall also overflow at the same elevation as the top of the aggregate.

(5) There shall be at least two (2) feet of earthen buffer between the septic tank and all portions of adjacent wastewater infiltration trenches. Where gravity flow is utilized, the invert elevation of the septic tank outlet shall be at the same elevation or higher than the top of the aggregate in the highest placed wastewater infiltration trench.

(6) To ensure proper operation and protection of onsite wastewater systems, the Department may require individual or combined installation of drainage swales, curtain or interceptor drains, protective barriers, or protective ground cover. Final approval of the permit may be withheld until such time as these improvements are completed.

(7) The bottom of each wastewater infiltration trench, including the distribution pipe contained within, shall be as level as possible, with an elevation differential not to exceed two (2) inches throughout the trench run.

(8) The required number, length, and configuration of wastewater infiltration trenches shall be determined by the Department and shall be based upon the Standard for Determining Peak Sewage Flow Rates (Section 501, Peak Sewage Flow Rate Standard) from Commercial and Recreational Establishments in conjunction with the Long-Term Acceptance Rate Standard for Onsite Wastewater Systems (Section 500, Long-Term Acceptance Rate Standard for Onsite Wastewater Shall be sized based upon the most hydraulically

limiting, naturally occurring soil texture from the ground surface to twelve (12) inches below the bottom of the proposed wastewater infiltration trenches.

(9) The aggregate over the distribution pipe shall be covered with a strong, untreated pervious material to prevent infiltration of backfill material.

## 203. Onsite Wastewater System Construction Criteria.

203.1. On sloping terrain, wastewater infiltration trenches shall be installed perpendicular to the direction of slope and parallel to the contours of the land.

203.2. Where deemed necessary by the Department, all required site alterations (swales, fill, shaping, etc.) shall be done prior to permitting the installation of the onsite wastewater system.

203.3. The area in which the onsite wastewater system is to be located shall be protected from surface water and roof or downspout drainage by the installation of drainage swales and small amounts of fill to achieve positive surface drainage.

203.4. Gross amounts of dirt, mud, and debris shall be removed from the septic tank before backfilling. All backfilling around the tank shall be tamped to facilitate stabilization.

203.5. If septic tank lids are of multi-part, slab-type construction, all joints shall be caulked or covered with heavy roofing paper or similar material.

203.6. All septic tanks of two-piece construction joined by tongue and groove shall be sealed with either bituminous mastic or other watertight caulking material placed in the groove in such quantity that the sealant is clearly visible around the entire tank after the two (2) pieces are joined.

203.7. When effluent pumping is required, all components of the pumping system shall adhere to standards contained within this regulation.

203.8. The Department may restrict, delay, or prohibit the installation or final approval of any onsite wastewater system when adverse soil or site conditions exist. These may include, but not be limited to, wet soil conditions in textural Class III and Class IV as described in the Long-Term Acceptance Rate Standard for Onsite Wastewater Systems approved by the Department.

## 204. Evaluation of Alternative Infiltration Trench Products.

The Department shall be responsible for the evaluation and approval of alternative infiltration trench products prior to their use in the state, unless otherwise regulated by statute. This evaluation shall include a review of available research data; a review of parameters relating to structure, geometry, and volume; and the establishment of required equivalency values for comparing the product to a conventional wastewater infiltration trench.

204.1. Application.

(1) All requests for approval of alternative infiltration trench products must be submitted in writing to the Department and must include the following:

- (a) Complete description of the product and its intended use.
- (b) Complete listing of materials used in the construction of the product, including specifications.

(c) Copies of all available literature pertaining to the product and a listing of all appropriate reference materials.

(d) Copies of any and all available research, testing, and monitoring data, to include records of performance and/or prior experience in actual field conditions.

(2) The Department will review the application and may seek other information, including additional evaluations.

204.2. Equivalency Value for Infiltrative Surface.

(1) The total infiltrative surface area surrounding the sides and bottom of a conventional wastewater infiltration trench (i.e., 5.33 sq.ft./lin.ft.) shall serve as the basis for all geometric comparisons to alternative infiltration trench products.

(2) The effective infiltrative surface area of a conventional trench shall include the total of both rectangular sidewalls, beginning at the top of the aggregate and extending to the trench bottom, in addition to the width of the trench bottom. Similarly, the effective infiltrative surface area of a product shall include the total of both immediately adjacent, rectangular sidewalls, beginning at the top of louvers, slits, holes or similar orifices, in addition to the rectangular width of the trench immediately beneath the product.

(3) The equivalency value (E) for any given product is determined by comparing the total effective surface area of the product, as defined above, with that of a conventional wastewater infiltration trench as follows:

(a) Total Infiltrative Surface Area for One (1) Foot of Conventional Trench:

Trench Sidewalls =  $2 \times (1.16 \text{ ft.H} \times 1.0 \text{ ft.L}) = 2.33 \text{ sq.ft./lin.ft.}$ Trench Bottom =  $1 \times (3 \text{ ft.W} \times 1 \text{ ft.L}) = 3.0 \text{ sq.ft./lin.ft.}$ Total Infiltrative Surface Area = 5.33 sq.ft./lin.ft.

(b) Equivalency Value (E) Shall Be Computed As Follows:

E = 5.33 sq.ft./ft ÷ Sum of Three Rectangular Interfaces Immediately Adjacent to Product (sq.ft./ft.)

(c) The Required Total Length of the Product Shall Be Calculated As Follows:

Length of Product (L) = E x Length of Conventional 36 in. Wide Trenches Required by DHEC Regulations and Standards

204.3. Other parameters to be evaluated for alternative infiltration trench products may include the following:

(1) Structural Integrity - Products must be of sound construction and able to adequately withstand the normal pressures and stresses associated with installation and use.

(2) Inertness - No product can be approved unless it will remain relatively unaffected for extended periods of time while in contact with typical domestic wastewater.

(3) Storage Volume - The effluent storage capacity of a product must closely approximate or exceed that of a comparable conventional system.

(4) Maintenance of Permeable Interfaces - A product shall have a direct interface with the effective infiltrative surface (undisturbed natural soil) or, if backfill is required, backfill material shall not create a

permeability barrier and shall not hinder the downward or horizontal flow of effluent into the undisturbed natural soil.

(5) The unique characteristics of a given product may warrant the evaluation of other parameters not specifically mentioned in this section of the regulation.

(6) The design, construction, or installation methods used with any product shall not conflict nor violate any other requirements established by the Department.

204.4. Approval for General Use.

If warranted, the Department will issue a letter of approval for general use of the alternative infiltration trench product in accordance with equivalency values and other requirements determined herein. At least nine (9) inches of soil cover is required.

## 300. Wastewater Treatment Facility Accessibility.

300.1. Permits for new onsite wastewater systems shall not be issued where a wastewater treatment facility is accessible for connection.

300.2. Repairs to or replacement of failing onsite wastewater systems shall not be allowed where a wastewater treatment facility is accessible for connection.

#### **301.** Discharge of Waste.

No septic tank effluent or domestic wastewater or sewage shall be discharged to the surface of the ground or into any stream or body of water in South Carolina without an appropriate permit from the Department.

#### 302. Changes in Use That Impact Existing Onsite Wastewater Systems.

If the use of a dwelling or facility is changed such that additions or alterations are proposed which increase wastewater flow, change wastewater characteristics, or compromise the integrity or function of the system, the onsite wastewater system shall be brought into full compliance with this regulation. Alterations that change the wastewater characteristics or increase wastewater flow will require the owner to submit an application and receive a permit to construct for the upgrade/expansion prior to any alterations.

#### 400. Appendices of Standards for Permitted Systems.

#### Appendix A – System Standard 100/101 – Conventional with 14-Inch Aggregate Depth

(1) Site/Permitting Requirements

(a) The depth to the zone of saturation (ZOS) must be at least twenty-nine (29) inches below the naturally occurring soil surface and at least six (6) inches below the bottom of the proposed wastewater infiltration trenches at the deepest point of effluent application.

(b) The depth to any restrictive horizon must be greater than twelve (12) inches below the bottom of the proposed wastewater infiltration trenches at the deepest point of effluent application.

(c) The long-term acceptance rate for system sizing shall be based upon the most hydraulically limiting naturally occurring soil texture from the ground surface to twelve (12) inches below the bottom of the proposed wastewater infiltration trenches.

(d) There shall be a replacement area equivalent to at least fifty (50) percent in size of the original system area held in reserve for system repair. This area shall have a suitable configuration and shall meet the minimum soil and site conditions of this regulation.

(e) This system must not be used on sloping sites that require serial distribution unless it can be demonstrated that the entire wastewater infiltration trench installation (i.e., side wall to side wall and end to end) can meet the required textural limitations and the required offsets to the zone of saturation and restrictive horizons.

(2) Installation Requirements

(a) The wastewater infiltration trench aggregate shall be fourteen (14) inches in depth and shall be placed so as to provide seven (7) inches of aggregate below the pipe, four (4) inches beside the pipe, and three (3) inches above the pipe. The aggregate shall be covered with at least nine (9) inches of soil.

(b) The wastewater infiltration trench width shall be thirty-six (36) inches.

(c) Where gravity flow from the septic tank to the subsurface wastewater infiltration area is utilized, the invert elevation of the septic tank outlet shall be installed at an elevation at least equal to or higher than the top of the aggregate in the highest wastewater infiltration trench(es).

(d) All tree and brush removal shall be done in a manner that minimizes the disturbance or loss of naturally occurring soil.

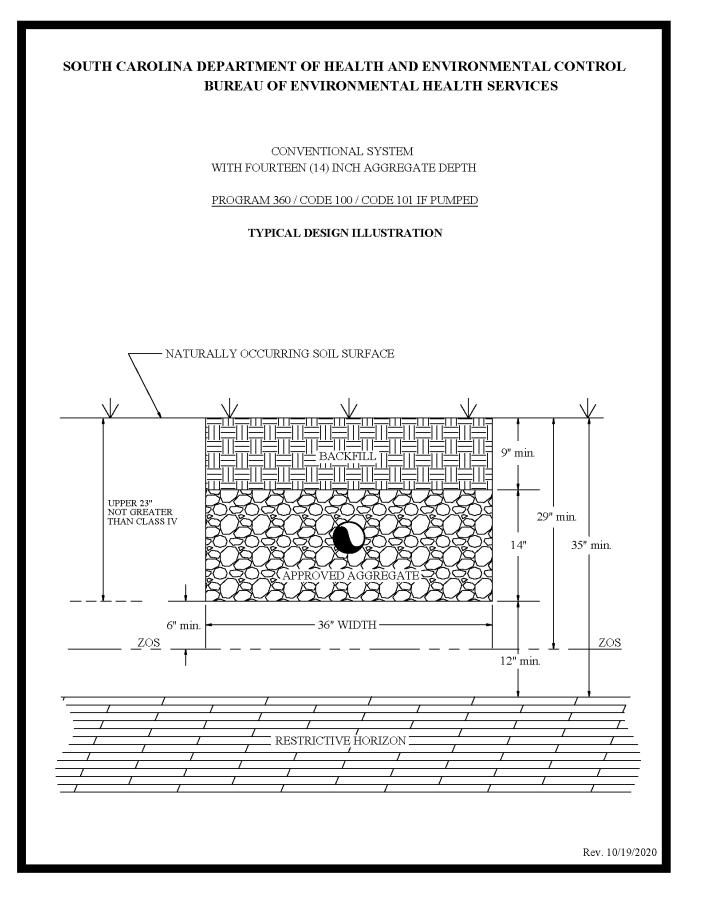
(3) Final Landscaping and Drainage

(a) Installation of drainage swales, ditches, curtain drains, and rain gutters may be required to divert or intercept water away from the onsite wastewater system location to a positive outfall. The septic tank and subsurface wastewater infiltration area shall be backfilled and shaped to promote surface water runoff.

(b) A barrier to preclude parking and vehicular traffic over the system area may be required.

(c) Following final landscaping, seeding, or sodding may be required to prevent erosion.

(d) Final approval shall be withheld until all landscaping and drainage improvements have been satisfactorily completed.



# Appendix B – System Standard 150 – Large (greater than 1500 gpd) and Community Systems

(1) Site/Permitting Requirements

(a) Designs for large and community onsite wastewater systems shall be prepared by a Registered Professional Engineer licensed in South Carolina. Further, the Department may require whatever engineering and soils based submittals are deemed necessary to determine the feasibility and acceptability of any site for such a system.

(b) No part of the system, with the exception of solid pipe, may be located within one hundred (100) linear feet of a receptor.

(c) The depth to the zone of saturation (ZOS) shall be at least thirty-six (36) inches below the naturally occurring soil surface and at least six (6) inches below the deepest point of effluent application.

(d) The depth to any restrictive horizon must be greater than twelve (12) inches below the bottom of the proposed wastewater infiltration trenches.

(e) The long-term acceptance rate for system sizing shall be based upon the most hydraulically limiting, naturally occurring soil texture from the ground surface to twelve (12) inches below the bottom of the proposed wastewater infiltration trenches.

(f) There shall be at least fifty (50) percent reserved subsurface wastewater infiltration area repair or replacement area available consisting of soils suitable for a large onsite wastewater system, except where public (community) systems are utilized, in which case there must be at least one hundred (100) percent repair or replacement area.

(g) Large (greater than 1500 gpd) and community onsite wastewater systems incorporating advanced treatment methods, including but not limited to aerobic pre-treatment, lagoons, surface or subsurface drip irrigation, low pressure pipe distribution, and other maintenance intensive methods, shall be required to obtain a Land Application Permit under R.61-9.505.

(h) Efforts to circumvent the requirements of this standard by configuring remote, individually deeded, adjacently located subsurface wastewater infiltration areas in lieu of a community onsite wastewater system shall not be permitted. On a very limited basis, a few of these individual systems may be considered for mass installation where the wastewater infiltration trenches will be adjacent to each other in a defined area, provided that the combined peak wastewater loading is less than fifteen hundred (1500) gpd. In such cases:

(i) Each subsurface wastewater infiltration area plot shall be sized such that there is sufficient area for one hundred (100) percent subsurface wastewater infiltration area replacement.

(ii) Each plot shall be deeded with all appropriate easements as a lot in conjunction with the specific unit that it serves, and required protective offsets, as described in Section 200.6, shall apply to each individual remote subsurface wastewater infiltration area.

(iii) A plan shall be prepared by a Registered Professional Engineer licensed in South Carolina that illustrates the overall plan; specifies the route and identification of effluent sewers and force mains; specifies the entity responsible for perpetual maintenance of the sewer lines and mass subsurface wastewater infiltration area; specifies the configuration and identification of the individual subsurface wastewater infiltration area parcels; and specifies the manner in which ingress and egress will be provided to the individual subsurface wastewater infiltration area parcels.

(iv) When the combined peak wastewater loading of the adjacently located subsurface wastewater infiltration areas from the entire project will exceed fifteen hundred (1500) gpd, the project shall be considered as a public (community) collection and treatment system, and all requirements described in Section 103.1(5) and this standard shall apply.

(2) Installation Requirements

(a) Large (greater than 1500 gpd) and community onsite wastewater systems shall not be constructed in fill material and shall not be placed any closer to receptors than one hundred (100) feet.

(b) Conventional wastewater infiltration trenches installed in the naturally occurring soil and having a width of thirty-six (36) inches shall be utilized.

(c) Wherever possible, designs that favor long wastewater infiltration trenches, convex landscape positions, and rectangular subsurface wastewater infiltration area configurations shall be required.

(d) All tree/brush removal shall be done in a manner that minimizes the disturbance or loss of naturally occurring soil.

(3) Community or Cluster Collection and Treatment Onsite Wastewater Systems

(a) An onsite wastewater system serving more than one (1) piece of deeded property shall be considered as a public (community) collection and treatment system.

(b) A permit activity will not occur that is inconsistent with a plan or plan amendment approved under Section 208(b) of the Clean Water Act, unless the Department finds such variance necessary to protect the public's health, safety, and welfare.

(c) A public entity shall own the system and shall be responsible for the operation, maintenance, and replacement of all components unless otherwise approved by the Department. The Department may consider a request from a private entity or person; however, such proposals must be evaluated on a case-by-case basis. The Department will evaluate the capability of long-term, reliable system operation in its evaluation of a permit request.

(d) If the project is owned by a private entity or person, the Department shall require financial assurances for the operation, maintenance, and replacement of the tank(s) and subsurface wastewater infiltration area system and relevant collection/pumping components.

(e) There shall be an area equivalent to one hundred (100) percent in size of the original primary subsurface wastewater infiltration area held in reserve for system repair or replacement. This area shall have a suitable configuration and shall meet all minimum requirements for large onsite wastewater systems.

(f) The collection sewer and pumping portions of a community onsite wastewater system shall receive a separate Construction Permit under R.61-67.300.

(g) The responsible party(s) on record shall be required to properly operate and maintain in good working order all system(s) parts which are installed pursuant to the permit and to comply with all terms and conditions of the permit. System parts include, but are not limited to, sealed watertight tanks, lid(s), piping, aggregate, pump, and pump components.

## Appendix C – System Standard 210/211 – Shallow Placement with 9-Inch Aggregate Depth

(1) Site/Permitting Requirements

(a) There must not be a zone of saturation (ZOS) within twenty-four (24) inches of the naturally occurring soil surface.

(b) The depth to any restrictive horizon must be greater than twelve (12) inches below the bottom of the proposed wastewater infiltration trenches.

(c) The texture in the upper eighteen (18) inches of naturally occurring soil may either be Class I, Class II, Class III, or Class IV.

(d) The long-term acceptance rate for system sizing shall be based upon the most hydraulically limiting naturally occurring soil texture from the ground surface to twelve (12) inches below the bottom of the proposed wastewater infiltration trenches.

(e) Due to the decreased sidewall absorption area and the increased potential for ground water mounding near the surface, the Equivalency Factors for these systems shall be calculated by conventional wastewater infiltration trenches and increased by an additional factor of 0.09 times.

(f) There shall be a replacement area equivalent to at least fifty (50) percent in size of the original system area held in reserve for system repair. This area shall have a suitable configuration and shall meet the minimum soil and site conditions of this regulation.

(g) This system must not be used on sloping sites that require serial distribution unless it can be demonstrated that the entire wastewater infiltration trench installation (i.e., side wall to side wall and end to end) can meet the required textural limitations and the required offsets to the zone of saturation and restrictive horizons.

(h) This system cannot be considered for facilities with peak flow rates in excess of fifteen hundred (1500) gpd.

(2) Installation Requirements

(a) The wastewater infiltration trench aggregate shall be nine (9) inches in depth and shall be covered with at least nine (9) inches of backfill.

(b) The wastewater infiltration trench width shall be thirty-six (36) inches.

(c) The maximum depth of the bottom of the wastewater infiltration trench shall be eighteen (18) inches below the naturally occurring soil surface unless it can be demonstrated that deeper placement can meet the required textural limitations and the offsets to the zone of saturation and restrictive horizons.

(d) Where gravity flow from the septic tank to the subsurface wastewater infiltration area is utilized, the invert elevation of the septic tank outlet shall be installed at an elevation at least equal to or higher than the top of the aggregate in the highest wastewater infiltration trench(es).

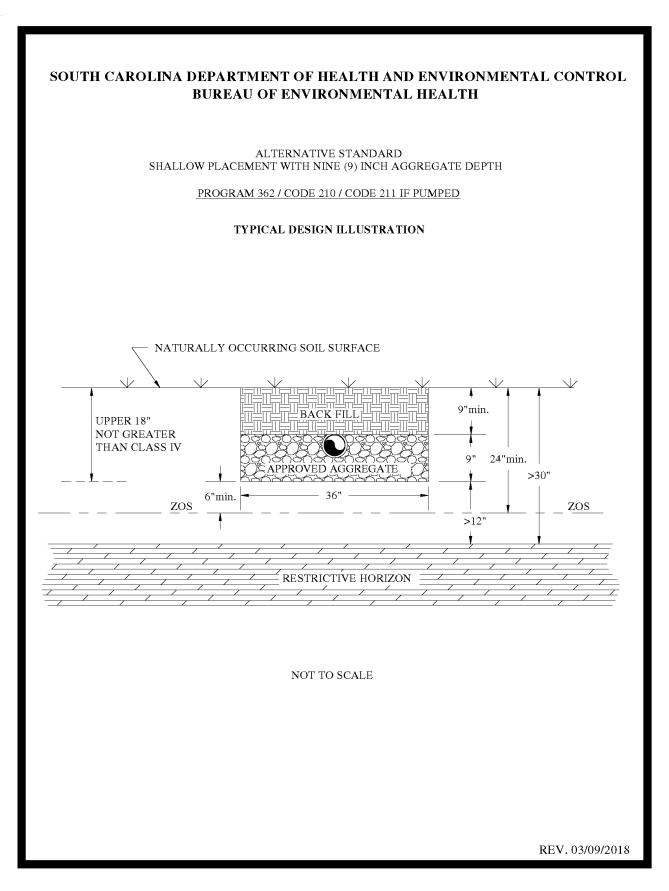
(e) All tree and brush removal shall be done in a manner that minimizes the disturbance or loss of naturally occurring soil.

(3) Final Landscaping and Drainage

(a) Installation of drainage swales, ditches, curtain drains, and rain gutters may be required to divert or intercept water away from the onsite wastewater system location to a positive outfall. The septic tank and subsurface wastewater infiltration area shall be backfilled and shaped to promote surface water runoff.

- (b) A barrier to preclude parking and vehicular traffic over the system area may be required.
- (c) Following final landscaping, seeding or sodding may be required to prevent erosion.

(d) Final approval shall be withheld until all landscaping and drainage improvements have been satisfactorily completed.



# Appendix D – System Standard 220/221 – Shallow Placement with Six (6)-Inch Aggregate Depth

(1) Site/Permitting Requirements

(a) There must not be a zone of saturation (ZOS) within twenty-one (21) inches of the naturally occurring soil surface.

(b) The depth to any restrictive horizon must be greater than twelve (12) inches below the bottom of the proposed wastewater infiltration trenches.

(c) The texture in the upper eighteen (18) inches of naturally occurring soil may either be Class I, Class II, Class III, or Class IV.

(d) The long-term acceptance rate for system sizing shall be based upon the most hydraulically limiting naturally occurring soil texture from the ground surface to twelve (12) inches below the bottom of the proposed wastewater infiltration trenches.

(e) Due to the decreased sidewall absorption area and the increased potential for ground water mounding near the surface, the Equivalency Factors for these systems shall be calculated by conventional wastewater infiltration trenches and increased by an additional factor of 0.12 times.

(f) There shall be a replacement area equivalent to at least fifty (50) percent in size of the original system area held in reserve for system repair. This area shall have a suitable configuration and shall meet the minimum soil and site conditions of this regulation.

(g) This system must not be used on sloping sites that require serial distribution unless it can be demonstrated that the entire wastewater infiltration trench installation (i.e., side wall to side wall and end to end) can meet the required textural limitations and the required offsets to the zone of saturation and restrictive horizons.

(h) This system cannot be considered for facilities with peak flow rates in excess of fifteen hundred (1500) gpd.

(2) Installation Requirements

(a) The wastewater infiltration trench aggregate shall be six (6) inches in depth and shall be covered with at least nine (9) inches of backfill.

(b) The wastewater infiltration trench width shall be thirty-six (36) inches.

(c) The maximum depth of the bottom of the wastewater infiltration trench shall be fifteen (15) inches below the naturally occurring soil surface unless it can be demonstrated that deeper placement can meet the required textural limitations and the offsets to the zone of saturation and restrictive horizons.

(d) Where gravity flow from the septic tank to the subsurface wastewater infiltration area is utilized, the invert elevation of the septic tank outlet shall be installed at an elevation at least equal to or higher than the top of the aggregate in the highest wastewater infiltration trench(es).

(e) All tree and brush removal shall be done in a manner that minimizes the disturbance or loss of naturally occurring soil.

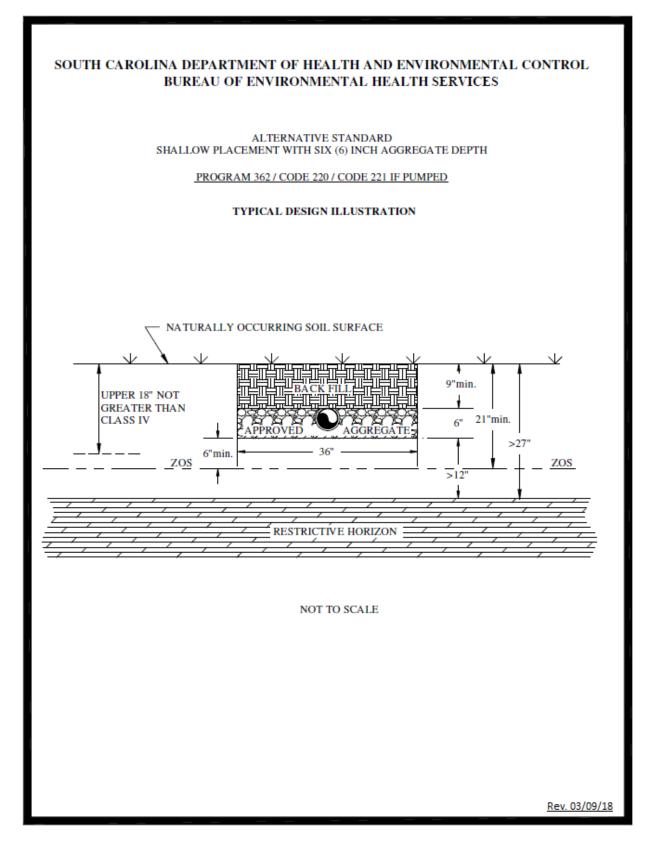
(3) Final Landscaping and Drainage

(a) Installation of drainage swales, ditches, curtain drains, and rain gutters may be required to divert or intercept water away from the onsite wastewater system location to a positive outfall. The septic tank and subsurface wastewater infiltration area shall be backfilled and shaped to promote surface water runoff.

(b) A barrier to preclude parking and vehicular traffic over the system area may be required.

(c) Following final landscaping, seeding or sodding may be required to prevent erosion.

(d) Final approval shall be withheld until all landscaping and drainage improvements have been satisfactorily completed.



# Appendix E – System Standard 230/231 – Shallow Placement with 14-Inch Aggregate Depth with Fill Cap

(1) Site/Permitting Requirements

(a) There must not be a zone of saturation (ZOS) within twenty (20) inches of the naturally occurring soil surface.

(b) The depth to any restrictive horizon must be greater than twelve (12) inches below the bottom of the proposed wastewater infiltration trenches.

(c) The texture in the upper eighteen (18) inches of naturally occurring soil must be no more limiting than Class III.

(d) This system must not be used on sloping sites that require serial distribution unless it can be demonstrated that the entire wastewater infiltration trench installation (i.e., side wall to side wall and end to end) can meet the required textural limitations and the required offsets to the zone of saturation and restrictive horizons.

(e) The long-term acceptance rate for system sizing shall be based upon the most hydraulically limiting naturally occurring soil texture from the ground surface to twelve (12) inches below the bottom of the proposed wastewater infiltration trenches.

(f) The total linear footage of wastewater infiltration trenches shall be the same as that required for conventional systems.

(g) There shall be a replacement area equivalent to at least fifty (50) percent in size of the original system area held in reserve for system repair. This area shall have a suitable configuration and shall meet the minimum soil and site conditions of this regulation.

(h) This system cannot be considered for facilities with peak flow rates in excess of fifteen hundred (1500) gpd.

(2) Installation Requirements

(a) The wastewater infiltration trench width shall be thirty-six (36) inches.

(b) The maximum depth of the bottom of the wastewater infiltration trench shall be fourteen (14) inches below the naturally occurring soil surface unless it can be demonstrated that deeper placement can meet the required textural limitations and the offsets to the zone of saturation and restrictive horizons.

(c) The depth of the fill cap shall provide a minimum of twelve (12) inches of soil cover above the top of the wastewater infiltration trench aggregate.

(d) Where gravity flow from the septic tank to the subsurface wastewater infiltration area is utilized, the invert elevation of the septic tank outlet shall be installed at an elevation at least equal to or higher than the top of the aggregate in the highest wastewater infiltration trench(es).

(e) The required fill cap must extend at least five (5) feet beyond the limits of the subsurface wastewater infiltration trenches and must taper to the original soil surface at a slope not to exceed 10 percent. On sloping sites, where serial distribution has been incorporated into the system design, on the lower side and ends of the wastewater infiltration trenches, the fill cap must extend to at least ten (10) feet beyond the limits of the wastewater infiltration trenches and must taper to the original soil surface at a slope not to exceed five (5) percent. The required property line setback shall be measured from the point at which the fill cap taper intersects

with the natural soil surface. The fill cap must be installed prior to beginning trench installation when required on the construction permit.

(f) The required fill material must be soil texture Class I, Class II, or Class III and be devoid of extraneous debris such as organic matter, building materials, etc.

(g) The wastewater infiltration trench aggregate shall be fourteen (14) inches in depth.

(h) All tree/brush removal shall be done in a manner that minimizes the disturbance or loss of naturally occurring soil.

(3) Final Landscaping and Drainage

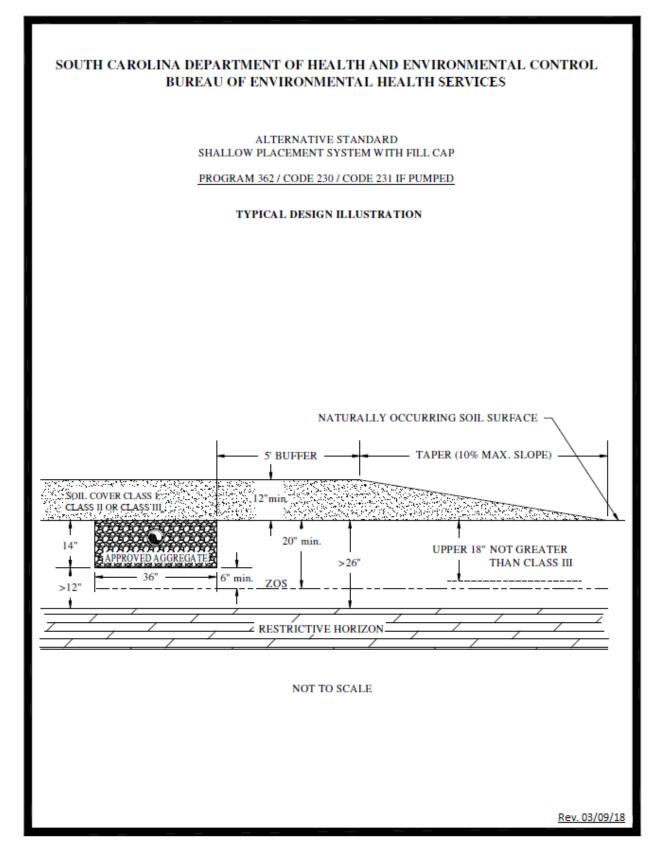
(a) The septic tank and fill cap area shall be backfilled and shaped to promote the runoff of surface water.

(b) Where natural surface drainage does not exist, a swale shall be constructed adjacent to the fill cap area to divert surface water away from the onsite wastewater system to a positive outfall. The installation of ditches, curtain drains, and rain gutters may be required to intercept and divert water away from the onsite wastewater system location.

(c) A barrier to preclude parking and vehicular traffic over the system area may be required.

(d) Following final landscaping, seeding or sodding may be required to prevent erosion.

(e) Final approval shall be withheld until all landscaping and drainage improvements have been satisfactorily completed.



# Appendix F – System Standard 240/241 – Ultra-Shallow Placement with 6-Inch Aggregate Depth with Fill Cap

(1) Site/Permitting Requirements

(a) There must not be a zone of saturation (ZOS) within twelve (12) inches of the naturally occurring soil surface.

(b) The depth to any restrictive horizon must be greater than twelve (12) inches below the bottom of the proposed wastewater infiltration trenches.

(c) The soil texture in the upper eighteen (18) inches of naturally occurring soil must be no more limiting than Class III.

(d) This system must not be used on sloping sites that require serial distribution unless it can be demonstrated that the entire wastewater infiltration trench installation (i.e., side wall to side wall and end to end) meets the required textural limitations and required offsets to the zone of saturation and restrictive horizons.

(e) No part of this system can be installed within one hundred twenty-five (125) feet of the critical area line or tidal waters as determined by the Department; or within one hundred twenty-five (125) feet of the ordinary high water elevation within the banks of non-tidal, environmentally sensitive waters.

(f) The long-term acceptance rate for system sizing shall be based upon the most hydraulically limiting naturally occurring soil texture from the ground surface to twelve (12) inches below the bottom of the proposed wastewater infiltration trenches.

(g) Due to the decreased sidewall area and the increased potential for ground water mounding near the surface, the Equivalency Factors for these systems shall be calculated by conventional wastewater infiltration trenches and increased by an additional factor of 0.12 times.

(h) There shall be a replacement area equivalent to at least fifty (50) percent in size of the original system area held in reserve for system repair. This area shall have a suitable configuration and shall meet the minimum soil and site conditions of this regulation.

(i) This system cannot be considered for facilities with peak flow rates in excess of fifteen hundred (1500) gpd.

(2) Installation Requirements

(a) The wastewater infiltration trench width shall be thirty-six (36) inches.

(b) The maximum depth of the bottom of the wastewater infiltration trench shall be six (6) inches below the naturally occurring soil surface unless it can be demonstrated that deeper placement can meet the required textural limitations and offsets to the zone of saturation and restrictive horizons.

(c) The depth of the fill cap shall provide a minimum of twelve (12) inches backfill above the top of the wastewater infiltration trench aggregate.

(d) Where gravity flow from the septic tank to the subsurface wastewater infiltration area is utilized, the invert elevation of the septic tank outlet shall be installed at an elevation at least equal to or higher than the top of the aggregate in the highest wastewater infiltration trench(es).

(e) The required fill cap must extend at least five (5) feet beyond the limits of the subsurface wastewater infiltration trenches and must taper to the original soil surface at a slope not to exceed 10 percent. On sloping sites where serial distribution has been incorporated into the system design, on the lower side and ends of the wastewater infiltration trenches, the fill cap must extend to at least ten (10) feet beyond the limits of the wastewater infiltration trenches and must taper to the original soil surface at a slope not to exceed five (5) percent. The required property line setback shall be measured from the point at which the fill cap taper intersects with the natural soil surface. The fill cap must be installed prior to beginning trench installation when required on the construction permit.

(f) The required fill material must be soil texture Class I, Class II, or Class III, and be devoid of extraneous debris such as organic matter, building materials, etc.

(g) The wastewater infiltration trench aggregate shall be six (6) inches in depth.

(h) All tree/brush removal shall be done in a manner that minimizes the disturbance or loss of naturally occurring soil.

(3) Final Landscaping and Drainage

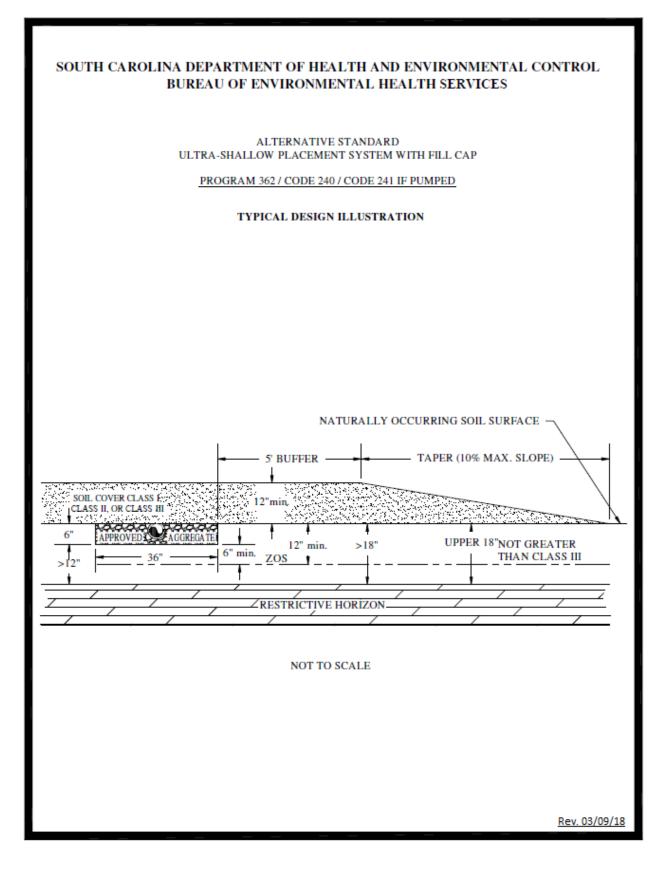
(a) The septic tank and fill cap area shall be backfilled and shaped to promote the runoff of surface water.

(b) Where natural surface drainage does not exist, a swale shall be constructed adjacent to the fill cap area to divert surface water away from the onsite wastewater system to a positive outfall. The installation of ditches, curtain drains, and rain gutters may be required to intercept and divert water away from the onsite wastewater system location.

(c) A barrier to preclude parking and vehicular traffic over the system area may be required.

(d) Following final landscaping, seeding or sodding may be required to prevent erosion.

(e) Final approval shall be withheld until all landscaping and drainage improvements have been satisfactorily completed.



# Appendix G – System Standard 250/251 – Reservoir Infiltration System for Soils with Expansive Clay

(1) Site/Permitting Requirements

(a) Rock formations must be greater than four (4) feet below the naturally occurring soil surface.

(b) For standard installations (see Typical Design Illustration A), the wastewater infiltration trenches must penetrate the saprolite at least six (6) inches. There must be an offset greater than twelve (12) inches between the bottom of the trenches and any rock formations. (i.e., there must be greater than eighteen (18) inches of clean, unconsolidated saprolite below the expansive clay layer.)

(c) If the unconsolidated saprolite layer is greater than sixty (60) inches below the naturally occurring soil surface (see Typical Design Illustration B), paragraph (1)(b) (above) shall apply and clean medium sand shall be added to the trenches so that the top of the aggregate will be twelve (12) inches below finished grade.

(d) There must be no evidence of a zone of saturation (ZOS) in the unconsolidated saprolite layer.

(e) The long-term acceptance rate shall not exceed 0.25 gpd/sq. ft.

(f) There shall be a replacement area equivalent to at least fifty (50) percent in size of the original system area held in reserve for system repair. This area shall have a suitable configuration and shall meet the minimum soil and site conditions of this regulation.

(g) Sites to be considered for this system shall be evaluated using backhoe pits to describe the soil profile.

(h) This system cannot be considered for facilities with peak flow rates in excess of fifteen hundred (1500) gpd.

(i) Clean, unconsolidated saprolite shall be defined as soft, friable, thoroughly decomposed rock that has formed in place by chemical weathering, retaining the fabric and structure of the parent rock, and being devoid of expansive clay. Unconsolidated saprolite can be dug using a hand auger or knife. Consolidated saprolite cannot be penetrated with a hand auger or similar tool and must be dug with a backhoe or other powered equipment.

(ii) Expansive clay shall be defined as soils containing significant amounts of expansible-layer clay minerals or smectites as evidenced in the field by classifications of Very Sticky and Very Plastic and Structure Grades of Weak or Structureless when evaluated in accordance with the Field Book. Such soils are considered to be unsuitable for onsite wastewater systems.

(2) Installation Requirements

(a) The depth of approved aggregate shall be twenty-four (24) inches.

(b) The depth of medium sand will vary between zero (0) and one hundred twenty (120) inches, depending upon the depth to the saprolite layer.

(c) The trench width shall be thirty-six (36) inches.

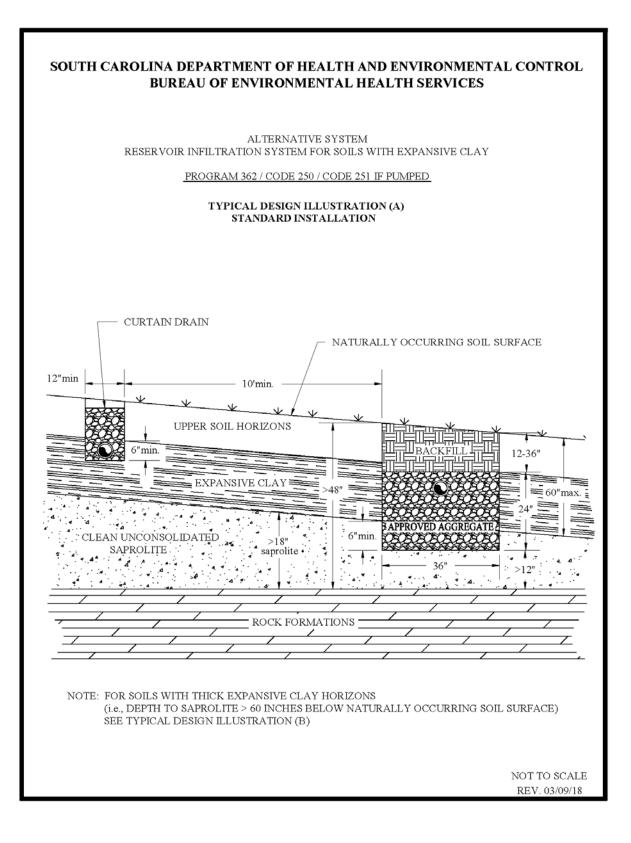
(d) Where gravity flow from the septic tank to the subsurface wastewater infiltration area is utilized, the invert elevation of the septic tank outlet shall be installed at an elevation at least equal to or higher than the top of the aggregate in the highest wastewater infiltration trench(es).

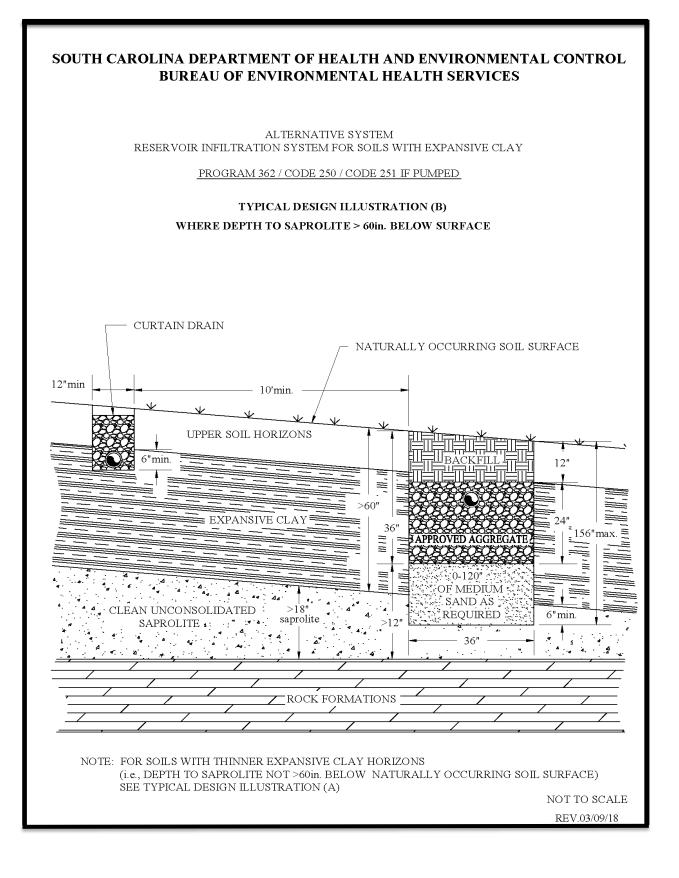
(e) The backfill shall range from twelve (12) inches to thirty-six (36) inches for standard installations (see Typical Design Illustration A) and shall be twelve (12) inches where the depth to saprolite is greater than sixty (60) inches below the naturally occurring soil surface (see Typical Design Illustration B).

(3) Final Landscaping and Drainage

(a) On sites where there is evidence of a zone of saturation at the soil-expansive clay interface, a curtain drain must be placed upslope along a contour and must extend the entire length of the subsurface wastewater infiltration area. The curtain drain shall extend a minimum of six (6) inches into the expansive clay layer. The septic tank and subsurface wastewater infiltration area shall be backfilled and shaped to promote surface water runoff.

(b) Following final landscaping, seeding or sodding may be required to prevent erosion.





### Appendix H – System Standard 260/261 – 9-Inch Shallow Placement System with Fill Cap

(1) Site/Permitting Requirements

(a) There must not be a zone of saturation (ZOS) within fifteen (15) inches of the naturally occurring soil surface.

(b) The depth to any restrictive horizon must be greater than twelve (12) inches below the bottom of the proposed wastewater infiltration trenches.

(c) The texture in the upper eighteen (18) inches of naturally occurring soil must be no more limiting than Class III.

(d) This system must not be used on sloping sites that require serial distribution unless it can be demonstrated that the entire wastewater infiltration trench installation (i.e., side wall to side wall and end to end) can meet the required textural limitations and the required offsets to the zone of saturation and restrictive horizons.

(e) The long-term acceptance rate for system sizing shall be based upon the most hydraulically limiting naturally occurring soil texture from the ground surface to twelve (12) inches below the bottom of the proposed wastewater infiltration trenches.

(f) Due to the decreased sidewall absorption area and the increased potential for ground water mounding near the surface, the Equivalency Factors for these systems shall be calculated by conventional wastewater infiltration trenches and increased by an additional factor of 0.09 times.

(g) No part of this system can be installed within 125 feet of the critical area line or tidal waters as determined by the Department; or within 125 feet of the ordinary high water elevation within the banks of non-tidal, environmentally sensitive waters.

(h) There shall be a replacement area equivalent to at least fifty (50) percent in size of the original system area held in reserve for system repair. This area shall have a suitable configuration and shall meet the minimum soil and site conditions of this regulation.

(i) This system cannot be considered for facilities with peak flow rates in excess of fifteen hundred (1500) gpd.

- (2) Installation Requirements
  - (a) The wastewater infiltration trench width shall be thirty-six (36) inches.

(b) The maximum depth of the bottom of the wastewater infiltration trench shall be nine (9) inches below the naturally occurring soil surface unless it can be demonstrated that deeper placement can meet the required textural limitations and the offsets to the zone of saturation and restrictive horizons.

(c) Where gravity flow from the septic tank to the subsurface wastewater infiltration area is utilized, the invert elevation of the septic tank outlet shall be installed at an elevation at least equal to or higher than the top of the aggregate in the highest wastewater infiltration trench(es).

(d) The depth of the fill cap shall provide a minimum of twelve (12) inches backfill above the top of the wastewater infiltration trench aggregate.

(e) The required fill cap must extend at least five (5) feet beyond the limits of the wastewater infiltration trenches and must taper to the original soil surface at a slope not to exceed 10 percent (see attached illustration). On sloping sites where serial distribution has been incorporated into the system design, on the lower side and ends of the wastewater infiltration trenches, the fill cap must extend to at least ten (10) feet beyond the limits of the wastewater infiltration trenches and must taper to the original soil surface at a slope not to exceed five (5) percent. The required property line setback shall be measured from the point at which the fill cap taper intersects with the naturally occurring soil surface. The fill cap must be installed prior to beginning trench installation when required on the construction permit.

(f) The required fill material must be soil texture Class I, Class II, or Class III, and be devoid of extraneous debris such as organic matter, building materials, etc.

(g) The wastewater infiltration trench aggregate shall be nine (9) inches in depth.

(h) All trees/brush removal shall be done in a manner that minimizes the disturbance or loss of naturally occurring soil.

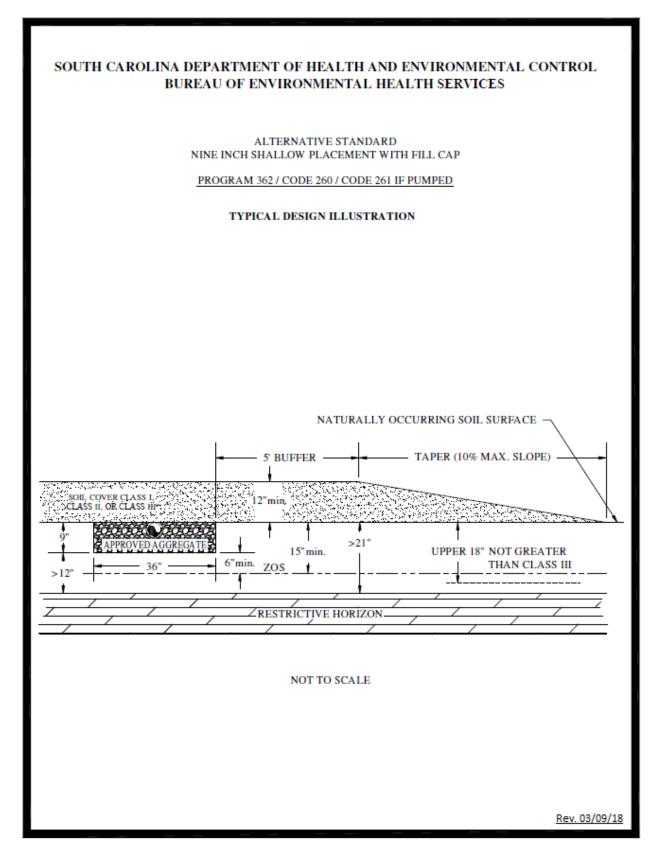
(3) Final Landscaping and Drainage

(a) The septic tank and fill cap area shall be backfilled and shaped to promote the runoff of surface water.

(b) Where natural surface drainage does not exist, a swale shall be constructed adjacent to the fill cap area to divert surface water away from the onsite wastewater system to a positive outfall. The installation of ditches, curtain drains, and rain gutters may be required to intercept and divert water away from the onsite wastewater system location.

(c) A barrier to preclude parking and vehicular traffic over the system area may be required.

(d) Following final landscaping, seeding or sodding may be required to prevent erosion.



### Appendix I – System Standard 270/271 – Alternative Trench Width and Depth Systems

(1) Site/Permitting Requirements

(a) Soil conditions, the depth to rock and other restrictive horizons, the depth to the zone of saturation (ZOS), and the elevation differential between the septic tank outlet and the highest wastewater infiltration trench(es) must meet applicable standards for conventional or alternative onsite wastewater systems.

(b) There shall be a replacement area equivalent to at least fifty (50) percent in size of the original system area held in reserve for system repair. This area shall have a suitable configuration and shall meet the minimum soil and site conditions of this regulation.

(c) This system cannot be considered for facilities with peak flow rates in excess of fifteen hundred (1500) gpd unless the trench width is three (3) feet and the aggregate depth is between fourteen (14) and twenty-eight (28) inches.

(d) The linear footage requirement for an alternative width and depth system shall be determined by first figuring the conventional (thirty-six (36) inch wide with fourteen (14) inch aggregate depth) linear footage requirements and then multiplying by the appropriate factor based on desired trench width and aggregate depth. (See table below system illustration for multiplication factors.)

(2) Installation Requirements

(a) Trench widths shall not exceed ten (10) feet.

(b) The aggregate depth shall be between six (6) inches and twenty-eight (28) inches when considering trench widths ranging from one and one-half  $(1\frac{1}{2})$  to ten (10) feet (see chart). The aggregate depth may be increased to a maximum of forty-two (42) inches, provided the trench width does not exceed thirty-six (36) inches (Note: In these cases, the equivalency formula should be utilized to determine the appropriate factor (F) when considering aggregate depths between twenty-eight (28) and forty-two (42) inches). All trenches shall be covered with at least nine (9) inches of backfill.

(c) Methods of construction which preclude vehicular compaction of the trench bottom must always be utilized.

(3) Final Landscaping and Drainage

(a) Installation of drainage swales, ditches, diversion drains, or rain gutters may be required to divert or intercept water away from the onsite wastewater system location. The septic tank and subsurface wastewater infiltration area shall be backfilled and shaped to promote surface water runoff.

(b) A barrier to preclude parking and vehicular traffic over the area of the system may be required.

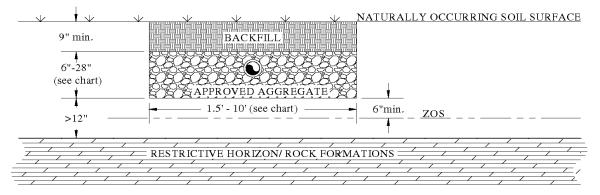
(c) Following final landscaping, seeding or sodding may be required to prevent erosion.

# SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL BUREAU OF ENVIRONMENTAL HEALTH SERVICES

ALTERNATIVE STANDARD ALTERNATIVE TRENCH WIDTH & DEPTH SYSTEMS

PROGRAM 362 / CODE 270 / CODE 271 IF PUMPED

#### TYPICAL DESIGN ILLUSTRATION



#### NOT TO SCALE

6" *	9" **			AGGREGATE DEPTH (in.)					
	-	14"	20"	24"	28"				
2.39	1.94	USE LTAR STANDRARD	1.10	0.97	0.87				
1.99	1.66	USE LTAR STANDARD	1.00	0.89	0.80				
1.71	1.46	USE LTAR STANDARD	0.91	0.82	0.75				
1.50	1.30	USE LTAR STANDARD	0.84	0.76	0.70 see system 360/380				
1.20	1.06	0.84	0.73	0.67	0.62				
1.00	0.89	0.73	0.64	0.59	0.55				
0.85	0.78	0.64	0.57	0.53	0.50				
0.74	0.68	0.57	0.52	0.49	0.46				
0.66	0.61	0.52	0.47	0.45	0.42				
0.59	0.55	0.47	0.43	0.41	0.39				
0.54	0.51	0.43	0.40	0.38	0.36				
		1.71       1.46         1.50       1.30         1.20       1.06         1.00       0.89         0.85       0.78         0.74       0.68         0.66       0.61         0.59       0.55	1.39         1.00         STANDARD           1.71         1.46         USE LTAR STANDARD           1.50         1.30         USE LTAR STANDARD           1.20         1.06         0.84           1.00         0.89         0.73           0.85         0.78         0.64           0.74         0.68         0.57           0.66         0.61         0.52           0.59         0.55         0.47           0.54         0.51         0.43	1.991.00STANDARD1.001.711.46USE LTAR STANDARD0.911.501.30USE LTAR STANDARD0.841.201.060.840.731.000.890.730.640.850.780.640.570.740.680.570.520.660.610.520.470.590.550.470.430.540.510.430.40	1.99         1.00         STANDARD         1.00         0.39           1.71         1.46         USE LTAR STANDARD         0.91         0.82           1.50         1.30         USE LTAR STANDARD         0.84         0.76           1.20         1.06         0.84         0.73         0.67           1.00         0.89         0.73         0.64         0.59           0.85         0.78         0.64         0.57         0.53           0.74         0.68         0.57         0.52         0.49           0.66         0.61         0.52         0.47         0.45           0.59         0.55         0.47         0.43         0.41				

# Appendix J – System Standard 280/281 – Reservoir Infiltration System for Soils with Expansive Clay Shallow Rock Formations

(1) Site/Permitting Requirements

(a) Rock formations must be rippable to a depth greater than four (4) feet below the naturally occurring soil surface.

(b) The soil wastewater infiltration trenches must penetrate the saprolite at least six (6) inches, and there must be an offset greater than twelve (12) inches between the trench bottoms and any rock formations (i.e., there must be at least six (6) inches of clean, unconsolidated saprolite below the expansive clay layer, and medium sand may be added to the excavation to achieve an offset from rock that exceeds twelve (12) inches).

(c) There must be no evidence of a zone of saturation (ZOS) in the unconsolidated saprolite layer.

(d) The long-term acceptance rate shall not exceed 0.20-gpd/sqft.

(e) Effluent discharged to this system must receive a higher degree of treatment than that provided by a conventional septic tank (e.g., two (2) compartment septic tank or two (2) septic tanks in series).

(f) There shall be a replacement area equivalent to at least fifty (50) percent in size of the original system area held in reserve for system repair. This area shall have a suitable configuration and shall meet the minimum soil and site conditions of this regulation.

(g) No part of this system can be installed within one hundred twenty-five (125) feet of the ordinary high water elevation within the banks of environmentally sensitive waters.

(h) Sites to be considered for this system shall be evaluated using backhoe pits to describe the soil profile.

(i) This system cannot be considered for facilities with peak flow rates in excess of fifteen hundred (1500) gpd.

(i) Clean, unconsolidated saprolite shall be defined as soft, friable, thoroughly decomposed rock that has formed in place by chemical weathering, retaining the fabric and structure of the parent rock, and being devoid of expansive clay. Unconsolidated saprolite can be dug using a hand auger or knife. Consolidated saprolite cannot be penetrated with a hand auger or similar tool, and must be dug with a backhoe or other powered equipment.

(ii) Expansive clay shall be defined as soils containing significant amounts of expansible-layer clay minerals (smectites) as evidenced in the field by classifications of Very Sticky and Very Plastic and Structure Grades of Weak or Structureless when evaluated in accordance with the Field Books. Such soils are considered to be unsuitable for onsite wastewater systems.

(2) Installation Requirements

(a) The depth of approved aggregate shall be at least twenty-four (24) inches.

(b) The trench width shall be thirty-six (36) inches.

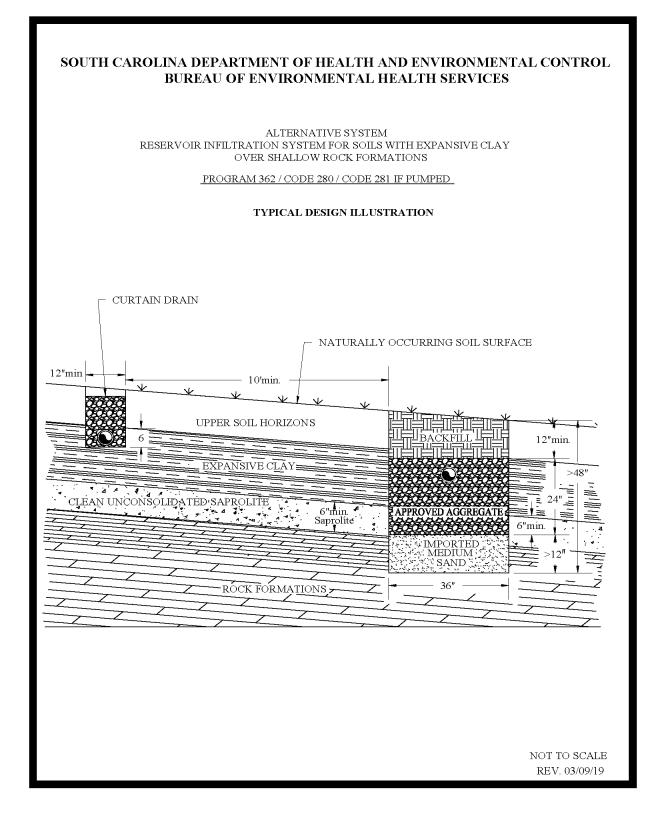
(c) Where gravity flow from the septic tank to the subsurface wastewater infiltration area is utilized, the invert elevation of the septic tank outlet shall be installed at an elevation at least equal to or higher than the top of the aggregate in the highest wastewater infiltration trench(es).

### (3) Final Landscaping and Drainage

(a) On sites where there is evidence of a zone of saturation at the soil-expansive clay interface, a curtain drain must be placed upslope along a contour and must extend the entire length of the subsurface wastewater infiltration area. The curtain drain shall extend a minimum of six (6) inches into the expansive clay layer. The septic tank and subsurface wastewater infiltration area shall be backfilled and shaped to promote surface water runoff.

(b) Final approval shall be withheld until all landscaping, drainage, and other requirements have been satisfactorily completed.

(c) Following final landscaping, seeding or sodding may be required to prevent erosion.



### Appendix K – System Standard 290/291 – Alternative Trench Width and Depth Systems with Fill Cap

(1) Site/Permitting Requirements

(a) The depth to any restrictive horizon must be greater than twelve (12) inches below the bottom of the proposed wastewater infiltration trenches.

(b) The texture in the upper eighteen (18) inches of naturally occurring soil must be no more limiting than Class III.

(c) Soil conditions, the depth to rock and other restrictive horizons, the depth to the zone of saturation (ZOS), and the elevation differential between the septic tank outlet and the highest wastewater infiltration trench(es) must meet applicable standards for alternative onsite wastewater systems.

(d) There shall be a replacement area equivalent to at least fifty (50) percent in size of the original system area held in reserve for system repair. This area shall have a suitable configuration and shall meet the minimum soil and site conditions of this regulation.

(e) This system cannot be considered for facilities with peak flow rates in excess of six hundred (600) gpd.

(f) The linear footage requirement for an alternative width and depth system shall be determined by first figuring the conventional (36-inch-wide with 14-inch aggregate depth) linear footage requirements and then multiplying by the appropriate factor based on desired trench width and aggregate depth as computed in the following table:

FACTOR (F) FOR M	IAINTAINING E	QUIVALENT IN	FILTRATIVE SURFACE AREA
TRENCH WIDTH (ft.)	AGGREGAT	E DEPTH (in.)	
	<b>6"</b> *	9" **	<b># OF DISTRIBUTION PIPES</b>
	MULTIPLICA	TION FACTOR	
4'	1.20	1.06	1
5'	1.00	0.89	1
6'	0.85	0.78	2
7'	0.74	0.68	2
8'	0.66	0.61	2
9'	0.59	0.55	3
10'	0.54	0.51	3
	* Factors reflect ** Factors refle	a twelve (12) perce ect a nine (9) percen	nt increase t increase

(g) This system may only be installed on sites where the long-term acceptance rate (LTAR) for the system will be between 1.0 and 0.5 gpd per foot squared ( $gpd/ft^2$ ). The bottom of the absorption field cannot be installed in Class IV soils (0.4 to 0.1 LTAR).

(h) The distribution pipes in the bed shall be at least eighteen (18) inches from the edge of the trench and located on three (3) foot centers.

(i) This system must not be used on sloping sites that require serial distribution unless it can be demonstrated that the entire wastewater infiltration trench installation (i.e., side wall to side wall and end to end)

can meet the required textural limitations and the required offsets to the zone of saturation and restrictive horizons.

(j) The long-term acceptance rate for system sizing shall be based upon the most hydraulically limiting naturally occurring soil texture from the ground surface to twelve (12) inches below the bottom of the proposed wastewater infiltration trenches.

(2) Installation Requirements

(a) Trench widths shall not exceed ten (10) feet.

(b) Wide trenches should be installed by excavating from the sides. Heavy equipment, such as backhoes, may not be placed in the trenches in order to avoid soil compaction.

(c) The required fill cap must extend at least five (5) feet beyond the limits of the wastewater infiltration trenches and must taper to the original soil surface at a slope not to exceed ten (10) percent. On sloping sites, where serial distribution has been incorporated into the system design, on the lower side and ends of the wastewater infiltration trenches, the fill cap must extend to at least ten (10) feet beyond the limits of the wastewater infiltration trenches and must taper to the original soil surface at a slope not to exceed five (5) percent. The required property line setback shall be measured from the point at which the fill cap taper intersects with the naturally occurring soil surface. The fill cap must be installed prior to beginning trench installation when required on the construction permit.

(3) Final Landscaping and Drainage

(a) Installation of drainage swales, ditches, diversion drains, or rain gutters may be required to divert or intercept water away from the onsite wastewater system location. The septic tank and subsurface wastewater infiltration area shall be backfilled and shaped to promote surface water runoff.

(b) A barrier to preclude parking and vehicular traffic over the area of the system may be required.

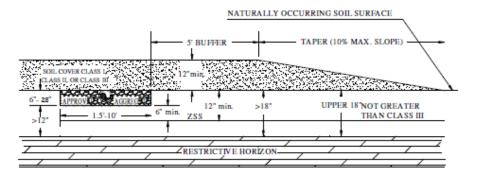
(c) Following final landscaping, seeding, or sodding may be required to prevent erosion.

# SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL BUREAU OF ENVIRONMENTAL HEALTH SERVICES

ALTERNATIVE STANDARD ALTERNATIVE TRENCH WIDTH & DEPTH SYSTEMS

PROGRAM 362 / CODE 290 / CODE 291 IF PUMPED

TYPICAL DESIGN ILLUSTRATION



NOT TO SCALE

TRENCH WIDTH (ft.)	AGGREGATE DEPTH (in.)					
	6" *	9" **	14"	20"	24"	28"
1.5'	2.39	1.94	USE LTAR STANDRARD	1.10	0.97	0.87
2.0'	1.99	1.66	USE LTAR STANDARD	1.00	0.89	0.80
2.5'	1.71	1.46	USE LTAR STANDARD	0.91	0.82	0.75
3.0'	1.50	1.30	USE LTAR STANDARD	0.84	0.76	0.70 sec system 360/380
4.0'	1.20	1.06	0.84	0.73	0.67	0.62
5.0'	1.00	0.89	0.73	0.64	0.59	0.55
6.0'	0.85	0.78	0.64	0.57	0.53	0.50
7.0'	0.74	0.68	0.57	0.52	0.49	0.46
8.0'	0.66	0.61	0.52	0.47	0.45	0.42
9.0'	0.59	0.55	0.47	0.43	0.41	0.39
10.0'	0.54	0.51	0.43	0.40	0.38	0.36
5.33 sqft. / ft 2 (SwD / 12) + T	* Factor	s (F) reflect 12%	increase foot	of conventional t	ype trench ( 36i	surface area per li n. wide, 14in. deej
2 (SwD / 12) + T	W ** Facto (See not	ors (F) reflect 9% es in text)	increase	SwD = Side W TW = Trench	all Depth (in) Width (ft.)	<u>Rev. 03/09/</u>

# Appendix L – System Standard 370/371 – Shallow Placement with Fill Cap for Sites with Shallow Class IV Soil

(1) Site/Permitting Requirements

(a) There must not be a zone of saturation (ZOS) within twelve (12) inches of the naturally occurring soil surface.

(b) The depth to any restrictive horizon must be greater than twelve (12) inches below the bottom of the proposed wastewater infiltration trenches.

(c) No part of this system can be installed within one hundred twenty-five (125) feet of the ordinary high water elevation within the banks of environmentally sensitive waters.

(d) This system may be considered for installation on contiguous lots in new subdivisions approved after the effective date of this standard provided a setback of at least seventy-five (75) feet is maintained between the system and all adjacent property lines. The seventy-five (75) foot setback shall be measured from the point at which the fill cap taper intersects with the naturally occurring soil surface.

(e) This system cannot be considered for facilities with peak sewage flow rates in excess of four hundred eighty (480) gpd. In addition, this system shall not be considered for facilities requiring grease traps.

(f) There shall be a replacement area equivalent to at least fifty (50) percent in size of the original system area held in reserve for system repair. This area shall have a suitable configuration and shall meet the minimum soil and site conditions of this regulation.

(g) The long-term acceptance rate for system sizing shall be based upon the most hydraulically limiting naturally occurring soil texture from the ground surface to twelve (12) inches below the bottom of the proposed wastewater infiltration trenches.

(2) Installation Requirements

(a) Effluent discharged to this system must receive a higher degree of treatment than that provided by a conventional septic tank (e.g. two (2) compartment septic tank or two (2) septic tanks in series).

(b) Where gravity flow from the septic tank to the subsurface wastewater infiltration area is utilized, the invert elevation of the septic tank outlet shall be installed at an elevation at least equal to or higher than the top of the aggregate in the highest wastewater infiltration trench(es).

(c) The required fill cap must extend at least five (5) feet beyond the limits of the wastewater infiltration trenches, and it must taper to the original soil surface at a slope not to exceed ten (10) percent. The required seventy-five (75) foot property line setback shall be measured from the point at which the fill cap taper intersects with the naturally occurring soil surface.

(d) The required fill material must be soil texture Class I, Class II, or Class III and be void of extraneous debris such as organic matter, building materials, etc.

(e) The depth of the fill cap shall provide a minimum of twelve (12) inches backfill above the top of the wastewater infiltration trench aggregate.

(f) The wastewater infiltration trench width shall be thirty-six (36) inches.

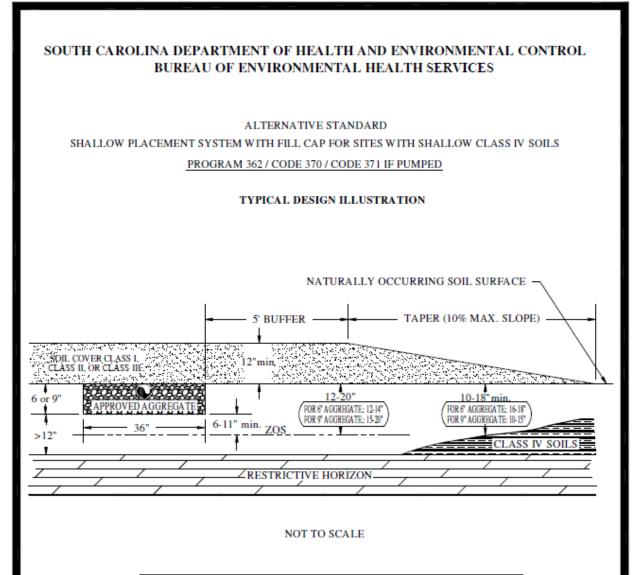
(g) All tree and brush removal shall be done in a manner that minimizes the disturbance or loss of naturally occurring soil.

(3) Final Landscaping and Drainage

(a) The septic tank and fill cap area shall be backfilled and shaped to promote the runoff of surface water.

(b) Where natural surface drainage does not exist, a swale shall be constructed adjacent to the filled area to divert surface water away from the onsite wastewater system to a positive outfall. The installation of ditches, curtain drains, and rain gutters may be required to intercept and divert water away from the onsite wastewater system location.

- (c) A barrier to preclude parking and vehicular traffic over the system area may be required.
- (d) Following final landscaping, seeding or sodding may be required to prevent erosion.



Depth to ZSS (in)	Depth to Class IV Soil (in)	Amount of Imported Fill Cap / Aggregate Depth (in)	Extension Factor
12	18	12/6	1.5
13	17	12/6	1.5
14	16	12/6	1.5
15	15	12/9	1.3
16	14	12/9	1.3
17	13	12/9	1.3
18	12	12/9	1.3
19	11	12/9	1.3
20	10	12/9	1.3

Rev. 03/09/18

# Appendix M – System Standard 380/381 – Double Aggregate Depth Wastewater Infiltration Trenches

(1) Site/Permitting Requirements

(a) Use of the double aggregate depth option must be restricted to soils that meet all textural limitations and required offsets to the zone of saturation (ZOS) and restrictive horizons.

(b) Systems incorporating the double aggregate depth option shall be loaded on the basis of the most hydraulically limiting naturally occurring soil texture from the ground surface to twelve (12) inches below the bottom of the proposed wastewater infiltration trenches.

(c) In order to maintain the same total absorptive area as that provided by conventional aggregate depth systems, the equivalent linear footage requirement for thirty-six (36) inch wide double aggregate depth trenches shall be determined by multiplying the conventional trench requirement by a factor of 0.7.

(d) There shall be a replacement area equivalent to at least fifty (50) percent in size of the original system area held in reserve for system repair. This area shall have a suitable configuration and shall meet the minimum soil and site conditions of this regulation.

(2) Installation Requirements

(a) The wastewater infiltration trench aggregate shall be twenty-eight (28) inches in depth and shall be placed so as to provide twenty (20) inches of aggregate below the pipe, five (5) inches beside the pipe, and three (3) inches above the pipe. The aggregate shall be covered with at least nine (9) inches of backfill.

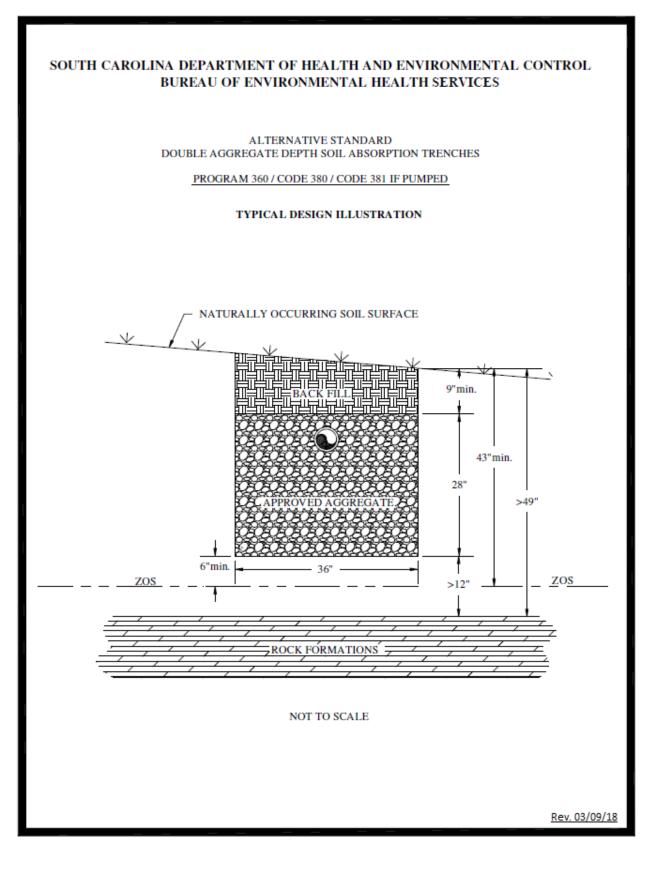
(b) The wastewater infiltration trench width shall be thirty-six (36) inches.

(c) Where gravity flow from the septic tank to the subsurface wastewater infiltration area is utilized, the invert elevation of the septic tank outlet shall be installed at an elevation at least equal to or higher than the top of the aggregate in the highest wastewater infiltration trench(es).

(3) Final Landscaping and Drainage

(a) Installation of drainage swales, ditches, curtain drains, and rain gutters may be required to divert or intercept water away from the onsite wastewater system location. The septic tank and subsurface wastewater infiltration area shall be backfilled and shaped to promote surface water runoff.

(b) Following final landscaping, seeding or sodding may be required to prevent erosion.



# Appendix N – System Standard 420/421 – Mounded Infiltration System

(1) Site/Permitting Requirements

(a) The texture in the upper twelve (12) inches of naturally occurring soil must be Class I or Class II.

(b) The soil texture in the permeable substratum must be no more limiting than Class II.

(c) There must not be a zone of saturation (ZOS) within six (6) inches of the naturally occurring soil surface.

(d) The depth to any restrictive horizon must be greater than twelve (12) inches below the bottom of the proposed wastewater infiltration trenches.

(e) There shall be a replacement area equivalent to at least fifty (50) percent in size of the original system area held in reserve for system repair. This area shall have a suitable configuration and shall meet the minimum soil and site conditions of this regulation.

(f) No part of this system can be installed within one hundred twenty-five (125) feet of the critical area line or tidal waters as determined by the Department; or within one hundred twenty-five (125) feet of the ordinary high water elevation within the banks of non-tidal, environmentally sensitive waters.

(g) This system cannot be considered for facilities with peak flow rates in excess of four hundred eighty (480) gpd. In addition, this system shall not be considered for facilities requiring grease traps.

(h) This system must not be utilized on sites that require serial distribution. Level installations on sloping sites can be considered if it can be demonstrated that the entire installation (i.e., side wall to side wall and end to end) will meet the required textural limitations and the required offsets to the zone of saturation and restrictive horizons.

(i) The total linear footage of six (6) inch deep, thirty-six (36) inch wide wastewater infiltration trenches shall be increased by 100 percent over that which would be required for conventional trenches, as determined by the long-term acceptance rate of the permeable substratum.

(j) This system may be considered for installation on contiguous lots in new subdivisions approved after the effective date of this standard provided a setback of at least seventy-five (75) feet is maintained between the system and all adjacent property lines. The seventy-five (75) foot setback shall be measured from the point at which the fill cap taper intersects with the naturally occurring soil surface.

- (2) Installation Requirements
  - (a) Site Preparation

(i) The naturally occurring soil surface underlying the area of the wastewater infiltration trenches shall be thoroughly tilled and mixed with the imported medium sand to a depth of six (6) inches.

(ii) All tree and brush removal shall be done in a manner that minimizes the disturbance or loss of naturally occurring soil.

- (b) Fill and System
  - (i) The fill cap and buffer shall be Class I, Class II, or Class III.

(ii) The depth of the fill cap shall provide a minimum of twelve (12) inches backfill above the top of the wastewater infiltration trench aggregate.

(iii) Where gravity flow from the septic tank to the subsurface wastewater infiltration area is utilized, the invert elevation of the septic tank outlet shall be installed at an elevation at least equal to or higher than the top of the aggregate in the highest wastewater infiltration trench(es).

(iv) The fill buffer shall be at least fifteen (15) feet in width.

(v) The fill taper shall be at least twenty (20) feet in width.

(vi) The required property line setback shall be measured from the point at which the fill cap taper intersects with the naturally occurring soil surface.

(vii) The total fill depth, excluding the taper zone, shall be at least eighteen (18) inches above the naturally occurring soil surface.

(viii) The wastewater infiltration trenches shall be installed in a Class I fill pad at least six (6) inches in depth, which extends five (5) feet beyond the trenches in all directions.

(ix) The wastewater infiltration trenches require a total aggregate depth of six (6) inches.

(x) The wastewater infiltration trench width shall be thirty-six (36) inches.

(xi) Infiltration trenches shall penetrate the permeable substratum and shall be at least two (2) feet in width containing USDA medium sand, washed concrete sand, or other material approved by the Department.

(xii) Effluent discharged to this system must receive a higher degree of treatment than that provided by a conventional septic tank (e.g., two (2) compartment septic tank or two (2) septic tanks in series).

(3) Final Landscaping and Drainage

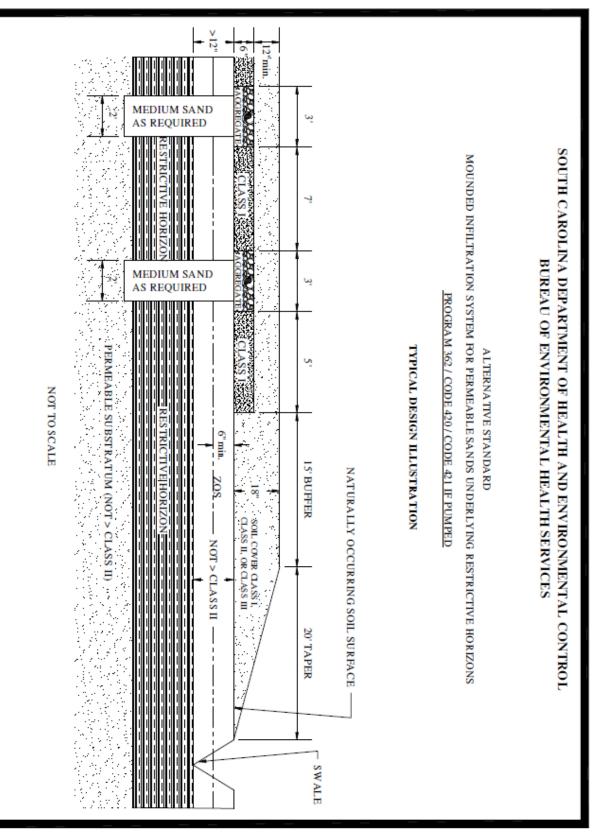
(a) The septic tank and fill cap area shall be backfilled and shaped to promote the runoff of surface water.

(b) Where natural surface drainage does not exist, a swale shall be constructed adjacent to the filled area to divert surface water away from the onsite wastewater system to a positive outfall. The installation of ditches, curtain drains, and rain gutters may be required to intercept and divert water away from the onsite wastewater system location.

(c) A barrier to preclude parking and vehicular traffic over the system area may be required.

(d) Following final landscaping, seeding or sodding may be required to prevent erosion.

# Rev. 03/09/18



# **196 FINAL REGULATIONS**

# Appendix O – System Standard 431 – Mounded Fill System

(1) Site/Permitting Requirements

(a) The texture in the upper eighteen (18) inches of naturally occurring soil must be Class I or Class II.

(b) The absorption bed within the mound shall be sized on the long-term acceptance rate of the most limiting texture in the upper eighteen (18) inches of naturally occurring soil.

(c) The linear footage of the absorption bed shall be determined in accordance with Standard 270.

(d) The absorption bed width shall be a minimum of five (5) feet and a maximum of 10 feet.

(e) Mounded fill systems must not be placed on sites with a slope in excess of three (3) percent.

(f) No part of this system can be installed within one hundred twenty-five (125) feet of the critical area line or tidal waters as determined by the Department; or within one hundred twenty-five (125) feet of the ordinary high water elevation within the banks of non-tidal, environmentally sensitive waters. Because of the long buffer, side slope, fill pad, and taper associated with this system, the one hundred twenty-five (125) foot setback shall be measured from the outer edge of the aggregate bed within the mound.

(g) There shall be a replacement area equivalent to at least fifty (50) percent in size of the original system area held in reserve for system repair. This area shall have a suitable configuration and shall meet the minimum soil and site conditions of this regulation.

(h) This system cannot be considered for facilities with peak flow rates in excess of four hundred eighty (480) gpd. In addition, this system shall not be considered for facilities requiring grease traps.

(i) Effluent discharged to this system must receive a higher degree of treatment than that provided by a conventional septic tank (e.g., two (2) compartment septic tank or two (2) septic tanks in series).

(j) This system may be considered for installation on contiguous lots in new subdivisions approved after the effective date of this standard provided a setback of at least seventy-five (75) feet is maintained between the system and all adjacent property lines. Because of the long buffer, side slope, fill pad, and taper associated with this system, the seventy-five (75) foot setback shall be measured from the outer edge of the aggregate bed within the mound.

(2) Installation Requirements

### (a) Site Preparation

(i) If present within eighteen (18) inches of the naturally occurring soil surface, organic material and restrictive horizons must be removed from beneath the mound and replaced with USDA medium sand, washed concrete sand, or an equivalent material approved by the Department. The replacement area must extend five (5) feet in all directions beyond the edges of the aggregate filled absorption bed.

(ii) The naturally occurring soil surface underlying the mound shall be thoroughly tilled and mixed with the imported mound fill material to a depth of six (6) inches.

(b) Mound/Absorption Bed Requirements

(i) Low Pressure Pipe Distribution (LPP) must be utilized to preclude localized hydraulic overloading of the imported fill material and to minimize the impact on the shallow zone of saturation.

(ii) Low Pressure Pipe Distribution (LPP) must be designed and installed in accordance with Department standards or equivalent designs. The size and layout of each distribution system will vary based on the size of the filter and the needed dosing.

(iii) Pump design shall be in accordance with Department standards.

(iv) There must be at least twenty-four (24) inches of medium sand placed between the naturally occurring soil surface and the bottom of the absorption bed. The bottom surface of the absorption bed must be placed at least twenty-four (24) inches above the zone of saturation.

(v) If the slope of the site in the proposed mound area is one (1) percent or less, then the mound shall be placed on a twelve (12) inch fill pad which must extend twenty (20) feet beyond the mound in all directions. If the slope of the site in the proposed mound area is greater than one (1) percent but less than or equal to three (3) percent, then the mound shall be placed on a twelve (12) inch deep fill pad which must extend twenty (20) feet beyond the mound area on the sides of the mound; forty (40) feet beyond the mound area on the downslope side of the mound; with no fill pad required on the upslope side of the mound.

(vi) The mound and fill pad material shall be USDA medium sand, washed concrete sand, or other equivalent material approved by the Department.

(vii) The depth of the fill cap material above the absorption bed shall be nine (9) to fifteen (15) inches of soil texture Class II or Class III. Sod may be substituted for four (4) inches of this portion of the fill cap material.

(viii) The depth of the fill cap material above the mound side-slope, the twelve (12) inch deep fill pad, and the taper shall be at least four (4) inches of soil texture Class II or Class III. Sod may be substituted for this portion of the fill cap material.

(ix) A 1:2 maximum slope is required if the mound side-slope and taper are sodded.

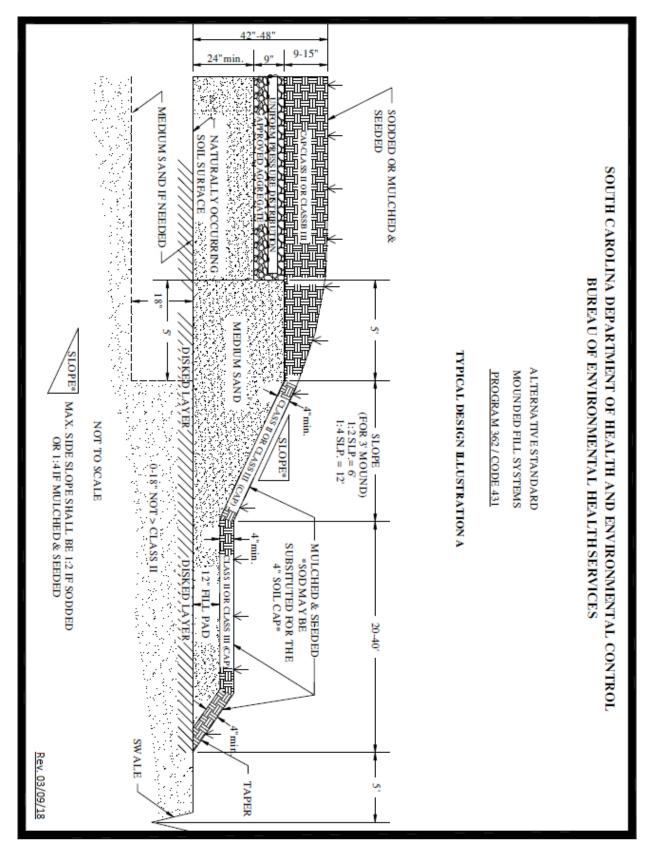
(x) A 1:4 maximum slope is required if the mound side-slope and taper are mulched and seeded.

- (3) Final Landscaping and Drainage
  - (a) The septic tank and mound area shall be backfilled and shaped to promote the runoff of surface water.

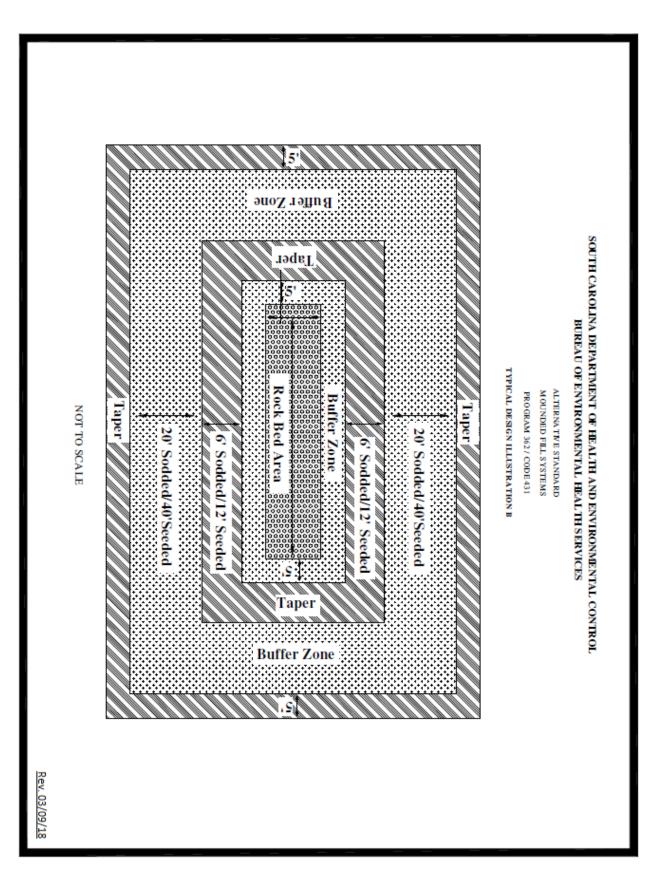
(b) Where natural surface drainage does not exist, a swale shall be constructed adjacent to the filled area to divert surface water away from the onsite wastewater system to a positive outfall. The installation of ditches, curtain drains, and rain gutters may be required to intercept and divert water away from the onsite wastewater system location.

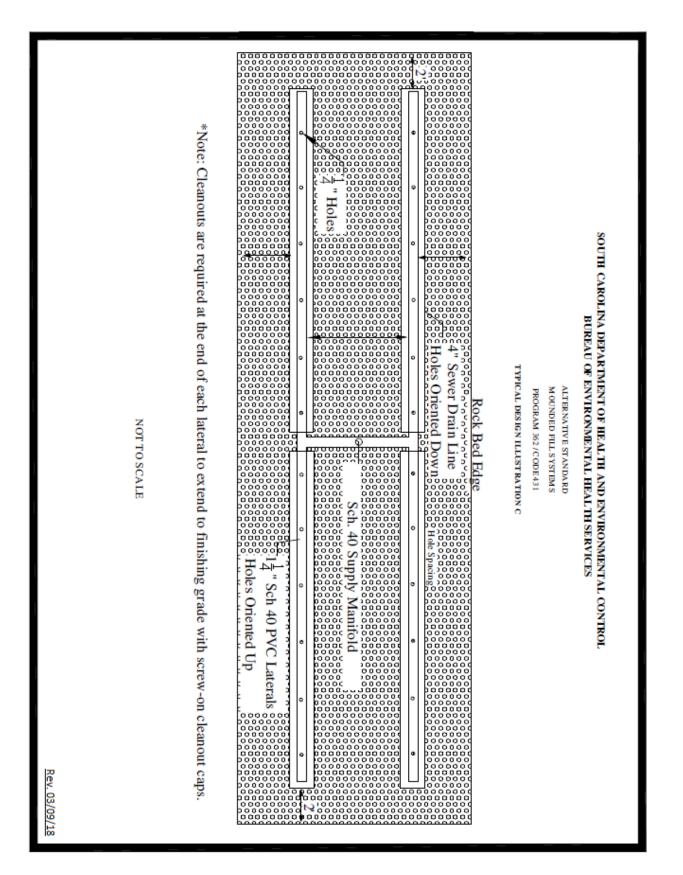
(c) A barrier to preclude parking and vehicular traffic over the system area may be required.

(d) Following final landscaping, seeding, or sodding may be required to prevent erosion.



South Carolina State Register Vol. 45, Issue 5 May 28, 2021





South Carolina State Register Vol. 45, Issue 5 May 28, 2021

# Appendix P – System Standard 601 – Elevated Infiltration System

(1) Site/Permitting Requirements

(a) The texture in the upper eighteen (18) inches of naturally occurring soil must be Class I or Class II.

(b) The filter shall not be placed on slopes greater than three (3) percent.

(c) This system cannot be considered for facilities with peak flow rates in excess of four hundred eighty (480) gpd. This system shall not be considered for facilities requiring grease traps.

(d) There shall be a buffer of at least fifty (50) feet surrounding and separating the system from all adjacent property lines. This buffer shall be measured from the retaining wall.

(e) There shall be a replacement area equivalent to at least fifty (50) percent in size of the original system area held in reserve for system repair. This area shall have a suitable configuration and shall meet the minimum soil and site conditions of this regulation.

(f) No part of this system can be installed within one hundred twenty-five (125) feet of the critical area line or tidal waters as determined by the Department or within one hundred twenty-five (125) feet of the ordinary high water elevation within the banks of non-tidal, environmentally sensitive waters.

(g) The total bottom area of the filter must be increased by fifty (50) percent above that required for conventional trenches.

(h) This system may be considered for installation on contiguous lots in new subdivisions approved after the effective date of this standard provided a setback of at least seventy-five (75) feet is maintained between the system and all adjacent property lines. The seventy-five (75) foot setback shall be measured from the point at which the retaining wall intersects the naturally occurring soil surface.

(2) Installation Requirements

(a) Site Preparation

(i) If present within eighteen (18) inches of the naturally occurring soil surface, organic material and restrictive horizons must be removed from beneath the filter and replaced with USDA medium sand, washed concrete sand, or an equivalent material approved by the Department.

(ii) The naturally occurring soil surface underlying the filter shall be thoroughly tilled and mixed with the imported filter material to a depth of six (6) inches.

### (b) System Requirements

(i) The filter must be constructed to a height of at least thirty-six (36) inches above the original grade with the sewage effluent passing through at least twenty-four (24) inches of filter material.

(ii) The filter material shall be USDA medium sand, washed concrete sand, or other material approved by the Department.

(iii) The filter retaining wall shall extend at least four (4) inches above the surface of the filter material and shall penetrate the naturally occurring soil surface at least four (4) inches.

(iv) The filter retaining wall shall be constructed in accordance with the accompanying design illustrations.

(v) Effluent discharged to this system must receive a higher degree of treatment than that provided by a conventional septic tank (e.g., two (2) compartment septic tank or two (2) septic tanks in series).

(vi) The top of the filter shall be capped with Class II or Class III soil and shall slope from center to edges in order to promote surface runoff.

(c) Distribution Requirements

(i) Low Pressure Pipe Distribution (LPP) must be utilized to preclude localized hydraulic overloading of the imported fill material and to minimize the impact on the shallow zone of saturation.

(ii) Low Pressure Pipe Distribution (LPP) must be designed and installed in accordance with Department standards or equivalent designs. The size and layout of each distribution system will vary based on the size of the filter and the needed dosing.

(iii) Pump design shall be in accordance with Department standards.

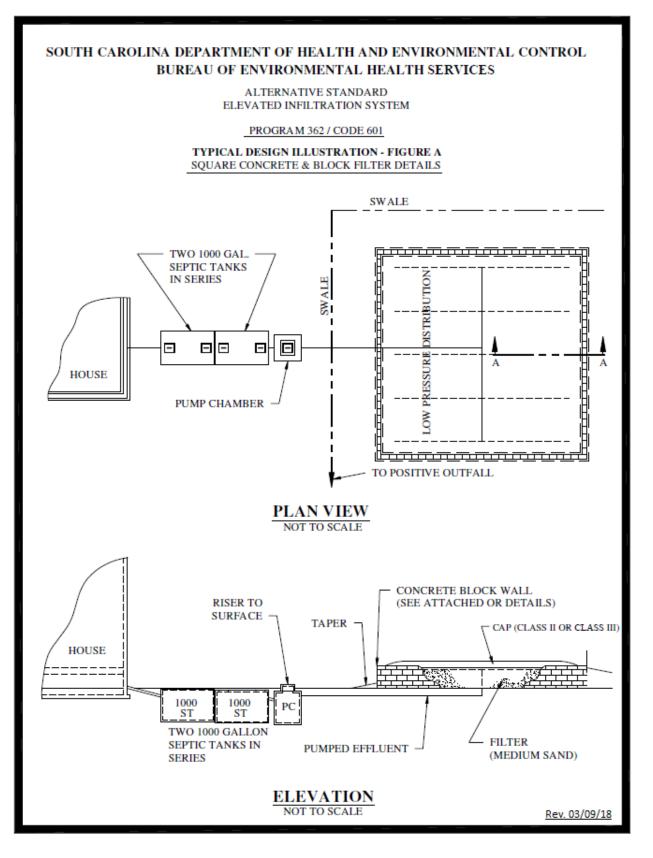
(3) Final Landscaping and Drainage

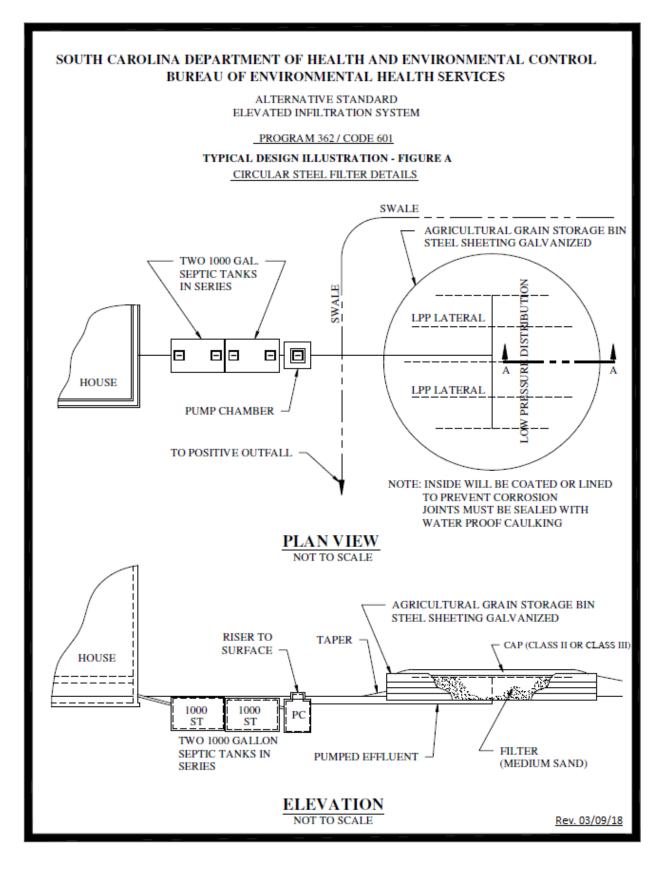
(a) Fill material shall be placed around the outside of the filter to a depth of one (1) foot, and shall slope to original grade at a point five (5) feet from the retaining wall.

(b) The septic tank and filter area shall be backfilled and shaped to promote the runoff of surface water.

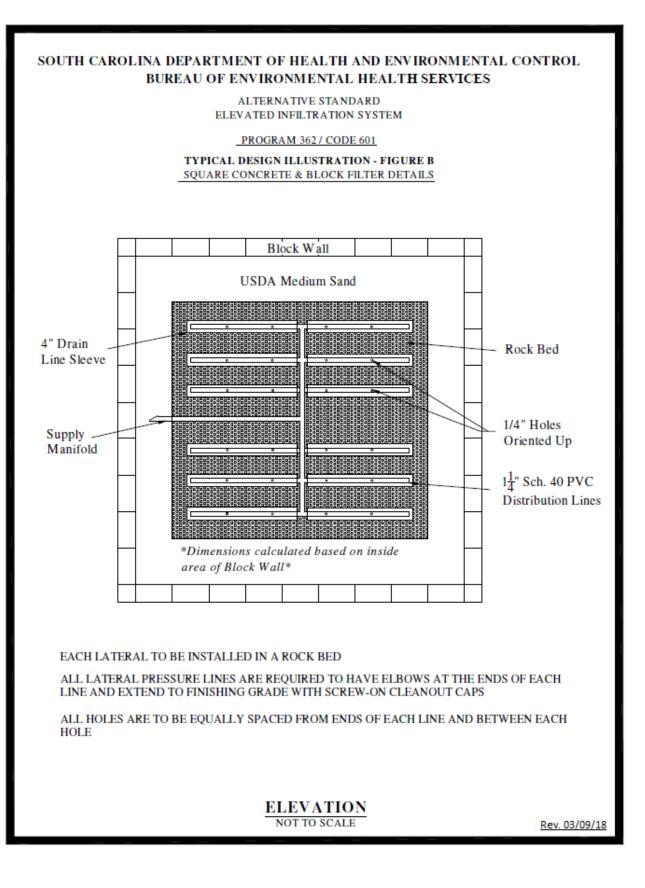
(c) Where natural surface drainage does not exist, a swale shall be constructed adjacent to the filter to divert surface water away from the onsite wastewater system to a positive outfall. The installation of ditches, curtain drains, and/or rain gutters may be required to intercept and divert water away from the onsite wastewater system location.

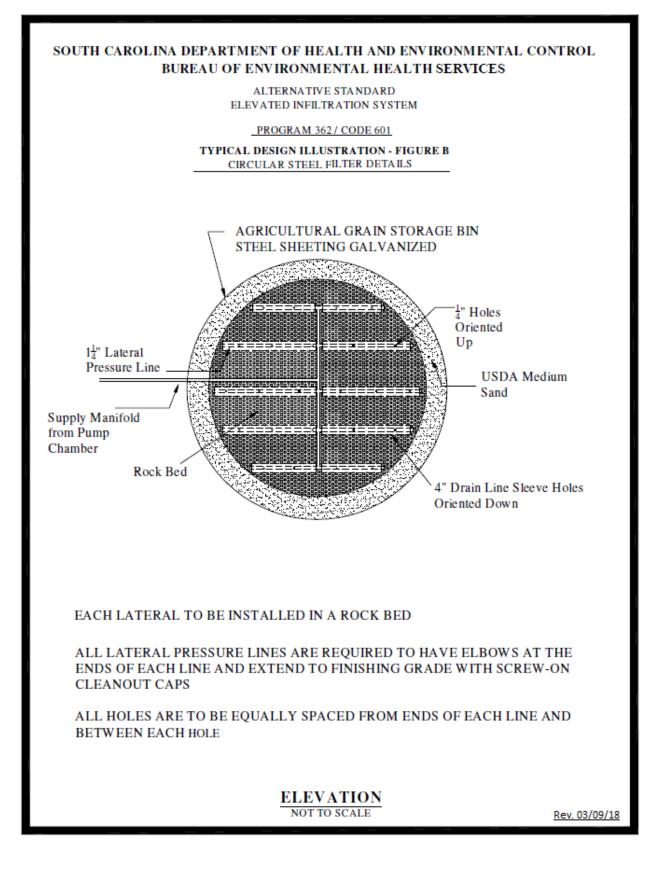
(d) Following final landscaping, seeding or sodding may be required to prevent erosion.

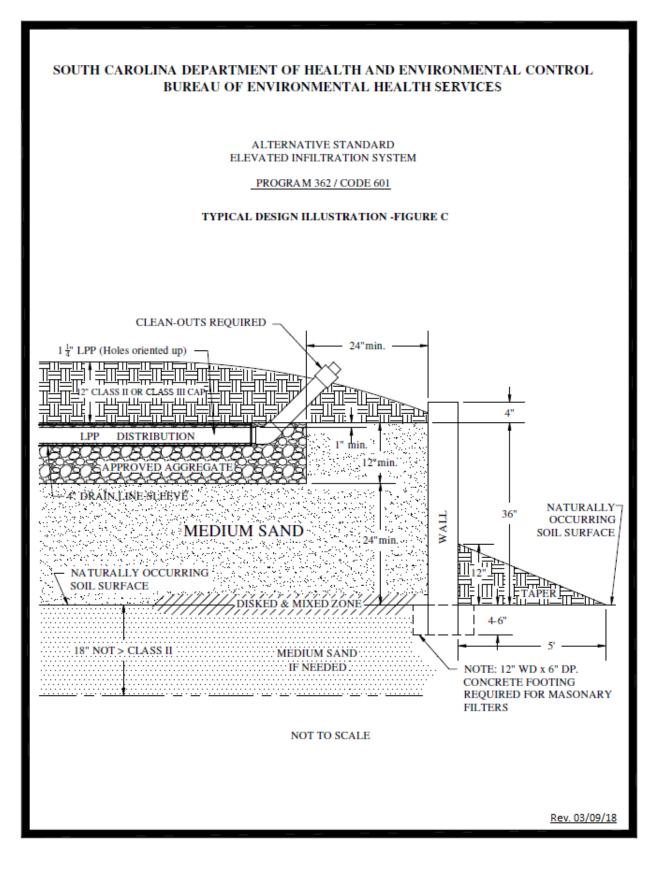




South Carolina State Register Vol. 45, Issue 5 May 28, 2021







# Appendix Q – System Standard 610 – Specialized Onsite Wastewater System Designs (less than 1500 gpd)

(1) Site/Permitting Requirements

(a) This Standard shall not apply to the following:

(i) Projects where two (2) or more pieces of deeded property will share a common system.

(ii) Residential or commercial projects where the individual or combined peak sewage flow is estimated to be in excess of fifteen hundred (1500) gpd.

(iii) Projects that discharge wastes containing high amounts of fats, grease and oil, including restaurants and other food service facilities, unless the system manufacturer certifies that the proposed system is designed to treat such high strength wastes.

(iv) Industrial process wastewater.

(b) A site may be considered for a specialized onsite wastewater system design if written documentation provided by a Registered Professional Engineer licensed in South Carolina, including soil studies performed by a licensed person meeting the criteria of Section 102.1(2)(b) or (c), indicates that the proposed system will function satisfactorily and in accordance with all requirements of this regulation. Such substantiating documentation must include the following:

(i) A Soils Report from a licensed person meeting the criteria of Section 102.1(2)(b) or (c) including detailed soil profile descriptions and Soil Series classification(s) utilizing methods and terminology specified in the Field Book for Describing and Sampling Soils; depth to the zone of saturation utilizing methods and terminology outlined in Redoximorphic Features for Identifying Aquic Conditions, and other appropriate principles specified in Soil Taxonomy; the depth to restrictive horizons; and a description of topography and other pertinent land features.

(ii) For drain field and replacement areas with a less than fifteen (15) inch zone of saturation, no part of a specialized onsite wastewater system may be installed within one hundred twenty-five (125) feet of the critical area line or tidal waters as determined by the Department or within seventy-five (75) feet of the ordinary high water elevation within the banks of non-tidal, environmentally sensitive waters.

(iii) There shall be a replacement area equivalent to at least fifty (50) percent in size of the original system area held in reserve for system repair. This area shall have a suitable configuration and shall meet the minimum soil and site conditions of this regulation.

(iv) A plan that has been sealed, signed and dated by a Registered Professional Engineer licensed in South Carolina certifying that the proposed onsite wastewater system has been designed in accordance with the requirements of this regulation and will function satisfactorily. The plan should also show an area equivalent to at least fifty (50) percent in size of the original system held in reserve for system repair.

(v) The manufacturer's recommendations for operation and maintenance of the system, and the consulting Registered Professional Engineer's management plan to meet this. For systems that have mechanical components and/or require a higher degree of maintenance to ensure the proper treatment and disposal of Domestic Wastewater, an operation and maintenance (O&M) plan must be developed by the designing Registered Professional Engineer to be given to the party who is ultimately responsible for the operation of the system. O&M plans must be recorded along with the property deed and must run with the land.

(c) Any permit to construct that is issued pursuant to this standard shall be based upon the consulting Registered Professional Engineer's design, certification, and other supporting documentation provided by the licensed person meeting the criteria of Section 102.1(2)(b) or (c).

(d) The consulting Registered Professional Engineer shall be responsible for supervising construction of the system and providing the Department with a certified as-built plan of the actual installation containing all details required by the Department. The certified as-built plan must be submitted to the Department within two (2) business days of completing the system installation. If the construction schedule for a specialized system installation is more than forty-eight (48) hours, the Department must be notified in advance of the beginning of construction. Any Final Approval that is released pursuant to this standard shall be based upon this engineering certification.

## Appendix R – Curtain Drain Standard

(1) Minimum Construction Requirements

(a) Only pipe having received written approval from the Department may be utilized in curtain drains. This approval shall be based upon the pipe meeting all applicable ASTM standards.

(b) The aggregate used in curtain drains shall be a material approved by the Department.

(c) The curtain drain trench utilizing tire chips or gravel or a similar type of Department approved product shall be at least six (6) inches wide.

(d) The curtain drain shall be placed ten (10) feet upslope and twenty-five (25) feet downslope of a subsurface wastewater infiltration area or repair area. Where the aggregate portion of the curtain is installed at the same or lower (downslope) elevation relative to an adjacent subsurface wastewater infiltration area or repair area, the aggregate portion of the curtain must be a minimum of twenty-five (25) feet from the adjacent subsurface wastewater infiltration area or repair area.

(e) The trench bottom shall have a uniform slope to the discharge point. Trench excavation with a ditch witch is permissible provided the trench bottom has a uniform downslope gradient.

(f) The solid discharge (non-aggregate) line shall be fifteen (15) feet from adjacent subsurface wastewater infiltration area or repair area.

(g) The downslope side of the trench toward the subsurface wastewater infiltration area shall have a minimum six (6) mil poly or an equivalent strength treated impervious material draped from the trench surface to the trench bottom to prevent groundwater from bridging the curtain drain.

(h) Agricultural drainpipe (slitted) with a minimum diameter of four (4) inches shall be placed along the trench bottom in the aggregate portion. Perforated pipe is acceptable, provided the perforations are installed facing either sideways or upward.

(i) There shall be at least two (2) inches of aggregate beneath the drainpipe.

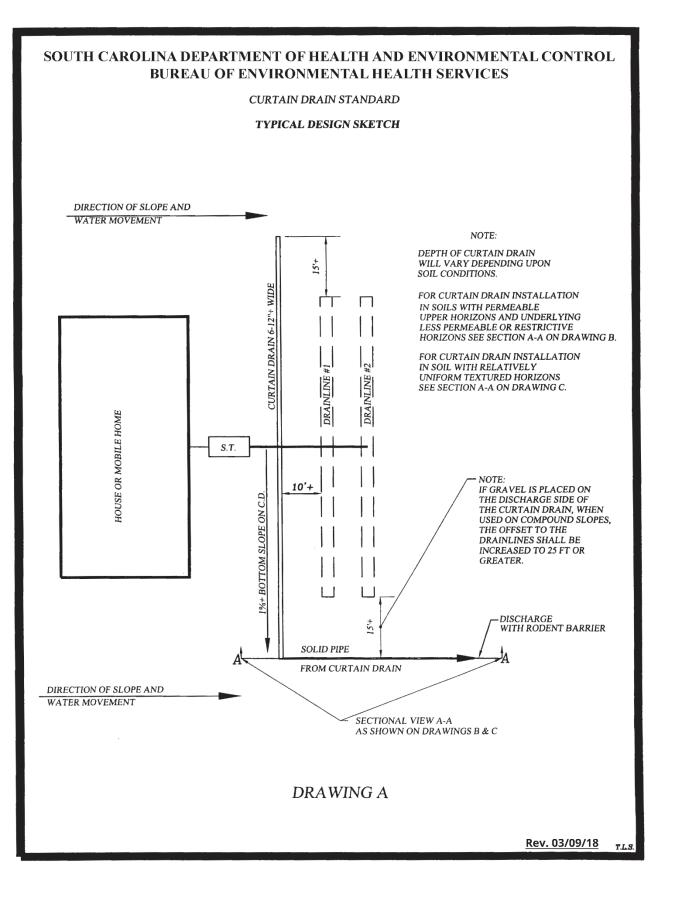
(j) The aggregate shall be brought to at least six (6) inches from the ground surface.

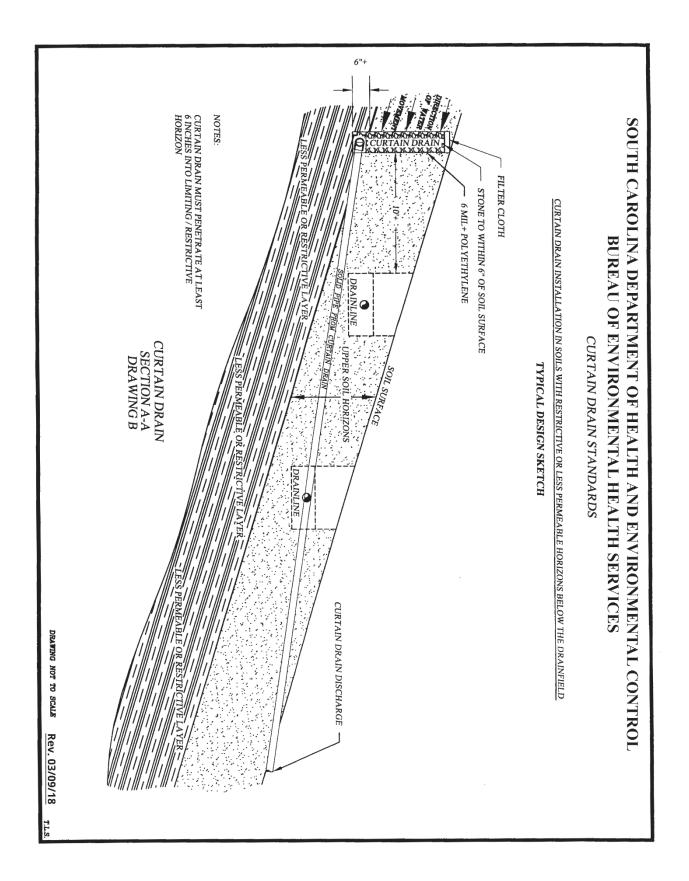
(k) The aggregate shall be covered with a strong, untreated pervious material to prevent infiltration of back fill material.

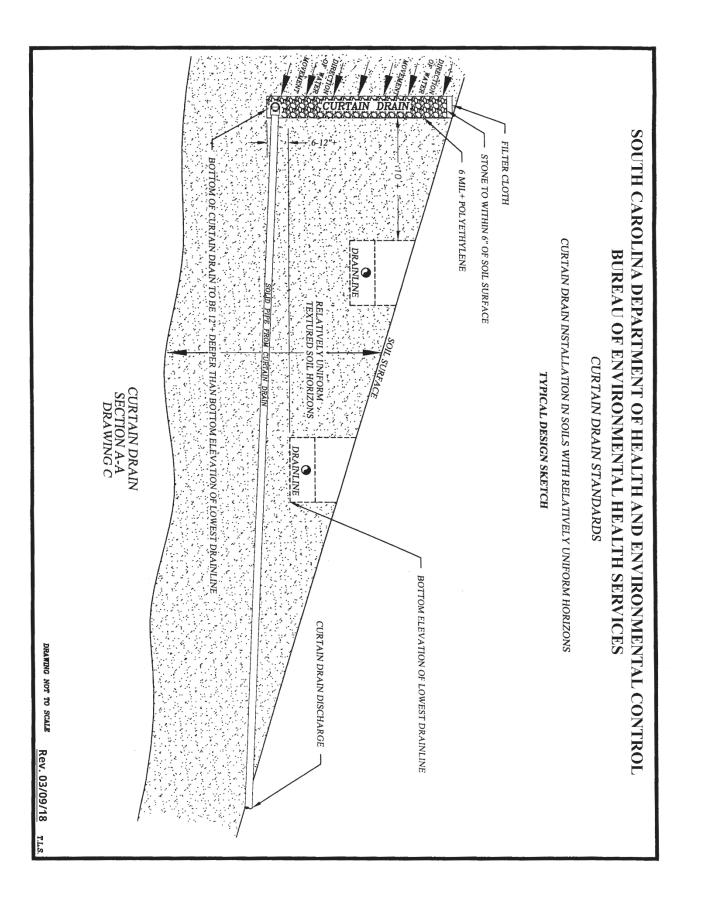
(1) Solid drainpipe with a minimum diameter of four (4) inches shall be placed along the trench bottom from the aggregate to the discharge point.

- (m) The curtain drain must discharge to the ground surface past the last wastewater infiltration trench line.
- (n) Rodent barriers on discharge pipe outlet(s) are required.

(o) If the curtain drain's trench bottom depth exceeds thirty (30) inches, it shall be inspected prior to the aggregate being installed to ensure proper trench depth and grade. It is acceptable to place the pipe and aggregate in the trench prior to the final inspection when a probe rod inspection port can be used to accurately measure trench bottom depth.







#### **Appendix S – Nonwater-Carried Sewage Treatment Systems**

(1) The permitting of nonwater-carried sewage treatment systems, such as a biological, composting, or incinerating toilet, may be considered for toilet wastes when a proposed site is unsuitable for the issuance of an onsite wastewater system permit under the system standards in Appendices A through R. Nonwater-carried sewage treatment systems shall be designed, installed, maintained, and operated without endangering public health, the environment, or creating a nuisance.

(2) With the application for a permit to construct, all applicants seeking to install a nonwater-carried sewage treatment system must submit to the Department plans from a Registered Professional Engineer licensed in South Carolina that describe the design and installation of the proposed nonwater-carried sewage treatment system and demonstrate the following:

(a) The system complies with all local codes and ordinances.

(b) All products and processes meet applicable National Sanitation Foundation (NSF) Standards and American National Standards Institute (ANSI) Standard 41 and bear the seal of approval of the NSF or an equivalent testing and certification program.

(c) Compartment and appurtenances are insect and vector-proof and have continuous exterior ventilation.

(d) There will be no liquid wastewater produced by the system.

(e) Methods for training the owner/operator in the proper use, function, and maintenance of the system including safe handling and disposal methods for any residue generated by the system.

(f) All manufacturer recommendations for installation, operation, and maintenance will be followed.

(3) Applicants seeking to install a nonwater-carried sewage treatment system at a site where water under pressure will be connected to the structure and gray water is generated (from showers, sinks, etc.), but where nonwater-carried sewage treatment systems will be the only means for toilet waste disposal, must:

(a) Submit plans from a Registered Professional Engineer licensed in South Carolina that meet the requirements of Appendix S, paragraphs (2)(a) through (f), for all toilet wastes; and

(b) Apply for and obtain a Department permit to construct and approval to operate an onsite wastewater system for treatment of gray water. This system must meet all permit, licensing, and onsite wastewater system requirements under this regulation, except that the initial system size may be reduced by twenty-five (25) percent.

(4) A licensed installer is not required for the installation of a nonwater-carried sewage treatment system under this standard. However, engineering certifications using the applicable Department form must be submitted to the Department before the Department will issue an approval to operate a system under this standard.

## **Appendix T – Wastewater Combustion Systems**

(1) Wastewater combustion systems may be considered when a proposed site is unsuitable for the issuance of an onsite wastewater system permit under the system standards in Appendices A through R. A wastewater combustion system shall be designed, installed, maintained, and operated without endangering public health, the environment, or creating a nuisance.

(2) With the application for a permit to construct, all applicants seeking to install a wastewater combustion system must submit to the Department plans from a Registered Professional Engineer licensed in South Carolina that describe the design and installation of the proposed wastewater combustion system and demonstrate the following:

(a) The system complies with all local codes and ordinances.

(b) CSA Group certification of the wastewater combustion system in the United States.

(c) The system must be of adequate size to handle the wastewater volume and peak flow generated by the structure.

(d) Compartment and appurtenances are insect and vector-proof and have continuous exterior ventilation.

(e) All liquid wastewater produced must be sent to the combustion system. Liquid wastewater must not be sent to an onsite wastewater system or held in a storage system to be pumped and hauled.

(f) Methods for training the owner/operator in the proper use, function, and maintenance of the system including safe handling and disposal methods for any residue generated by the system.

(g) All manufacturer recommendations for installation, operation, and maintenance will be followed.

(3) Applicants seeking to install a wastewater combustion system for toilet wastes in conjunction with an onsite wastewater system for treatment of gray water generated by the structure must:

(a) Submit to the Department plans from a Registered Professional Engineer licensed in South Carolina that meet the requirements of Appendix T, paragraphs (2)(a) through (g), for all toilet wastes; and

(b) Apply for and obtain a Department permit to construct and approval to operate an onsite wastewater system for treatment of gray water. This system must meet all permit, licensing, and onsite wastewater system requirements under this regulation, except that the initial system size may be reduced by twenty-five (25) percent.

(4) A licensed installer is not required for the installation of a wastewater combustion system under this standard. However, engineering certifications using the applicable Department form must be submitted to the Department before the Department will issue an approval to operate a system under this standard.

## Appendix U – Gray Water Subsurface Reuse Systems

(1) With the application for a permit to construct, all applicants seeking to install a gray water subsurface reuse system must submit to the Department for approval plans from a Registered Professional Engineer licensed in South Carolina that describe the design and installation of the proposed gray water subsurface reuse system and demonstrate the following:

(a) The system complies with all local codes and ordinances.

(b) The system must be of adequate size to handle the wastewater volume and peak flow generated by the structure.

(c) Compartment and appurtenances are insect and vector-proof and have continuous exterior ventilation.

(d) All gray water produced by the structure must be sent to the gray water subsurface reuse system or to a separate onsite wastewater system for treatment and disposal of domestic wastewater. Liquid wastewater must not be held in a storage system to be pumped and hauled.

(e) Methods for training the owner/operator in the proper use, function, and maintenance of the system including safe handling and disposal methods for any residue generated by the system.

(f) All manufacturer recommendations for installation, operation, and maintenance will be followed.

(2) This regulation does not apply to or permit the reuse of gray water for any purpose, or by any means, other than subsurface irrigation. This regulation also does not apply to or permit any reuse or recirculation of gray water within the confines of (i.e., via the plumbing within) a dwelling unit, building, business, or other structure.

(3) A property owner proposing to install a gray water subsurface reuse system for the reuse and disposal of gray water shall ensure that there is also an approved method of treatment and disposal for all other domestic wastewater and sewage generated by the structure. An onsite wastewater system for the treatment and disposal of all other domestic wastewater and sewage generated by the structure shall meet all requirements of this regulation, including standard sizing requirements.

(4) A licensed installer is not required for the installation of a gray water subsurface reuse system under this standard. However, engineering certifications using the applicable Department form must be submitted to the Department before the Department will issue an approval to operate a system under this standard.

USDA-NRCS SOIL TEXTURE	SOIL CHARACTERISTICS WHEN MOIST (FIELD TEST)	LONG- ACCEP RATE (	TANCE
Sand (S)	Sand has a gritty feel, does not stain the fingers, and does not form ribbon or ball when wet or moist.	0.9 - 1.0	Class I
Loamy Sand (LS)	Loamy sand has a gritty feel, stains the fingers, forms a weak ball, and cannot be handled without breaking.		
Sandy Loam (SL)	Sandy loam has a gritty feel and forms a ball that can be picked up with the fingers and handled with care without breaking.	0.7 - 0.8	Class II
Loam (L)	Loam may have a slightly gritty feel but does not show a fingerprint, and forms only short ribbons from 0.25 – 0.50 inch. Loam will form a ball that can be handled without breaking.		
USDA-NRCS SOIL TEXTURE	SOIL CHARACTERISTICS WHEN MOIST (FIELD TEST)	LONG- ACCEP RATE (	TANCE

# 500. Long-Term Acceptance Rate Standard for Onsite Wastewater Systems.

Sandy Clay Loam (SCL)	Sandy clay loam has a gritty feel but contains enough clay to form a firm ball and may ribbon from $0.75 - 1.0$ inch.	0.5 - 0.6	Class III
Clay Loam (CL)	Clay loam is sticky when moist, forms a ribbon of $1.0 - 2.0$ inches, and produces a slight sheen when rubbed with the thumbnail. Clay loam produces a nondistinct fingerprint.		
Silt Loam (SiL)	Silt loam has a floury feel when moist and will show a fingerprint, but will not ribbon and forms only a weak ball.		
Silt (Si)	Silt has a floury feel when moist and is sticky when wet but will not ribbon and forms a ball that will tolerate some handling.		
Silty Clay Loam (SiCL)	Silty clay loam has a slight floury feel, is sticky when moist, and will ribbon from $1.0 - 2.0$ inches. Rubbing with thumbnail produces a moderate sheen. Silty clay loam produces a distinct fingerprint.		
Sandy Clay (SC)	Sandy clay is plastic, gritty, and sticky when moist, forms a firm ball, and produces a ribbon in excess of 2.0 inches.	0.1 - 0.4	Class IV
Clay (C)	Clay is both sticky and plastic when moist, produces a ribbon in excess of 2.0 inches, produces a high sheen when rubbed with the thumbnail, and forms a strong ball resistant to breaking.		
Silty Clay (SiC)	Silty clay has a slight floury feel, is both sticky and plastic when moist, forms a ball, and produces a ribbon in excess of 2.0 inches.		

(1) The long-term acceptance rate for system sizing shall be based upon the most hydraulically limiting naturally occurring soil texture from the ground surface to twelve (12) inches below the bottom of the proposed wastewater infiltration trenches. Alternative and experimental systems installed beneath expansive soils shall be sized at a long-term acceptance rate not to exceed 0.2-0.25 gpd/sf as specified in approved standards.

(2) Soil texture shall be estimated by field testing as described above. Laboratory determination of soil texture may be substituted for field testing when conducted in accordance with: (1) Bouyoucos, G.J. 1962. Hydrometer Method Improved for Making Particle Size Analyses of Soils. Agron. J. 53:464-465; (2) ASTM D-422, Procedures for Sieve and Hydrometer Analyses; or (3) the Pipette Method (ASA-CSSA-SSSA), USDA Methods of Soils Analysis, Soil Survey Laboratory Information Manual, and Soil Survey Laboratory Methods Manual.

(3) The total linear feet (lf) for conventional onsite wastewater systems shall be calculated by dividing the peak daily flow (gpd) by the long-term acceptance rate (gpd/sf) and dividing the result by the trench width (ft): lf =  $gpd \div gpd/sf \div ft$ . The total linear feet for alternative systems may either be increased or decreased in accordance with factors specified in alternative standards.

## 501. Peak Sewage Flow Rate Standard.

ESTABLISHMENT	UNIT	PEAK FLOW RATE GAL/UNIT/DAY
Airport (Not Including Food Service)	Passenger	3
Assembly Halls	Person	3
Bar (Not Including Food Service)	Customer Seat	5 15
Beauty/Style Shops/Barber Shops	Chair	100
Businesses/Offices/Factories (Add for Showers)	Employee/Shift Transient Employee (4 hrs or Less/Shift) Employee	15 10 10
Camps (No Laundry) -Labor/Summer/Retreat (Separate Food Service) (Separate Bath House) -Day Camps (with meal) (without meal)	Person Person Person Person Person	35 10 25 15 10
Campgrounds (No Laundry) -Full Water/Sewer -No Sewer Risers, Bathhouse only (Add for Dump Station)	Campsite Campsite Campsite	120 50 40
Car Wash (Non-automatic)	Bay	500
Church (No Daycare) -With Kitchen -Without Kitchen -Family Life Center	Seat Seat Person	3 2 5
Day Care	Child	10
Food Service -Full Service Utensils -Paper/Plastic Utensils	Meal Person Seat	4 10 40 Reduce by 50 percent
Golf Course Club House (Not Including Foodservice)	Player	10
Kennel	Run	25
Laundromat	Machine	500
Mortuary (for domestic wastewater only, no infectious waste)	Body	25
Hotel/Motel (Not Including Food Service)	Room	100
Picnic Park	Visitor	10
Public Restroom	User	3
ESTABLISHMENT	UNIT	PEAK FLOW RATE GAL/UNIT/DAY

Residential/Dwelling	Bedroom	120
Residential Care	Resident	100
Residential Out-Building (not used as a dwelling; e.g., pool house, private workshop or garage with private-use	1 to 3 Users Without washing	60
bathroom with toilet and sink; barn with hand-wash sink)	machine With washing machine/shower	120
School		
-With Cafeteria, Gym &	Student	15
Showers		
-With Cafeteria only	Student	10
-Without Cafeteria, Gym or	Student	8
Showers	D	(0
-Boarding School	Person	60
Stadium (Not Including Food Service)	Seat/Occupancy	3
Swimming Area Bathhouse	Person	10
Visitor Center	Visitor	5

The peak flow rate (gpd) for non-residential facilities may either be increased or reduced when comparable peak water consumption data for similar establishments in similar locations vary from the requirement. When considering such data, at least twelve (12) consecutive months must be presented with the maximum month of consumption and the days of operation per month being utilized to arrive at the peak flow rate (gpd).

# 502. Onsite Wastewater Pump System Standard.

502.1. Pump Tank (General).

(1) The submersible sewage effluent pump(s) must be housed in a properly vented, watertight tank that is readily accessible from the surface.

(2) A watertight access opening with removable lid shall be provided and shall be designed and maintained to prevent surface water inflow. Risers and other pump tank sections, where present, shall be joined using mastic, butyl rubber, or other pliable sealant that is waterproof, corrosion-resistant, and approved for use in septic tanks.

(3) When the pump tank must be located in an area characterized by a shallow zone of saturation, the Department may require the use of a pre-cast manhole, a fiberglass or polyethylene basin, or any other acceptable method for preventing groundwater intrusion.

(4) When the pump tank must be located in an area that is environmentally sensitive or subject to flooding, applicable portions of R.61-67, Standards for Wastewater Facility Construction, shall apply.

(5) The pump tank shall have sufficient capacity to accommodate all level control and alarm switches; to keep the pump(s) totally submersed in liquid at all times and to provide the required dosing volume and minimum pump run time. Pump tank capacity must be at least 500 gallons in order to provide emergency storage in the event of pump or power failure and to assist in maintaining the minimum pumping rate as listed in Section 502.2.

(6) Pre-engineered, manufactured packaged pump stations can be utilized in lieu of the composite design described herein, provided the pump meets the minimum capacity requirements of the system and no alterations are made to the pump station other than those specifically authorized by the manufacturer.

502.2. Minimum Pumping Rates (Peak Inflow) and Minimum Run Times.

(1) For residential systems, the maximum daily flow entering the pump tank shall be based upon one hundred twenty (120) gpd per bedroom. For commercial and other facilities, this value shall be based upon Section 501, Peak Sewage Flow Rate Standard.

(2) The minimum pumping rate (peak inflow) for discharges up to fifteen hundred (1500) gpd shall be determined as follows:

Maximum Estimated	Minimum Pumping Rate
Daily Flow (gpd)	(peak inflow) (gpm)
480 and less	10
481 - 720	15
721 - 1500	20

(3) The minimum pumping rate (peak inflow) for discharges in excess of fifteen hundred (1500) gpd shall be determined by multiplying the average flow rate (gpm) times a peaking factor of not less than 2.5, where the average flow rate is based upon actual minutes per day of facility operation.

(4) The minimum pump run time for all pump systems shall be determined as follows:

Minimum Pumping Rate	Minimum Pump Run	
(peak inflow) (gpm)	time (min)	
10 - 14	3	
15 - 24	4	
25 and above	5	

502.3. Minimum Dosing Volume, Scouring Velocity, and Pump Capacity.

(1) The minimum dosing volume (gal) shall be determined by multiplying the minimum pumping rate (gpm) times the minimum pump run time (min).

(2) The selected pump(s) must have the capacity to deliver the minimum pumping rate (gpm) at a scouring velocity of at least one (1) ft/sec (effluent) or two (2) ft/sec (raw) against the total dynamic head of the system. This minimum pump capacity (gpm at total feet of dynamic head) shall be specified on the permit to construct.

(3) Duplex pumps shall be required when the maximum estimated daily flow is equal to or greater than fifteen hundred (1500) gallons, and each pump shall meet the minimum capacity as stated above.

(4) In those cases where the minimum pump capacity or any other system requirements exceed what can be specified through the use of this Standard, the Department shall require the applicant to retain the services of a Registered Professional Engineer licensed in South Carolina.

502.4. Force Main, Valves, and Fittings.

(1) The force main shall be Schedule 40 PVC, and the diameter shall be sufficient to provide a velocity of at least one (1) ft/sec (effluent) or two (2) ft/sec (raw) using a C Factor of one hundred fifty (150) (effluent) or one hundred forty (140) (raw) at the minimum pumping rate (peak inflow). The force main shall be installed a

minimum of eight (8) inches below the ground surface. Fittings and valves shall be of compatible corrosion resistant material.

(2) A threaded union, flange, or similar disconnect device shall be provided in each pump discharge line. The pump(s) shall be easily removable at ground surface without requiring entrance into the tank. Valves shall also be readily accessible from the ground surface. Duplex pump systems shall be equipped with a separate pit or box for the placement and operation of valves.

(3) A shutoff valve (e.g., gate valve) and a check valve shall be located on the discharge line from each pump. The check valve shall be placed between the pump and the shutoff valve.

(4) A three-sixteenths (3/16) inch anti-siphon hole(s) shall be placed between the pump(s) and the check valve(s) when the discharge elevation of the distribution system is below the inlet to the pump tank.

(5) In cases where the force main must be installed over undulating terrain, automatic air relief valves shall be placed at high points in the line to prevent air locking.

(6) Exposed force mains crossing ditches and bodies of water (e.g., creeks and wetlands) and force mains under driveways and parking areas must be protected by encasing them within a larger diameter pipe that can withstand potential damage (e.g., galvanized pipe, steel pipe, ductile iron). Force mains under driveways and parking areas may also be protected by encasing them within a larger diameter schedule 80 PVC pipe. The protective piping should extend beyond the area of needed protection for at least ten (10) linear feet.

(7) The force main effluent shall discharge into a separate discharge box or distribution manifold before entering either a septic tank or a soil wastewater infiltration trench. The flow shall be directed to the bottom of the box through a PVC elbow or into a distribution manifold at an angle of ninety (90) degrees to the septic tank or first wastewater infiltration trench.

502.5. Pumps, Control Devices, and Electrical Connections.

(1) Pumps shall be listed by Underwriter's Laboratory or an equivalent third-party testing and listing agency and shall be specifically manufactured for use with domestic wastewater.

(2) Sealed mercury control floats or similar devices designed for detecting liquid levels in septic tank effluent shall be provided to control pump cycles. A separate level sensing device shall be provided to activate an audible and visible high water alarm. Pump-off levels shall be set to keep the pump submerged at all times.

(3) Pump and control circuits shall be provided with manual circuit disconnects within a watertight, corrosion resistant, outside enclosure (NEMA 4X or equivalent) adjacent to the pump tank, securely mounted at least twelve (12) inches above finished grade, unless installed within a weather-tight building. Alarm circuits shall be supplied ahead of any pump overload or short circuit protective devices. The pump(s) shall be manually operable without requiring special tools or entrance into the tank for testing purposes. Conductors shall be conveyed to the disconnect enclosure through water proof, gas proof, and corrosion resistant conduit(s) with no splices or junction boxes provided inside the tank. Wire grips, duct seal, or other suitable material shall be used to seal around wire and wire conduit openings inside the pump tank and disconnect enclosure.

(4) For systems requiring duplex pumps, each pump shall operate in a lead-lag sequence and be on an alternating cycle. A control panel shall be provided which shall include short circuit protection for each pump and for the control system, independent disconnects, automatic pump sequencer, hands-off-automatic (H-O-A) switches, run lights, and elapsed time counters for each pump.

502.6. Final Inspection and Approval.

(1) Before or during final inspection, the property owner or agent shall provide literature, including a pump curve, describing the specific pump installed. The inspector shall evaluate the system in accordance with this Standard, and shall confirm that all items, including the minimum pump capacity specified on the permit to construct, have been satisfied.

(2) Prior to final approval, the installer or electrician shall provide the Department with written documentation verifying that pump system electrical connections were made in accordance with all applicable codes. The Department may require testing of the pump system, demonstration of watertight integrity, or any other procedure deemed necessary to confirm the acceptability of the installation.

502.7. Raw Sewage Pump Stations.

(1) In those cases where it is necessary to pump raw sewage from a residence or facility to an onsite wastewater system, the pump station shall meet all applicable portions of this Standard and R.61-67, Standards for Wastewater Facility Construction.

(2) Adherence to the pump manufacturer's recommendations shall also be a major consideration with such systems.

## 503. Minimum Design Standards for Tank Construction.

503.1. Introduction.

The following standards describing tank designs intended to be utilized for septic tanks, grease traps, or pump chambers for onsite wastewater systems have been adopted in an effort to assure a quality product of sufficient strength and resistance, capable of fulfilling its intended purpose.

503.2. Design Approval.

(1) No person shall manufacture tanks intended to be utilized for septic tanks, grease traps, or pump chambers for onsite wastewater systems without receiving approval from the Department. All manufactured tanks must receive approval of design and reinforcement methods prior to manufacturing.

(2) Any person desiring to manufacture tanks shall submit a written application on forms provided by the Department. Such application shall include the name and address, the location of the facility, tank capacity, and design information.

(3) Prior to approval, the Department shall review the tank design, reinforcement, and manufacturing methods to determine compliance.

(4) The Department shall approve plans for manufactured tanks to ensure compliance with the South Carolina Minimum Design Standards for Tank Construction.

(5) The Department shall approve plans for fabricated tanks, other than those for precast reinforced concrete tanks, on an individual basis. Fabricated tanks shall meet the requirements of precast reinforced concrete tanks to provide equivalent effectiveness.

(6) The Department shall issue an approval to the tank manufacturer if the tank design, reinforcement and manufacturing method complies with the South Carolina Minimum Design Standards for Tank Construction. Tank manufacturing approvals are not transferable. When a change of ownership occurs, the new owner shall submit a written application on forms provided by the Department.

(7) The Department shall revoke approval to manufacture tanks for onsite wastewater systems if the tank manufacturer fails to comply with the South Carolina Minimum Design Standards for Tank Construction.

503.3. General.

(1) Septic tanks and grease traps shall be manufactured as single compartment or partitioned tanks.

(2) If septic tanks and grease traps are manufactured with a partition so that the tank contains two (2) compartments, the inlet compartment of the tank shall contain two-thirds (2/3) of the overall capacity, and the outlet compartment shall contain one-third (1/3) of the overall capacity. The top of the partition shall terminate two (2) inches below the bottom side of the tank top in order to leave space for air or gas passage between compartments. The top and bottom halves of the partition shall be constructed in such manner as to leave a four (4) inch water passage at the vertical mid-point of the partition wall for the full width of the tank.

(3) The minimum liquid capacity requirements shall be met by the use of a single septic tank or two (2) or more tanks installed in series. Septic tanks joined in series shall be interconnected by an upper effluent pipe(s) with a minimum diameter of four (4) inches and a lower sludge pipe(s) with a minimum diameter of twelve (12) inches. The upper connection(s) shall be installed level from tank to tank, and the lower sludge pipe connection(s) shall be placed twelve (12) inches above the bottoms of the tanks. The lower sludge pipe connection(s) can be eliminated if the first tank in series contains at least two-thirds (2/3) of the total required liquid capacity. There shall be no more than two (2) inches of fall from the inlet invert of the first tank to the outlet invert of the last tank in series.

(4) It is required that all pump chambers function as a single compartment tank. If a two (2) compartment tank is used, at least two (2) six (6) inch diameter holes or equivalent, must be provided in the partition wall six (6) inches from the tank bottom.

(5) The septic tank and grease trap tank length shall be at least two (2) but not more than three (3) times the width.

(6) The liquid depth shall not be less than four (4) feet.

(7) A minimum of nine (9) inches of freeboard shall be provided in all tanks, unless otherwise approved by the Department.

(8) Useable liquid capacity for septic tanks or grease traps shall not be less than one thousand (1000) gallons.

(9) The pump tank shall have sufficient capacity to accommodate all level control and alarm switches; to keep the pump(s) totally submersed in liquid at all times and to provide the required dosing volume and minimum pump run time. It is strongly recommended that pump tank capacities be as large as possible in order to provide emergency storage in the event of pump or power failure.

(10) There shall be a minimum of two (2) openings in the tank wall located at the inlet and outlet ends or sides of the inlet and outlet ends of the tank. The knockouts for the inlet and outlet openings of pre-cast concrete tanks shall have a concrete thickness of not less than one (1) inch in the tank wall. The openings shall allow for a minimum of four (4) inch pipe or a maximum of six (6) inch pipe. No openings shall be permitted below the tank liquid level.

(11) The inlet and outlet for septic tanks and grease traps shall be a cast-in-place concrete tee, a polyvinyl chloride (PVC) tee, an acrylonitrile butadiene styreneor (ABS), or a polyethylene (PE) tee made of not less than Schedule 40 pipe or equivalent fittings and material. The cast-in-place concrete tees shall have a minimum thickness of not less than two (2) inches. The invert of the outlet shall be at least two (2) inches lower in elevation than the invert of the inlet. The inlet and outlet tees shall extend above liquid level a minimum of six (6) inches

and to no less than one (1) inch from the top of the tank to allow venting between tank compartments and multiple tank configurations.

(12) The inlet tee for septic tanks and grease traps shall extend sixteen (16) inches below the liquid level.

(13) The outlet tee for a septic tank shall extend eighteen (18) inches below the liquid level and the outlet tee for a grease trap shall extend between six (6) and twelve (12) inches above the tank bottom.

(14) The inlet, outlet, and wiring conduit openings of all tanks must utilize a resilient, watertight, non-corrosive connective sleeve. The use of grout is prohibited.

(15) Access to each tank or compartment shall be provided by an opening located above the inlet and outlet with an inside dimension of at least eighteen (18) inches square (18 x 18) or in diameter, with removable tank access lids.

(16) Concrete tank access lids shall be equipped with steel lift rings at least three-eighths (3/8) inch diameter or by an alternative method approved by the Department.

(17) Should risers or manholes be utilized to allow access into septic tanks, grease traps, or pump chambers, the risers or manhole covers, as applicable, shall be constructed to prevent the release of odors, entry of vectors, and water. Grade level riser/manhole covers shall be secured by bolts, locking mechanisms, fasteners that can only be removed by tools, or have sufficient weight to prevent unauthorized access. The ground shall slope away from any access extended to grade level.

(18) Risers/manholes shall be sealed to the tank by using bituminous mastic, butyl rubber, or other pliable sealant that is waterproof, corrosion-resistant, and approved for use in tank construction. The sealant shall have a minimum size of one (1) inch diameter or equivalent. The joint shall be smooth, intact, and free of all deleterious substances before sealing.

(19) After curing, all multi-piece tanks shall be joined and sealed at the joints by using a bituminous mastic, butyl rubber, or other pliable sealant that is waterproof, corrosion-resistant, and approved for use in tank construction. The sealant shall have a minimum size of one (1) inch diameter or equivalent. The joint shall be smooth, intact, and free of all deleterious substances before sealing. The use of grout is prohibited.

(20) All concrete tanks must pass the ASTM C-1227 Standard for watertight testing. The Department will choose tanks at random for testing. Tanks will be approved for use in South Carolina after the Department ascertains that the standard is met. After joining, tanks manufactured in multiple sections shall be plastered along the section joints with hydraulic cement or other waterproofing sealant. Other methods of waterproofing tanks may be used as specifically approved in the plans and specifications for the tank. Prior to backfilling, the Department shall make a finding that multiple section tanks are watertight if a soil wetness condition is present within five feet of the elevation of the top of the tank. Any tank found to be improperly sealed, having cracks or holes, which will allow for water infiltration or discharge of sewage from the tank bottom, walls, or top, will not be approved for use.

(21) Concrete tank manufacturers must have equipment and capabilities for portion control to maintain constant mixture formulation ratios and provide for systematic inspection of finished products to ensure compliance with the minimum tank construction and design standards.

(22) The concrete mix used for concrete tank components must be formulated to yield a minimum twenty-eight (28) day compressive strength of four thousand (4,000) pounds per square inch (psi).

(23) The aggregate size utilized in the concrete mix shall not exceed one-third (1/3) of the wall thickness. Suitable aggregates include sand particle sizes from a fine to one-fourth (1/4) inch gravel or crushed stone. Granite dust or fine screenings from a crusher operation may be used in lieu of sand.

(24) An identifying seal must be cast, molded, or permanently affixed by an approved method from the Department on the outlet tank wall within six (6) inches of the top. The identifying seal shall identify the manufacturer and the liquid capacity of the tank. The concrete tank's cast date shall be located on the identifying seal or imprinted on the top of the tank within six (6) inches from outlet tank wall near the identifying seal. The lettering on the identifying seal or date imprinted on the top of the tank shall be no more than six (6) inches in height.

(25) The tank manufacturer shall guarantee all tanks in writing for two (2) years against failure due to poor workmanship and materials.

(26) Changes in approved tank design, construction, and alternative reinforcing methods will not be allowed without prior approval from the Department.

503.4. Pre-Cast Concrete Non-Fiber Reinforced Septic Tanks and Grease Traps.

(1) The tank walls and bottom shall be reinforced with six by six  $(6 \times 6)$  inch ten (10) gauge wire mesh.

(2) Tank tops shall be reinforced with six by six (6 x 6) inch ten (10) gauge wire mesh, a minimum of five (5) sections of three-eighths (3/8) inch diameter steel reinforcing bars oriented perpendicular to the tank sidewalls beginning at the center spaced twelve (12) inches apart and four (4) sections of three-eighths (3/8) inch diameter steel reinforcing bars placed diagonally from the corners to the center of the tank. The length of the perpendicular reinforcing bars shall be of sufficient length to extend two (2) inches into the sidewall. The length of the four (4) diagonal steel reinforcing bars shall be of sufficient length to extend two (2) inches into the sidewall and six (6) inches beyond the closest perpendicular steel reinforcing bar.

(3) If a septic tank or grease trap is manufactured with a partition, the tank partition (both halves) shall be reinforced with six by six (6 x 6) inch ten (10) gauge wire mesh. The reinforcing wire shall be bent to form an angle of ninety (90) degrees on the ends in order to form a leg not less than four (4) inches long. When the wire is placed in the mold, the four-inch legs shall lay parallel with the sidewall wire and adjacent to it.

(4) The tank walls and bottom thickness shall be at least two and one-half  $(2\frac{1}{2})$  inches, and top thickness shall be at least three (3) inches.

(5) All reinforcing wire and rods must be covered by at least one-half (1/2) inch of concrete.

(6) An acceptable vibration method shall be employed in the construction of the tank to prevent voids in the tank walls, bottom, and top.

503.5. Pre-Cast Concrete Fiber Reinforced Septic Tanks and Grease Traps.

(1) Tank tops shall be reinforced with a minimum of five (5) sections of three-eighths (3/8) inch diameter steel reinforcing bars oriented perpendicular to the tank sidewalls beginning at the center spaced twelve (12) inches apart, and four (4) sections of three-eighths (3/8) inch diameter steel reinforcing bars placed diagonally from the corners to the center of the tank. The length of the perpendicular reinforcing bars shall be of sufficient length to extend two (2) inches into the sidewall. The length of the four (4) diagonal steel reinforcing bars shall be of sufficient length to extend two (2) inches into the sidewall and six (6) inches beyond the closest perpendicular steel reinforcing bar.

(2) Tank bottoms shall be reinforced with a minimum of seven (7) sections of three-eighths (3/8) inch diameter steel reinforcing bars oriented perpendicular to the tank sidewalls beginning at the center spaced twelve (12) inches apart. The length of the perpendicular reinforcing bars shall be of sufficient length to extend two (2) inches into the sidewall.

(3) If a septic tank or grease trap is manufactured with a partition, the tank partition (both halves) shall be reinforced with six by six (6 x 6) inch ten (10) gauge wire mesh. The reinforcing wire shall be bent to form an angle of ninety (90) degrees on the ends in order to form a leg not less than four (4) inches long. When the wire is placed in the mold, the four-inch legs shall lay parallel with the sidewall wire and adjacent to it.

(4) The tank perimeter walls shall be reinforced with three-eighths (3/8) inch diameter steel reinforcing bars located one (1) inch from the tank's top and bottom section seams.

(5) The tank walls and bottom thickness shall be at least two and one-half  $(2\frac{1}{2})$  inches, and top thickness shall be at least three (3) inches.

(6) All reinforcing wire and rods must be covered by at least one-half (1/2) inch of concrete.

(7) Fiber products used with this reinforcement design must be added during the mixing process in order to achieve even distribution throughout the concrete mixture.

(8) Fiber length must range from at least one (1) to no more than two (2) inches.

(9) The fiber must be specifically manufactured for use as a concrete secondary reinforcement and be a polypropylene fibrillated (two-dimensional fiber mesh network) material.

(10) An acceptable vibration method shall be employed in the construction of the tank to prevent voids in the tank walls, bottom, and top.

503.6. Concrete Block Septic Tanks and Grease Traps.

(1) The tank walls and partition thickness shall be at least eight (8) inches and the top cover slabs thickness shall be at least four (4) inches.

(2) The tank bottom shall be a single pour concrete slab to a depth of at least four (4) inches within the first block course.

(3) If a septic tank or grease trap is manufactured with a partition, the tank walls and partition shall be constructed of solid sixteen by eight by eight ( $16 \times 8 \times 8$ ) inch concrete blocks. The use of hollow blocks is prohibited.

(4) All joints between concrete blocks shall be mortared using masonry cement mortar or equivalent. The joints shall have a nominal thickness of three-eighths (3/8) inch.

(5) The upper partition wall may be supported by the use of two by four by eight  $(2 \times 4 \times 8)$  inch bricks (or equivalent support material) standing on edge located at the block seams of the upper partition wall.

(6) The top cover slabs shall be constructed such that the individual slabs will not exceed two (2) feet in width and the length will be sufficient to extend to the outside tank width with a minimum slab thickness of four (4) inches.

(7) The individual top cover slabs shall be reinforced with a minimum of two (2) sections of three-eighths (3/8) inch diameter steel reinforcing bars oriented perpendicular to the tank sidewalls spaced twelve (12) inches

apart from the center. The length of the perpendicular reinforcing bars shall be of sufficient length to extend the full length of the slab.

(8) The end cover slabs shall be constructed such that the individual slabs will not exceed three (3) feet in width and the length will be sufficient to extend to the outside tank width with a minimum slab thickness of four (4) inches.

(9) The end cover slabs shall be cast to allow access to each tank or compartment by providing an opening located above the inlet and outlet tee with an inside dimension of eighteen (18) inches square (18 x 18 inches) or in diameter with removable tank access lids.

(10) The individual end cover slabs shall be reinforced with two (2) sections of three-eighths (3/8) inch diameter steel reinforcing bars oriented perpendicular to the tank sidewalls spaced twelve (12) inches apart from the center and two (2) sections of three-eighths (3/8) inch diameter steel reinforcing bars oriented perpendicular to the tank sidewalls spaced sixteen (16) inches apart from the center. The length of the perpendicular reinforcing bars shall be of sufficient length to extend the full length of the slab.

(11) The top and end cover slab seams shall be sealed to the tank walls and at all joints by using a bituminous mastic, butyl rubber, or other pliable sealant that is waterproof, corrosion-resistant, and approved for use in septic tanks. The sealant shall have a minimum size of one (1) inch diameter or equivalent. The use of grout is prohibited.

(12) The tank top and end cover slabs shall be equipped with steel lift handles at least one half (1/2) inch diameter, or by an alternative method approved by the Department.

(13) All reinforcing rods must be covered by at least one-half (1/2) inch of concrete.

(14) The interior of the tank (walls and bottom) shall be plastered with a waterproofing cement compound.

(15) An acceptable vibration method shall be employed in the construction of the tank to prevent voids in the tank access lids, tank bottom, and top and end slabs.

503.7. Pre-Cast Concrete Non-Fiber Reinforced Pump Chambers.

(1) The tank walls and bottom shall be reinforced with six by six  $(6 \times 6)$  inch ten (10) gauge wire mesh.

(2) Tank tops shall be reinforced with six by six (6 x 6) inch ten (10) gauge wire mesh, a minimum of five (5) sections of three-eighths (3/8) inch diameter steel reinforcing bars oriented perpendicular to the tank sidewalls beginning at the center spaced twelve (12) inches apart, and four (4) sections of three-eighths (3/8) inch diameter steel reinforcing bars placed diagonally from the corners to the center of the tank. The length of the perpendicular reinforcing bars shall be of sufficient length to extend two (2) inches into the sidewall. The length of the four (4) diagonal steel reinforcing bars shall be of sufficient length to extend two (2) inches into the sidewall and six (6) inches beyond the closest perpendicular steel reinforcing bar.

(3) The tank walls and bottom thickness shall be at least two and one-half  $(2\frac{1}{2})$  inches, and top thickness shall be at least three (3) inches.

(4) All reinforcing wire and rods must be covered by at least one-half (1/2) inch of concrete.

(5) An acceptable vibration method shall be employed in the construction of the tank to prevent voids in the tank walls, bottom, and top.

503.8. Pre-Cast Concrete Fiber Reinforced Pump Chambers.

(1) Tank tops shall be reinforced with a minimum of five (5) sections of three-eighths (3/8) inch diameter steel reinforcing bars oriented perpendicular to the tank sidewalls beginning at the center spaced twelve (12) inches apart and four (4) sections of three-eighths (3/8) inch diameter steel reinforcing bars placed diagonally from the corners to the center of the tank. The length of the perpendicular reinforcing bars shall be of sufficient length to extend two (2) inches into the sidewall. The length of the four (4) diagonal steel reinforcing bars shall be of sufficient length to extend two (2) inches into the sidewall and six (6) inches beyond the closest perpendicular steel reinforcing bar.

(2) Tank bottoms shall be reinforced with a minimum of seven (7) sections of three-eighths (3/8) inch diameter steel reinforcing bars oriented perpendicular to the tank sidewalls beginning at the center spaced twelve (12) inches apart. The length of the perpendicular reinforcing bars shall be of sufficient length to extend two (2) inches into the sidewall.

(3) The tank perimeter walls shall be reinforced with three-eighths (3/8) inch diameter steel reinforcing bars located one (1) inch from the tank's top and bottom section seams.

(4) The tank walls and bottom thickness shall be at least two and one-half  $(2\frac{1}{2})$  inches, and top thickness shall be at least three (3) inches.

(5) All reinforcing wire and rods must be covered by at least one-half (1/2) inch of concrete.

(6) Fiber products used with this reinforcement design must be added during the mixing process in order to achieve even distribution throughout the concrete mixture.

(7) Fiber length must range from at least one (1) to no more than two (2) inches.

(8) The fiber must be specifically manufactured for use as a concrete secondary reinforcement and be a polypropylene fibrillated (two-dimensional fiber mesh network) material.

(9) An acceptable vibration method shall be employed in the construction of the tank to prevent voids in the tank walls, bottom, and top.

#### 504. Fiberglass Reinforced Plastic Tanks Standard.

Standards describing fiberglass reinforced plastic septic tanks have been adopted to ensure a quality product of sufficient strength and resistance, capable of fulfilling its intended purpose. Many of these standards were derived from NBS Voluntary Product Standard PS 15-69, which covers custom contact-molded reinforced polyester chemical resistant process equipment.

504.1. General Requirements.

The following general requirements are applicable to fiberglass reinforced plastic septic tanks as defined within this regulation, and approved design standards and structural properties of the same shall be not less than those stated.

(1) Material

Resins and sealants used in the tank manufacturing process shall be capable of effectively resisting corrosive influences of liquid components of sewage, gases generated by the digestion of sewage, and soil burial. Materials used shall be formulated to withstand vibration, shock, normal household chemicals, earth, and hydrostatic pressure both when full and empty. Not less than thirty (30) percent of the total weight of the tank shall be fiberglass reinforcement. For tanks not exceeding a fifteen hundred (1500) gallon liquid capacity, the minimum

wall thickness shall be three-sixteenths (3/16) inch, provided, however, that isolated small spots may be as thin as eighty (80) percent of the minimum.

(2) Inner Coating

Internal surfaces shall be coated with an appropriate gel coating to provide a smooth, pore-free, watertight surface for fiberglass reinforced plastic parts.

(3) Physical Properties

Tanks shall be so constructed that all parts of the tank shall meet the following requirements:

(a) Ultimate Tensile Strength (Minimum) – Nine thousand (9,000) pounds per square inch (psi) when tested in accordance with ASTM D 638-71a, Standard Method of Test for Tensile Properties of Plastics.

(b) Flexural Strength (Minimum) – Sixteen thousand (16,000) psi when tested in accordance with ASTM D 790-71, Standard Method of Test for Flexural Properties of Plastics.

(c) Flexural Modulus of Elasticity Tangent (Minimum) – Seven hundred thousand (700,000) psi when tested in accordance with ASTM D 790-71, Standard Method of Test for Flexural Properties of Plastics.

(4) Watertight Integrity

Tanks shall be so constructed as to be watertight for the designed life of the tank. Lids or covers shall be sufficiently tight when installed to preclude the entrance of surface or ground water into the tank.

(5) Longevity

Proof from an independent testing laboratory shall be submitted substantiating a minimum life expectancy of twenty years of service for the intended use of the tank and appurtenant components such as necessary sealants, connective fastenings, resins, etc.

(6) Safety

As a safety measure, provisions shall be made in the construction of septic tank lids or covers to preclude unauthorized entry or removal when the use of the tank necessitates positioning of access openings at or above ground level.

(7) Workmanship

Tanks shall be of uniform thickness and free from defects that may affect their serviceability or durability. Completed tanks shall have a smooth inside finish free of spills, pits, and honeycombs. Plant quality control shall be sufficient to maintain a high degree of uniformity in tank quality.

504.2. Specific Requirements.

Specific requirements for design and construction shall be not less than those specified herein and shall be in conformity with recognized National Standards for design and construction and in accordance with this regulation.

504.3. Capacity and Design Limits.

(1) Dimensions

(a) The inside length of a horizontal cylindrical tank shall be at least two (2) but not more than three (3) times the width.

(b) The uniform liquid depth shall not be less than four (4) feet.

(c) At least fifteen (15) percent of the total volume of the tank shall be above the liquid level.

(d) If tanks of other shapes are proposed, specifications must be submitted to the Department for approval.

(2) Inlet

(a) Provisions shall be made for the building sewer to enter the center of one end of the septic tank two (2) inches above the normal liquid level of the tank.

(b) A tee shall be constructed as an integral part of the tank to receive the building sewer, or as an alternative, an integrally constructed baffle may be used.

(c) If baffles are used, suitable integrally fitted sleeves or collars shall be provided in the inlet openings of the tank to provide surface areas sufficient to ensure capability of watertight bonding between the tank and the inlet sewer.

(d) If the tee or baffle is constructed of plastic material, it shall meet NSF Standard #14 for drain, waste, and vent system application.

(e) If fiberglass reinforced plastic is used, it shall be of the same constituency as material of which the tank is constructed.

(f) The inlet tee or baffle shall extend sixteen (16) inches below the designed liquid level and be placed and secured in a vertical position so as to be watertight and preclude dislodgement during installation, operation, or maintenance activities.

(3) Outlet

(a) Provisions shall be made for the outlet sewer to receive the discharge from the tank by providing an opening in the center of the end of the tank opposite the inlet, the invert elevation of which shall be at the liquid level of the tank.

(b) A tee shall be constructed as an integral part of the tank to connect to the outlet sewer or, as an alternative, an integrally constructed baffle may be used.

(c) If baffles are used, suitable integrally fitted sleeves or collars shall be provided in the outlet opening of the tank to provide surface areas sufficient to ensure capability of watertight bonding between the tank and the outlet sewer.

(d) If the tee or baffle is constructed of plastic material, it shall meet NSF Standard #14 for drain, waste, and vent system application.

(e) If fiberglass reinforced plastic is used, it shall be of the same constituency as material of which the tank is constructed.

(f) The outlet tee or baffle shall extend eighteen inches below the design liquid level and be placed and secured in a vertical position so as to be watertight and preclude dislodgement during installation, operation, or maintenance activities.

(g) The inlet and outlet tees shall extend above liquid level a minimum of six (6) inches and to no less than one (1) inch from the top of the tank to allow venting between tank compartments and multiple tank configurations.

(4) Access Openings

Openings in the top of the septic tank shall be provided over the inlet and outlet tees or baffles with sufficient area to enable maintenance service to such tees or baffles.

(5) Identifying Markings

Fiberglass septic tanks shall be provided with a suitable legend, cast or stamped into the wall at the outlet end, and within six inches of the top of the tank, identifying the manufacturer, and indicating the liquid capacity of the tank in gallons.

#### 505. Thermoplastic Tanks Standard.

(1) The Department shall approve plans for thermoplastic tanks on an individual basis.

(a) Thermoplastic tanks shall be certified by an American National Standards Institute or Standards Council of Canada accredited third-party to comply with the most recent edition of IAPMO/ANSI Z1000 or CSA B66.

- (b) The uniform liquid depth shall be at least three (3) feet.
- (c) The inside length of the tank shall be at least two (2) times the inside width of the tank.

(2) If thermoplastic tanks having other dimensional characteristics are proposed, specifications must be submitted to the Department for approval, and the proposed design must be demonstrated to provide equivalent effectiveness for storage and distribution to that of concrete or thermoplastic tanks described in this regulation.

(3) Thermoplastic tank manufacturers must renew their product approvals by submitting new applications and plans to the Department every five (5) years and before changing any previously approved plans.

# 600. License to Clean Onsite Wastewater Systems, Self-Contained Toilets, and Other Sewage Holding Systems (i.e., Licensing of Pumper/Haulers).

600.1. No person shall be responsible for the cleaning of onsite wastewater systems, self-contained toilets, and other sewage holding systems in South Carolina without first applying for, receiving, and subsequently maintaining a valid license to conduct such activities as herein required by the Department. This includes, but is not limited to, nonwater-carried sewage treatment devices and gray water subsurface reuse system.

600.2. Licenses, Applications, and Fees.

(1) License applications, on forms approved by the Department, shall be submitted to the Department's regional environmental office which covers the county where the applicant's primary place of business is located; persons whose primary place of business is out of state must submit their applications to the Department's regional environmental office where it is reasonably anticipated the bulk of the activities sought to be licensed would occur.

(2) The following shall apply to applications submitted by persons engaged in the business of cleaning onsite wastewater systems, self-contained toilets, and other sewage holding systems:

(a) The applicant shall list on the application form each approved septage and sewage disposal facility they intend to use. Written verification of permission to use each disposal facility shall accompany the application.

(b) The applicant shall list on the application form all locations where pumping and transporting vehicles are parked/stored when not in use.

(c) For each annual renewal of an existing license, the person seeking renewal shall submit changes to any information included on the original license application to the Department through an updated application.

(d) Upon request by the Department, each person seeking a new license or renewal of an existing license shall make available for inspection all vehicles and equipment used in the pumping and transporting of septage and sewage.

(e) Additional inspections of vehicles and equipment may be conducted by the Department to ensure compliance with this regulation.

(f) If a licensee replaces, deletes, or adds to their inventory of vehicles used in pumping and transporting septage or sewage, the licensee shall immediately notify the Department for the purpose of updating their application. A vehicle may not be placed into use without prior inspection and approval from the Department.

(3) Prior to receipt of a license authorizing a person to be responsible for the cleaning of onsite wastewater systems, self-contained toilets, and other sewage holding systems, applicants shall complete an examination demonstrating their knowledge and comprehension of this regulation. Any applicant failing to satisfactorily complete the licensing examination may be eligible to retake the examination after thirty (30) calendar days. Applicants who fail to satisfactorily complete their second examination may then be allowed to retake subsequent examinations after a sixty (60)-day waiting period.

(4) A fee shall be assessed for a new license and for the annual renewal of a license.

(a) No person who seeks to be responsible for the cleaning of onsite wastewater systems, self-contained toilets, and other sewage holding systems shall be issued a new license pursuant to this regulation until a fee of one hundred dollars (\$100.00) has been paid to the Department, except that a person applying both for this license (i.e., pumper/hauler license) and an installers license (i.e., license to construct or repair systems) shall pay a fee of only fifty dollars (\$50.00) for the license to clean onsite wastewater systems, self-contained toilets, and other sewage holding systems.

(b) Every license issued by the Department under this regulation shall be valid for a period of one (1) year, unless otherwise suspended or revoked.

(c) Each licensee must pay an annual renewal fee of one hundred dollars (\$100.00), except that a person applying to renew both this license (i.e., pumper/hauler license) and an installers license (i.e., license to construct or repair systems) shall pay a fee of only fifty dollars (\$50.00) for the renewal of the license to clean onsite wastewater systems, self-contained toilets, and other sewage holding systems.

(d) Annual renewal fees shall be due on a date not less than thirty (30) calendar days from the billing date. A penalty charge of thirty dollars (\$30.00) shall be assessed for license fees that are past due. A second penalty of thirty dollars (\$30.00) shall be assessed for license fees sixty (60) days past due.

(e) Expiration of a license shall occur when the license fee is ninety (90) calendar days past due. No person with an expired license may be engaged in the business of cleaning onsite wastewater systems, self-contained toilets, and other sewage holding systems.

(f) An expired license shall not be renewed. Any person with an expired license may apply for a new license and must meet all applicable requirements for a new license.

(5) Licenses issued in accordance with this regulation shall not be transferable.

600.3. Further Governmental Restriction Not Prohibited.

Nothing within this regulation shall be construed to limit the power of any municipal, county, or governmental entity to enforce other license requirements or additional measures for the restrictions of persons cleaning onsite wastewater systems, self-contained toilets, and other sewage holding systems.

600.4. License Not Required.

Public or private sewer providers using pumping and transporting vehicles for the sole purpose of maintaining their sewer systems shall be exempt from the licensing requirements of Section 600 of this regulation. This exemption does not apply to public or private sewer providers using pumping and transporting vehicles to provide cleaning services to the public.

#### 601. Vehicles, Equipment, and Practices.

601.1. All vehicles and equipment used to remove and transport septage and sewage shall be maintained in a manner that will prevent the occurrence of leaks, spills, and other nuisance conditions. All vehicles shall be properly identified.

(1) Hoses, valves, tanks, and other equipment must be maintained in good repair and working order.

(2) All vehicles used to transport septage and sewage must bear the company name and license number in a prominent place on the sides and rear of each vehicle, using letters and numbers that are at least four (4) inches in height.

601.2. The cleaning of septic tanks and similar units and the pumping and transporting of septage and sewage shall be done in a manner that is safe and does not create a hazard to the public health and the environment. The proper cleaning of any septic tank or similar unit shall include the substantial removal of its contents (solids, semi-solids, and liquids).

601.3. Disposal of septage and sewage shall be allowed only at facilities approved by the Department. A licensee may dispose of septage and sewage only at those approved facilities designated by the licensee's application and any renewals or updates of the application.

(1) Discharge of septage and sewage shall be allowed only at those specific locations designated by the owners/operators of approved disposal facilities.

(2) Discharge of septage and sewage into a public sewage collection system, without the consent and permission of the owner/operator of such system, is prohibited.

(3) The storage of domestic wastewater, sewage, or septage in underground or partially buried tanks/subsurface containment units, is prohibited.

601.4. A licensee shall adequately supervise employees and ensure that onsite wastewater systems, self-contained toilets, and other sewage holding systems are cleaned in accordance with this regulation and other applicable regulations, permits, and standards issued by the Department.

#### 602. Records of Operation.

602.1. Each person licensed to clean onsite wastewater systems, self-contained toilets, and other sewage holding systems is required to maintain accurate records of cleaning and transporting activities.

(1) Records shall be kept current and shall include at least the following information for each cleaning/transporting activity:

(a) Date and time of septage and sewage removal.

(b) Name and address of residence or facility where septage and sewage was removed. Where one or more self-contained toilets are cleaned at one location (e.g., construction site, special event, etc.), one recorded entry per location will be acceptable.

(c) Quantity and type of septage and sewage removed (e.g., grease trap, septic tank, self-contained toilet, etc.). Where one or more self-contained toilets are cleaned at one location, quantity may be expressed by the total number of units cleaned at that location.

(d) Date, time, and location of septage and sewage disposal.

602.2. Records shall be made available for inspection by the Department upon request. All licensees must retain their records for a minimum of two (2) years.

#### 700. License to Construct or Repair Onsite Wastewater Systems (i.e. Licensing of Installers).

700.1. License Requirements and Fees.

(1) No person shall be responsible for the construction or repair of onsite wastewater systems in South Carolina without first applying for, receiving, and subsequently maintaining a valid license to conduct such activities as herein required by the Department, provided that a person may construct or repair an onsite wastewater system for personal use at the person's residence without obtaining a license.

(2) Licenses, Applications, and Fees

(a) License applications, on forms approved by the Department, shall be submitted to the Department's regional environmental office which covers the county where the applicant's primary place of business is located; persons whose primary place of business is out of state must submit their applications to the Department's regional environmental office where it is reasonably anticipated the bulk of the activities sought to be licensed would occur.

(b) Prior to receipt of a license authorizing a person to be responsible for the construction or repair of an onsite wastewater system, the applicant shall complete an examination demonstrating the applicant's knowledge and comprehension of this regulation. Any applicant failing to satisfactorily complete the licensing examination may be eligible to retake the examination after thirty (30) calendar days. Applicants who fail to satisfactorily complete their second examination may then be allowed to retake subsequent examinations after a sixty (60) calendar day waiting period.

(c) Each license requires fees for the initial license issuance and annual renewal. The required fees vary depending on the tier of licensure sought. The required initial license and renewal fees for each tier are as follows:

(i) Tier 1 – One hundred dollar (\$100.00) fee

- (ii) Tier 2 One hundred dollar (\$100.00) fee
- (iii) Tier 3 Two hundred dollar (\$200.00) fee

(d) Every license issued by the Department under this regulation shall be valid for a period of one (1) year, unless otherwise suspended or revoked.

(e) Renewal fees shall be due on a date not less than thirty (30) calendar days from the billing date. A penalty charge of thirty dollars (\$30.00) shall be assessed for license fees that are past due. A second penalty of thirty dollars (\$30.00) shall be assessed for license fees sixty (60) days past due.

(f) Expiration of a license shall occur when the license fee is ninety (90) calendar days past due. No person with an expired license may be engaged in the business of constructing and repairing onsite wastewater systems, sewage holding systems, or self-contained toilets.

(g) An expired license shall not be renewed. Any person with an expired license may apply for a new license and must meet all applicable requirements for a new license.

(h) Licenses issued in accordance with this regulation shall not be transferable.

(3) Further Governmental Restriction Not Prohibited

Nothing within this regulation shall be construed to limit the power of any municipal, county, or governmental entity to enforce other license requirements or additional measures for the restrictions of persons constructing or repairing onsite wastewater systems.

(4) Eligibility

Only a person who meets the following criteria is eligible to be licensed as an onsite wastewater systems installer:

(a) Applicants to be a Tier 1 or Tier 2 installer must:

(i) Pass an examination administered by the Department with a minimum score of eighty (80) percent; and

(ii) Submit a properly completed application with supporting documents including proof of continuing education units (CEUs) for any renewal; and

- (iii) Pay applicable fees.
- (b) Applicants to be a Tier 3 installer must:
  - (i) Qualify as either:

(A) A licensed onsite wastewater system installer who has been actively installing for three (3) years immediately preceding the date of application with no pending or prior disciplinary or enforcement action involving onsite wastewater system contracting; or

(B) An onsite wastewater system installer licensee from another state with affidavits from the regulatory authority demonstrating five (5) years of experience with no pending or prior disciplinary or enforcement action involving onsite wastewater system contracting; and

(ii) Pass an examination administered by the Department with a minimum score of eighty (80) percent;

(iii) Submit a properly completed application with supporting documents (if required);

- (iv) Submit proof of continuing education units (CEUs) for any renewal;
- (v) Submit proof of required Bond and insurance coverage; and
- (vi) Pay applicable fees.

# 701. Continuing Education and Training.

701.1. All installers are required to complete the necessary number of continuing education units (CEUs) every two (2) years from the date of licensing to renew the installer license. CEUs must be obtained from the Department-approved list of courses and providers.

701.2. The Department will not renew a license for any installer who has failed to meet the training and education requirements for the previous licensing period.

701.3. If any installer completes more than the required hours in a licensing period, as many as three (3) hours can be rolled over and credited to the requirement for the next licensing period.

701.4. The required CEUs for each Tier for every two (2) year licensing period are as follows:

- (1) Tier 1: Eight (8) hours
- (2) Tier 2: Twelve (12) hours
- (3) Tier 3: Eighteen (18) hours

701.5. Implementation of CEU Requirement.

The requirement for CEUs will enter into effect for any initial or renewal licensing period beginning on or after the date three (3) years following the effective date of this regulation.

## 702. Practice, Procedure, and Quality Control.

702.1. Practices: All Installers.

(1) A licensee shall adequately supervise employees and ensure that all onsite wastewater systems for which the licensee is responsible are constructed and repaired in accordance with this regulation and other applicable regulations, permits, and standards issued by the Department. Onsite wastewater systems must be installed pursuant to and in compliance with permits to construct issued by the Department.

(2) An installer does not have the authority to make any changes to a construction or repair project that deviate from an issued permit without first obtaining Department approval.

(3) Installers do not have the authority to subcontract unlicensed installers to conduct work under their licenses.

(4) The specific scope of activities authorized under each tier of licensure is set forth in this regulation's definition of "licensed onsite wastewater system installer." A licensed installer is prohibited from performing any construction or repair that is inconsistent with the scope of activities authorized under the licensee's applicable tier.

702.2. Onsite Wastewater System Installer Self-Inspections.

(1) All Tier 3 installers and Tier 1 or Tier 2 installers directed to perform self-inspections under Section 104.3(1)(c) shall provide the Department the opportunity to perform a final inspection and shall arrange with the Department in advance a time for the final inspection of an onsite wastewater system that is being installed. If, after thirty (30) minutes of that arranged time, the Department representative has not arrived for the inspection, the installer shall:

- (a) Inspect the system;
- (b) Record the findings on a form approved by the Department; and
- (c) Cover the system.

(2) It shall be considered a violation of this regulation to conduct a self-inspection of a system or cover a system without first scheduling a final inspection time with the Department and waiting the full thirty (30) minutes of the arranged time for the Department to conduct a final inspection.

(3) The installer shall not cover a system or seek Department final approval for a system that, upon inspection, is determined not to be in compliance with the permit to construct.

(4) Documentation of system installation and self-inspection using the Department-approved format, including the installer's signature and license number, as well as the system measurements and other specified information, shall be submitted to the Department within two (2) business days of the final self-inspection date. A copy of this document(s) must also be furnished to the property owner for whom the system was installed. Failure to submit to the Department the required documentation within the required timeframe shall be considered a violation of this regulation.

(5) An onsite wastewater system shall not be placed into operation unless and until the Department has issued a final approval to operate.

702.3. Quality Control: Installers.

The Department will conduct random final inspections on no less than three (3) percent annually of the total number of systems installed during the preceding fiscal year. The Department will also conduct field reviews of final installation and inspection documentation submitted by the installer and compare them to the actual installations those documents represent.

## 703. Bonding and Insurance Requirements: Tier 3 Installers.

703.1. Proof of both insurance and bond coverage shall be furnished to the Department prior to licensure as a Tier 3 installer and upon license renewal.

703.2. An onsite wastewater system Tier 3 installer shall be responsible for obtaining and maintaining both insurance and bond coverage for as long as the installer is licensed as a Tier 3 installer.

703.3. Failure to maintain both insurance and bond coverage shall result in the suspension or revocation of the Tier 3 installer license.

# 704. Transition to Tiered Licensure.

Upon the effective date of the tiered licensure provisions (Section 700) of this regulation, all installers licensed as master contractors under the previous R.61-56.2 shall be considered to hold a Tier 3 license, and all other

installers licensed under the previous R.61-56.1 shall be considered to hold a Tier 2 license. The Tier 3 or Tier 2 license shall expire upon the original expiration date of the license held under R.61-56.1 or R.61-56.2, as applicable, unless the license is renewed in accordance with the provisions of Section 700.1 of this regulation.

## 800. Enforcement.

800.1. Violations of this regulation shall be punishable in accordance with S.C. Code Sections 44-1-150, 44-55-825, 48-1-320, and 48-1-330. The Department may seek enforcement, suspend and revoke permits and licenses, issue civil penalties, and order corrective action in accordance with law. The Department shall have the authority to suspend civil penalties if the violations of this regulation are corrected in a period of time established by the Department.

800.2. Deviation from the installation design and conditions in onsite wastewater permits to construct and approvals to operate may be considered a violation of this regulation.

800.3. Suspension and revocation of permits to construct and approvals to operate an onsite wastewater system, nonwater-carried sewage treatment system, wastewater combustion system, or gray water subsurface reuse system.

(1) The Department may temporarily suspend a permit to construct or approval to operate for a violation of this regulation.

(2) The Department may revoke a permit to construct or approval to operate for a violation of this regulation. The Department will revoke a permit or approval when:

(a) The onsite wastewater system, nonwater-carried sewage treatment system, wastewater combustion system, or gray water subsurface reuse system is malfunctioning and sewage is discharging to the ground or the groundwater, the holder of the permit has received notice that the system is malfunctioning, the Department has given notice that repairs must be made within a reasonable period of time, the holder of the permit has not made the repairs, and the system continues to discharge sewage to the ground or the groundwater; or

(b) The onsite wastewater system, nonwater-carried sewage treatment system, wastewater combustion system, or gray water subsurface reuse system is malfunctioning and sewage is discharging to the ground or the groundwater, the holder of the permit has received notice that the system is malfunctioning, the Department has given notice that a wastewater treatment facility is accessible for connection.

800.4. Enforcement against persons licensed to construct, clean, and/or repair onsite wastewater systems.

(1) A licensee shall be subject to suspension, revocation, and civil penalties as provided in Sections 800.1 and 800.4(2) for the construction, cleaning, or repair of onsite wastewater systems, self-contained toilets, and other sewage holding systems in violation of state laws, regulations, and standards.

In determining whether a license should be suspended or revoked, the Department may consider such factors as the seriousness of a violation and whether a violation is a repeat of previous violations, among any other relevant factors. The interference by a licensee or their employees with a representative of the Department in performing their duties with respect to this regulation shall constitute grounds for revocation of license.

(2) Violation of an onsite wastewater system installation permit or any provisions of this regulation by a licensed onsite wastewater system installer or person licensed to clean onsite wastewater systems must be enforced as follows:

(a) First offense violations may be enforced under S.C. Code Section 44-1-150 or by suspension of the license for a period not to exceed one (1) year.

(b) Second offense violations shall be enforced under S.C. Code Section 44-1-150 or by suspension of the license for a period not to exceed three (3) years.

(c) Third offense violations shall be enforced under S.C. Code Section 44-1-150 or by permanent revocation of the license.

(3) The Department may suspend licenses for failure to pay a civil penalty required pursuant to a Department order.

800.5. Prior to suspending or revoking a permit to construct, approval to operate, or license, the Department shall provide written notification to the person stating the basis for suspension or revocation. A permit to construct, approval to operate, or license may be summarily suspended by the Department without prior warning if the Department determines there is an immediate threat to public health.

#### 801. Severability Clause.

Should any section, paragraph, sentence, clause, or phrase of this regulation be declared unconstitutional or invalid for any reason, the remainder of this regulation shall not be affected thereby.

61-56.1. [Repealed].

61-56.2. [Repealed].

## **Fiscal Impact Statement:**

There is no anticipated additional cost to the Department or state government due to any requirements of this amendment.

#### **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: 61-55, Septic Tank Site Evaluation Fees; 61-56, Onsite Wastewater Systems; 61-56.1, License To Construct Or Clean Onsite Sewage Treatment And Self-Contained Toilets; and 61-56.2, Licensing Of Onsite Wastewater Systems Master Contractors.

Purpose: The Department is amending R.61-56, Onsite Wastewater Systems, to add new system standards, clarify and amend definitions, and clarify and update selected sections. The amendments modernize the regulation and streamline permitting procedures to address needed updates in administering the Onsite Wastewater program. The Department is also amending provisions of R.61-56.1 and R.61-56.2 and merging R.61-56.1 and R.61-56.2 into R.61-56 to improve efficiency and clarity for regulated entities and the public. This entails repealing R.61-56.1 and R.61-56.2 and simultaneously adding their provisions, as amended, to R.61-56. The amendments include changes to licensing requirements for pumpers and haulers currently under R.61-56.1. The amendments revise provisions currently contained in R.61-56.2 to implement a tiered licensing program to establish improved competency of onsite wastewater system contractors/installers. This approach includes new requirements for examination and continuing education. In addition, because R.61-56.1 and R.61-56.2 are being combined with R.61-56, previously separate enforcement provisions are also consolidated and updated for clarity and to improve administration of the Onsite Wastewater program. In the interest of efficiency, the Department is also repealing R.61-55 and adding its provisions to R.61-56. The amendments related to R.61-55 include amendments to definitions and other changes as necessary to facilitate merging this regulation into R.61-56. The Department has also made other corrections for clarity and readability, grammar, punctuation, codification, and regulation text improvement.

Legal Authority: 1976 Code Sections 44-1-140(11), 44-1-150, 44-55-825, 44-55-827, and 48-1-10 et seq.

Plan for Implementation: Upon taking legal effect, Department personnel will take appropriate steps to inform the regulated community of the new amendments and repeals and any associated information. 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.

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

The amendments and repeals are needed and reasonable, as they provide clarification regarding the requirements and standards contained in R.61-56 and consistency with the latest scientific, industrial, and technological changes in onsite wastewater system design, construction, and installation. Furthermore, the amendments simplify the licensure of those operators that clean or pump sewage treatment and disposal systems and, for organization and clarity, provide a tiered structure for the licensure of operators that construct or install these systems. The amendments also serve to modernize the regulation and streamline permitting procedures to improve overall effectiveness of the Department's administration of the regulation.

#### DETERMINATION OF COSTS AND BENEFITS:

Internal Costs: 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 revisions.

External Costs: The revisions do not increase any fees charged by the Department under the current regulations. The revisions expand existing site evaluation options and allow more streamlined permit processing by allowing an applicant to submit a proposed system layout from a licensed Professional Soil Classifier ("PSC") or other licensed person qualified by statute to practice professional soil classifying. Under this regulation, applicants desiring to install systems for a subdivision will be required to submit third-party soils work from a PSC or other licensed person qualified by statute to practice professional soil classifying. That person will then have the option to either submit a proposed system layout under one of the system standards established within R.61-56 or give the soils report to a Registered Professional Engineer to design a specialized septic system through the 610 Standard. Subdivision permit applicants may incur additional costs for the third-party work performed under this process. Outside of the subdivision context, applicants for conventional systems will retain the option to use a qualified third party or allow the Department to conduct a soil evaluation and prepare a system layout. The expanded options and enhanced involvement of third-party contractors serve to streamline and expedite the permit process for the Department and the regulated community.

Benefits: These amendments upgrade overall quality and practicality, improve clarity and consistency, reflect changes in design, construction, and installation of onsite wastewater system nomenclature and technology, separate the licensing of pumper/haulers and installers, provide for tiered licensure, streamline permitting, clarify existing definitions, and add new definitions and standards for site and system requirements.

#### UNCERTAINTIES OF ESTIMATES:

None.

#### EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH:

There is no anticipated negative environmental or public health effect resulting from the amendments and repeals of these regulations. Positive benefits include fostering increased installer competency through new continuing

education requirements and the tiered system of licensure according to system complexity. The additions also enable the Department to focus efforts on ensuring installations are performed in accordance with the issued permit while allowing additional input in the soil evaluation and system layout stages from professionally certified persons.

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

The negative effect on the environment and public health if the amendment of this regulation is not implemented would be less efficiency and clarity for industry and reduced effectiveness and efficiency in the Department's oversight of the disposal of septage and sewage.

#### **Statement of Rationale:**

Here below is the Statement of Rationale pursuant to S.C. Code Section 1-23-110(A)(3)(h):

The Department is amending R.61-56, Onsite Wastewater Systems, to add new system standards, clarify and amend definitions, and clarify and update selected sections. The amendments modernize the regulation and streamline permitting procedures to address needed updates in administering the Onsite Wastewater program. The Department is also amending provisions of R.61-56.1 and R.61-56.2 and merging R.61-56.1 and R.61-56.2 into R.61-56 to improve efficiency and clarity for regulated entities and the public. This entails repealing R.61-56.1 and R.61-56.2 and simultaneously adding their provisions, as amended, to R.61-56. The amendments include changes to licensing requirements for pumpers and haulers currently under R.61-56.1. The amendments revise provisions currently contained in R.61-56.2 to implement a tiered licensing program to establish improved competency of onsite wastewater system contractors/installers. This approach includes new requirements for examination and continuing education. In addition, because R.61-56.1 and R.61-56.2 are being combined with R.61-56, previously separate enforcement provisions are also consolidated and updated for clarity and to improve administration of the Onsite Wastewater program. In the interest of efficiency, the Department is also repealing R.61-55 and adding its provisions to R.61-56. The amendments related to R.61-55 include amendments to definitions and other changes as necessary to facilitate merging this regulation into R.61-56. The Department has also made other corrections for clarity and readability, grammar, punctuation, codification, and regulation text improvement.

## Document No. 5003 DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL CHAPTER 61 Statutory Authority: 1976 Code Sections 44-96-10 et seq.

61-107.4. Solid Waste Management: Compost and Mulch Production from Land-clearing Debris, Yard Trimmings and Organic Residuals.

## Synopsis:

Pursuant to S.C. Code Sections 44-96-10 et seq., it is the responsibility of the Department of Health and Environmental Control ("Department") to promulgate regulations establishing standards for the management of yard trash and land-clearing debris, and for the production of compost. The amendments herein improve environmental protection, ensure adequate but not burdensome financial assurance to close facilities that cease operating, provide clarity for permit exemptions, update operational criteria, and correct typographical and other similar errors.

The Department had a Notice of Drafting published in the May 22, 2020, South Carolina State Register.

Changes made at the request of the Senate Medical Affairs Committee by letter dated April 15, 2021:

**Part II. Exempted and Conditionally Exempted Activities, Item B.13.** The requirements for a sixteen (16) foot height limit on piles of combustible material have been removed.

**Part III. Permitted Facilities, Item D.8.** The requirements for visual markers for permitted facilities have been removed. For consistency, the term "visual marker" has also been removed from Part 1, B. Definitions.

**Part III. Permitted Facilities, Item F.1.** The requirements for a sixteen (16) foot height limit on piles of combustible material have been removed.

**Part III. Permitted Facilities, Item J.3.b.** The requirements for financial assurance on all material stored on site, including materials stored for further processing, such as the production of lumber or firewood, at a permitted facility have been removed.

#### **Instructions:**

Replace R.61-107.4, Solid Waste Management: Compost and Mulch Production from Land-clearing Debris, Yard Trimmings and Organic Residuals, in its entirety with this amendment.

# Text:

61-107.4. Solid Waste Management: Compost and Mulch Production from Land-clearing Debris, Yard Trimmings and Organic Residuals.

Table of Contents

Part I. General Provisions

- A. Applicability
- B. Definitions
- C. Variances
- **D.** Prohibitions
- E. Violations and Penalties
- F. Severability

Part II. Exempted and Conditionally Exempted Activities A. Exempted Activities

B. Conditionally Exempt Activities

Part III. Permitted Facilities

- A. Facility Types
- B. General Criteria
- C. Location Criteria
- D. Design Criteria
- E. General Operating Criteria
- F. Material Management for Permitted Facilities
- G. Additional Operating Requirements for Type Two and Type Three Facilities
- H. Quality Assurance and Testing Requirements for Finished Compost
- I. Additional Requirements for Permitted Facilities
- J. Financial Assurance
- K. Closure
- L. Permit Suspension or Revocation

Part IV. Permit Application A. Permit Application Process

B. Notice

- C. Application Review and Permit Decision
- D. Permit Modifications
- E. Transfer of Ownership

Part V. General Permits A. General Permit Issuance B. Application for Coverage under a General Permit C. Corrective Measures and General Permit Revocation

61-107.4 Appendix: Feedstock Categories

- A. Feedstock Categories
- B. Prohibited Feedstocks

Part I. General Provisions.

A. Applicability.

1. The purpose of this regulation is to establish minimum standards for the proper management of yard trimmings, land-clearing debris, and other organic material; to encourage composting and establish standards for the production of compost; and to ensure that operations are performed in a manner that is protective of public health and the environment.

2. The requirements of this regulation are not applicable to the grinding of pallets, packaging, or other industrial sources of wood residuals.

3. The requirements of this regulation are not applicable to sewage sludge or industrial sludge generated and managed on site of a wastewater treatment facility permitted under the authority of R.61-9, Water Pollution Control Permits, including sludges mixed with Category One feedstocks generated off-site of the facility.

B. Definitions.

For the purposes of this regulation, the following terms are defined as follows:

"Aerated Static Pile" means a composting process that uses a controlled air distribution system to blow or draw air through the composting mass. No agitation or turning of the composting mass is performed.

"Aerobic" means the biological decomposition of organic substances in the presence of at least five percent oxygen by volume.

"Best management practices" (BMP) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of Waters of the State.

"Buffer" means the regulatory minimum separation distance required for wood-grinding equipment, operational areas, storage areas, or boundaries of a wood-grinding or composting site to structures.

"Carbon-to-Nitrogen ratio" ("C:N Ratio") means the quantity of total carbon (C) in relation to the quantity of total nitrogen (N) in an organic material or composting mass.

"Composite sampling" means a single sample for laboratory analysis composed of multiple, well-blended point or sub-samples uniformly distributed throughout the entire volume that, after mixing, accurately represents an average or median value of the property or trait of interest for a batch or general mass of compost.

"Compost" means the humus-like product of the process of composting.

"Compost stability" refers to a specific stage or state of organic matter during composting as characterized by the inverse measure of the potential for a material to rapidly decompose.

"Compostable" means the capability of being decomposed by natural biological processes.

"Compostable products" means manufactured items such as cups, plates, and flatware for food service or bags and packaging intended for singular use that undergoes degradation by biological processes. Only the materials that meet the relevant specifications of American Society for Testing Materials (ASTM) D6400 (plastics) or ASTM D6868 (coated papers and natural materials) shall be considered compostable products.

"Composting" means the aerobic biological decomposition of organic residuals under managed conditions and minimum time-temperature relationships resulting in compost.

"Composting mass" means the result of combining feedstocks in a formulaic recipe to achieve a Carbon-to-Nitrogen ratio, moisture content, and porosity within the mixture that facilitates rapid aerobic decomposition of the materials; the mixture of feedstocks is considered a composting mass until it meets the stability requirements of this regulation.

"Control" means having access to a property through part ownership, rental, lease, easement or other access agreement.

"Curing" means the process that follows composting in which the compost is matured to meet market conditions.

"Department" means the South Carolina Department of Health and Environmental Control (SCDHEC).

"Domestic septage" means either liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool, or similar treatment works that receives either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap at a restaurant.

"Domestic sewage" means waste and wastewater from humans or household operations that is discharged to or otherwise enters a treatment works.

"Feedstock" means source separated, recovered organic material approved by the Department or listed in the Appendix of R.61-107.4 to be used in the production of compost, mulch, or other product.

"Finished compost" means the product of a composting mass that has met the minimum time and temperature requirements for the composting method chosen and satisfies the stability requirements and applicable quality assurance and testing requirements for finished compost found in Part III.H of this regulation.

"Generated on site" means residuals produced on the same single tax map parcel or multiple tax parcels under the same ownership or control, upon which it is managed.

"Grinding" means the act of mechanically reducing the size of organic materials.

"Hearing" means a Department proceeding that is conducted after notice by mail has been given to the permittee of facts or conduct that warrant a permit revocation and is a proceeding where the permittee is given an opportunity to show compliance with all lawful requirements for the retention of the permit.

"Industrial sludge" means the solid, semi-solid, or liquid residue generated during the treatment of industrial wastewater in a treatment works. Industrial sludge includes, but is not limited to, scum or solids removed in

primary, secondary, or advanced wastewater treatment processes, and a material derived from industrial sludge. Industrial sludge does not include ash generated during the firing of industrial sludge in an industrial sludge incinerator or grit and screenings generated during preliminary treatment of industrial wastewater in a treatment works. Industrial sludge by definition does not include sludge covered under 40 CFR 503 or R.61-9.503, Standards for the Use or Disposal of Sewage Sludge.

"Industrial solid waste" means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under subtitle C of the Resource Conservation and Recovery Act (RCRA). The term does not include employee kitchen or cafeteria residuals, packaging waste or yard-trimmings generated on site of an industrial property.

"In-process material" means ground organics that have been incorporated into a composting mass and other material that is in the process of being cured, but has not yet achieved the status of finished compost.

"In-vessel composting" means a process in which decomposing organic material is enclosed in a drum, silo, bin, tunnel, or other container for the purpose of producing compost; and in which temperature, moisture and air-borne emissions are controlled, vectors are excluded, and nuisance and odor generation minimized.

"Land-clearing debris" means material generated solely from land-clearing activities, including brush, limbs, and stumps, but does not include solid waste from agricultural or silvicultural operations.

"Manure" means the fecal and urinary excreta of livestock, poultry, or fish and may also contain bedding, spilled feed, water, soil and other substances incidental to its collection. This definition does not include excreta from household animals such as dogs and cats.

"Mulch" means the organic, non-composted product rendered by grinding Category One feedstocks.

"Municipal solid waste" means discards from residential, commercial, institutional, and industrial sources that have not been separated at the source for recycling. Industrial process waste is excluded from the wastes that comprise municipal solid waste.

"On-site" means activities performed on property under the same ownership or control where the feedstocks were grown, produced, or otherwise generated for recycling.

"Open burning" is defined to have the same meaning as used in Air Pollution Control Regulations and Standards R.61-62.1, Definitions and General Requirements, or any future amendments, and currently means any fire or smoke-producing process that is not conducted in any boiler plant, furnace, high temperature processing unit, incinerator or flare, or in any other such equipment primarily designed for the combustion of fuel or waste material.

"Open dumping" means any unpermitted disposal or landfilling activity except as specifically exempted by regulation.

"Operational Area" means the area of a wood-grinding or composting facility where equipment maintenance, material storage, material processing, composting or curing activities are performed, or as otherwise specified by permit.

"Operator" means the person responsible for the overall operation of a wood-grinding or composting facility.

"Organic" means a substance derived from living organisms.

"Pathogen" means a disease-causing organism, such as fecal coliform, Salmonella bacteria, Ascaris parasite eggs, etc.

"Person" means an individual, corporation, company, association, partnership, unit of local government, state agency, federal agency, or other legal entity.

"Porosity" means the fraction of a material or mass that is void space.

"Putrescible" means material that contains organic matter capable of decomposition by microorganisms and of such a character and proportion that it causes obnoxious odors and the capability of attracting or providing food for birds and other animals.

"Residence" means any existing structure, all or part of which is designed or used for human habitation, that has received a final permit for electricity, permanent potable water supply, permanent sewage disposal, and, if required by the local government, a certificate of occupancy.

"Residuals" means materials that have served their original, intended use and have been source separated and diverted for recycling, grinding, or composting.

"Run-off" means any rainwater not absorbed by soil, that flows over land from any part of a facility.

"Sewage sludge" means the solid, semi-solid, or liquid residue generated during the treatment of municipal wastewater or domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and a material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during preliminary treatment of domestic or industrial sewage in a treatment works.

"Silvicultural" means produced from or pertaining to the care and cultivation of forest trees and timber, including bark and woodchips.

"Solid waste" means any garbage, refuse, or sludge from a waste treatment facility, water supply plant, or air pollution control facility and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations and from community activities. This term does not include solid or dissolved material in domestic sewage, recovered materials, or solid or dissolved material in domestic sewage, recovered materials, or solid or dissolved material in domestic sewage, recovered materials, or solid or dissolved material in domestic sewage, recovered materials, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to NPDES permits under the Federal Water Pollution Control Act, as amended, or the Pollution Control Act of South Carolina, as amended, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended. Also excluded from this definition are application of fertilizer and animal manure during normal agricultural operations or refuse as defined and regulated pursuant to the South Carolina Mining Act, including processed mineral waste, which will not have a significant adverse impact on the environment.

"Source separated" means segregated from solid waste at the point of generation to facilitate recycling.

"Thermophilic" means a biological stage in the composting process during which microorganisms break down proteins, fats, and complex carbohydrates such as cellulose at relatively high temperatures (ranging from 113 degrees Fahrenheit to 167 degrees Fahrenheit or 45 degrees Celsius to 75 degrees Celsius).

"Turn" means to physically manipulate the compost mass in order to aerate, decrease temperatures, and increase evaporation rates.

"Unauthorized material" means any feedstock or waste material that due to its feedstock category, characteristics, or volume, causes an exempt, conditionally exempt site, or permitted facility to be in violation of this regulation or the permit conditions approved by the Department.

"Untreated wood" means raw wood or lumber that has not been chemically treated or painted.

"Vector" means a carrier that is capable of transmitting a pathogen from one organism to another including, but not limited to, flies and other insects, rodents, birds, and vermin.

"Waters of the State" means lakes, bays, sounds, ponds, impounding reservoirs, springs, artesian wells, rivers, perennial and navigable streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial limits of the State, and all other bodies of water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially within or bordering the State or within its jurisdiction. This definition does not include ephemeral or intermittent streams. This definition includes wetlands as defined in this Part.

"Wetlands" means lands that have a predominance of hydric soil, are inundated or saturated by water or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions, and, under normal circumstances, do support a prevalence of hydrophytic vegetation. Normal circumstances refer to the soil and hydrologic conditions that are normally present without regard to whether the vegetation has been removed. Wetlands shall be identified through the confirmation of the three wetlands criteria: hydric soil, hydrology, and hydrophytic vegetation. All three criteria shall be met for an area to be identified as wetlands. Wetlands generally include swamps, marshes, and bogs.

"Yard trimmings" means residuals consisting solely of vegetative matter resulting from maintenance or alteration of public, commercial, institutional, or residential landscapes and tends to include grass clippings, leaves, discarded plants and weeds, which have been source separated and diverted for recycling.

#### C. Variances.

Any request for a change to the adherence to a provision or provisions of this regulation, or to a permit issued pursuant to or in accordance with this regulation, shall be made in writing to the Department. The Department shall provide a written response to such a request.

#### D. Prohibitions.

1. Open dumping of land-clearing debris, yard trimmings, and other organics is prohibited.

2. Open burning of land-clearing debris, yard trimmings, and other organics is prohibited except as approved by the Department for emergency storm debris management or as allowed by Air Pollution Control Regulations and Standards R.61-62.2, Prohibition of Open Burning.

### E. Violations and Penalties.

A violation of this regulation, or any permit or order issued pursuant to or in accordance with this regulation, subjects a violator to the issuance of a Department order, a civil enforcement action, or to a criminal enforcement action in accordance with S.C. Code Ann., Section 44-96-100, as amended.

#### F. Severability.

If, for any reason, any provision, paragraph, sentence, clause, phrase, or part of this regulation or application thereof, is declared by a court of competent jurisdiction as invalid, or unconstitutional, such judgment shall not affect, impair, or invalidate the remainder of this regulation or its application.

## Part II. Exempted and Conditionally Exempted Activities.

The feedstock categories referenced in this part of the regulation are listed and characterized in the Appendix of R.61-107.4. For the purposes of this Part, a "site" shall mean one tax map parcel or multiple contiguous tax parcels under the same ownership.

## A. Exempted Activities.

The activities below are exempted from the requirements of this regulation, but shall be performed in a manner to not cause harm to human health or to the environment as determined by the Department:

1. Backyard composting, when feedstocks generated on residential property by the property owner or occupants are composted primarily for use on the same property;

2. Grinding or composting of Category One feedstocks by a person on property under their ownership or control, when the feedstocks are generated on site;

3. Acceptance, storage, grinding, or composting of only Category One feedstocks by a person on property under their ownership or control, when the combined total of unground feedstocks and in-process material on site at any given time is less than 80 cubic yards;

4. Wood grinding activities for maintenance and land-clearing activities by public agencies, public utilities, railroads, or their representatives, upon land owned or controlled by the public agency, public utility, or railroad;

5. Composting activities using only Category One and Category Two vegetative feedstocks by a person on property under their ownership or control, when the combined total of feedstocks and in-process material on site, at any given time, is less than five cubic yards;

6. Storage, grinding, and composting activities approved by the Department for emergency storm debris management at sites designated by state, county, or municipal government;

7. Composting activities or other organics management activities associated with farming operations when the material managed is produced from crops grown on a farm, and when the compost is produced primarily for use on property under the same ownership or control;

8. Limited duration events that involve processing or storage of organic residuals for distribution to the public, to include "Grinding of the Greens" and, as approved by the Department, other programs of a similar nature; and

9. Composting activities by a participant transitioning to or enrolled in the U.S. Department of Agriculture (USDA) National Organic Program, or other programs of a similar nature as approved by the Department, and the compost produced is primarily for use on property under control of the participant.

B. Conditionally Exempt Activities.

1. The following activities are exempt from the permitting requirements of this regulation, but shall comply with all requirements of this Part:

a. Management of only source separated Category One feedstocks by a person on property under their ownership or control, when the combined total of feedstocks and in-process material on site at any given time is less than 400 cubic yards.

b. Management of only source separated Category Two feedstocks or mixtures of Category One and Category Two feedstocks by a person on property under their ownership or control, when the combined total of feedstocks and in-process material on site at any given time is less than 40 cubic yards.

c. Management of only source separated Category Two feedstocks or mixtures of Category One and Category Two feedstocks generated on site of commercial, industrial, or institutional properties under the same

ownership, when the combined total of feedstocks and in-process material on site at any given time is less than 400 cubic yards.

2. All materials shall be managed in a manner to not cause harm to human health or to the environment as determined by the Department.

3. A facility choosing to operate under a conditional exemption shall submit a written notice to the Department stating that it will operate under the conditional exemption requirements. Once submitted, the Department will respond to the notice in writing, either stating concurrence that the facility operation meets the conditional exemption requirements or that it does not.

a. The notice to the Department shall include completion of a Department-issued form and a site map of the facility that demonstrates compliance with required buffers and include information that will allow the Department to confirm that the proposed facility conforms to all other exemption conditions of this Part.

b. The Department shall respond in writing within fifteen (15) calendar days of receiving the notice.

c. Facilities operating prior to the effective date of the most recent amendment to this regulation shall notify the Department within ninety (90) calendar days of that effective date.

4. Conditionally exempt activities shall be performed in accordance with the minimum buffers listed below as measured from the operational area to the listed entities:

a. A minimum 200-foot buffer shall be required from the operational area to residences, schools, day-care centers, churches, hospitals, and publicly owned recreational park areas unless otherwise waived with documented consent of all property owners within the buffer and made available to the Department upon request;

b. A minimum 50-foot buffer shall be required from property lines unless otherwise waived with documented consent of all property owners within the buffer and made available to the Department upon request;

c. A minimum 100-foot buffer shall be required from public and private drinking water wells.

5. The Department may issue a variance to operate with less restrictive buffers when it determines that the technology and practices of the operation justify the reduction. The request shall be made in writing to the Department and the Department shall respond in writing.

6. All putrescible feedstocks shall be managed to prevent the escape of liquids and to suppress odors by incorporating the feedstocks into the compost mass, an in-vessel composting unit, an air-tight container, or an enclosed building.

7. Best Management Practices shall be utilized to manage stormwater and to prevent impact to Waters of the State.

8. No feedstocks or other material piles may be placed or stored in standing water.

9. All feedstocks and other material piles on site of the facility shall be monitored and managed to prevent fire.

10. Unauthorized and unrecyclable material shall be removed from the facility for proper disposal no less than every seven (7) calendar days, except that putrescible waste shall be placed in a covered container and removed from the facility within seventy-two (72) hours.

11. Compost produced by conditionally exempt facilities using Category Two feedstocks shall not be offered for sale to the public unless it can be demonstrated to meet all applicable standards for compost quality under Part III. of this regulation.

12. All feedstocks shall be ground and/or incorporated into a composting mass not less than once per year. Conditionally exempt facilities operating prior to the effective date of this regulation shall have one year from the effective date of this regulation revision to comply with this requirement.

Part III. Permitted Facilities.

The feedstock categories referenced in this part of the regulation are listed and characterized in the Appendix of R.61-107.4.

A. Facility Types.

Facilities described below shall not operate without a permit, except as specifically exempted in this regulation:

1. Type One facilities. Type One facilities are facilities that grind or compost only source separated organic residuals described as Category One feedstocks.

2. Type Two facilities. Type Two facilities are facilities that compost only source separated compostable materials described as Category Two feedstocks or mixtures of Category One and Category Two feedstocks, or any similar items specifically approved in writing by the Department.

3. Type Three facilities. Type Three facilities are facilities that:

a. Compost Category Three feedstocks or mixtures of Category Three feedstocks with other feedstock categories listed in the Appendix of R.61-107.4;

b. Compost feedstocks not listed in the Appendix of R.61-107.4, that pose a level of risk greater than Category Two feedstocks as determined and allowed, on a case-by-case basis, by permit from the Department; or

c. Produce compost using methods not specified in this regulation and as allowed on a case-by-case basis by permit from the Department.

B. General Criteria.

1. The siting, design, construction, operation, and closure activities for facilities shall conform to the standards set forth in this regulation, unless otherwise approved by the Department.

2. Facilities shall obtain the appropriate permit or permits from the Department in accordance with this regulation, prior to the construction, operation, expansion, or modification of a facility.

3. The Department may approve a variance from the general, location, design, or operating criteria, based upon the technology and practices of the operation.

4. All facilities shall be subject to inspections and evaluations of operations by a representative of the Department.

C. Location Criteria.

1. All facilities shall comply with the minimum buffers, listed below, from the operational area of the facility to the listed entities, as they exist at the time the permit application is received by the Department, except that an entity listed here shall be exempt from the buffer requirement to its own buildings.

a. For Type One facilities, for Type Two facilities performing in-vessel composting, or for Type Two facilities performing composting in an enclosed building, a minimum 200-foot buffer shall be required from the operational area to residences, schools, day-care centers, churches, hospitals, and publicly owned recreational park areas; for all other Type Two or for all Type Three facilities, a minimum 1,000-foot buffer shall be required.

b. For Type One facilities, a minimum 50-foot buffer shall be required from the operational area to property lines; for Type Two or Type Three facilities, the buffer shall be at least 100 feet;

c. A minimum 100-foot buffer shall be required from the operational area to any Waters of the State;

d. A minimum 100-foot buffer shall be required from the operational area to public or private drinking water wells; and

e. For Type Two or Type Three facilities, a minimum 10,000-foot buffer shall be required from the operational area to any airport runway used by turbojet aircraft and a minimum 5,000-foot buffer from any airport runway used only by piston-type aircraft, unless composting is in an enclosed building.

2. The Department may approve, with documented consent of all property owners within the buffer, less stringent buffers than those listed to residences, schools, day-care centers, churches, hospitals, publicly owned recreational park areas, and property lines.

3. The Department reserves the right to require more stringent buffers if it is determined, based on the site, feedstocks, or operations, that more stringent buffers are necessary to protect health and the environment.

4. The Department's permit decision does not supersede, affect, or prevent the enforcement of a zoning regulation or ordinance within the jurisdiction of an incorporated municipality or county, or by an agency or department of this state.

5. Local governments may require siting criteria and buffer distances that are more stringent than the state regulations.

D. Design Criteria.

1. All facilities shall be designed to divert stormwater from running onto the operational areas of a facility.

2. The operational area of all permitted Type One facilities shall have at least one foot of separation to groundwater.

3. The operational area of all permitted Type Two and Type Three facilities shall be a hard-packed all-weather surface able to withstand various temperatures and be conducive to heavy equipment operation, without damage or failure. The working surface shall be:

a. A naturally occurring or engineered soil mixture with at least two feet separation to the seasonal high-water table; or

b. A surface such as concrete or asphalt pad on an appropriate sub-base intended to support and prevent failure of the surface layer with at least one foot of separation to the seasonal high-water table from the sub-base of the constructed surface; or

c. As otherwise approved by the Department.

4. Facilities may use borings or test pits to determine separation from the seasonal high-water table.

5. The Department may impose more protective design criteria for the operational areas of Type Three facilities to ensure compatibility with the feedstocks in use and the structural integrity needed for the equipment used at the site.

6. Facility design shall be structured so that each composting mass can be managed in accordance with the operational requirements of this regulation.

7. Access to all permitted facilities shall be controlled through the use of fences, gates, berms, natural barriers, or other means to prevent unauthorized dumping and access.

E. General Operating Criteria.

1. Site Control and Sign Requirements shall be as follows:

a. No incoming waste shall be accepted by the facility unless facility personnel are present to receive the incoming waste.

b. All permitted facilities shall post signs in conspicuous places that are resistant to weather and fading of color that:

(1) Identify the owner, operator, or a contact person and telephone number in case of emergencies;

(2) Provide the hours during which the facility is open; and

(3) List the valid SCDHEC Facility I.D. number(s) for the facility.

c. Facilities may accept only those materials allowed by facility type and category as listed in the Appendix of R.61-107.4 or approved in writing by the Department.

d. No material, including feedstocks or in-process material, may be stored at the permitted facility in excess of the maximum capacity allowed by permit.

e. No facility shall accept deliveries of feedstocks or other materials that will result in materials being stored in excess of the maximum capacity allowed by permit.

2. All wood-grinding activities shall assure that no debris is ejected onto neighboring properties.

3. Facilities shall use Best Management Practices to control run-on and run-off. An appropriate permit may be required prior to the discharge of any stormwater.

4. Unauthorized feedstocks, unrecyclable materials, and waste shall be removed from the facility for proper disposal no less than every seven (7) calendar days unless otherwise approved by the Department. Unauthorized putrescibles shall immediately be placed in a covered container and removed from the facility within seventy-two (72) hours of receipt. The area designated for temporary storage of unauthorized waste at the facility shall be identified in the facility operational plan. The Department may require more frequent removal based on the nature or quantity of other unacceptable waste.

5. Reporting and Records Retention shall be in accordance with the following:

a. Not less than once each month, facilities shall measure and record the amounts, in cubic yards, of feedstocks, in-process material, finished compost, and mulch, and waste material on site at that time.

b. No later than September 1 of each year, all permitted facilities shall submit to the Department an annual report on a form approved by the Department for the prior fiscal year beginning on July 1 and ending June 30. The report shall include the following information:

(1) The total amount in tons of in-coming feedstock received yearly for each type of feedstock and the source for each;

(2) The total amount in tons of mulch, compost, or other material that on a yearly basis is:

(a) Produced;

(b) Transferred off-site as products such as mulch, compost, or soil amendment;

(c) Transferred off-site for further processing; or

(d) Disposed in a landfill and the reason for disposal.

c. Records of weekly temperature readings of mulch piles shall be maintained by all facilities for a period of no less than three (3) years and be made available at all reasonable times for inspection by the Department.

d. Changes to telephone numbers, names of responsible parties, addresses, etc. for a permitted facility shall be submitted to the Department within ten (10) business days of the change.

e. Records shall be maintained by all facilities for a period of no less than three (3) years and shall be furnished upon request to the Department or be made available during inspections by the Department.

6. Operational Plans.

All facilities shall be operated in accordance with this regulation and an operational plan developed specifically for the facility and approved by the Department in writing.

a. Facilities shall maintain an operational plan on site of the facility and it shall be made available for inspection upon request by the Department.

b. Facilities requiring permits shall submit their operational plan to the Department along with the permit application. The Department may require changes to an operational plan when the Department has determined that the operation requires additional measures to protect human health and safety and the environment.

c. Facilities shall address all requirements of this part in their operational plan, including at a minimum:

(1) A description of the anticipated source and composition of the incoming feedstocks;

(2) A description of the processes and methods that will be used to grind, compost, cure, store, and otherwise manage material, including a description of production capabilities and equipment to be used;

(3) A description of the procedure for inspecting, measuring, and managing incoming feedstock and unacceptable waste;

(4) A description of the procedures for prevention and control of vector, odor, dust, and litter specific to their geographic location and the types and amounts of feedstocks used in their operation;

(5) A description of the anticipated markets for end products;

(6) A quality assurance and testing plan for finished compost that describes:

(a) All of the parameters and protocols for obtaining, preserving, storing, and transporting samples to a South Carolina certified laboratory;

(b) The frequency of monitoring to assess temperature profiles during composting;

(c) The methods and processes used to determine stability of the compost; and

(d) Other protocols used to achieve quality assurance standards required in this regulation;

(7) A fire prevention and response plan which includes:

(a) A description of the processes used to prevent fire, specific to their site design and operating criteria;

(b) A description of the procedures for responding to a fire specific to their site location, feedstock types, and operating criteria;

(c) The location of emergency equipment and fire suppressant materials; and

(d) The emergency contact information for the local fire protection agency.

(8) A contingency plan describing facility operations in the event of equipment failure;

(9) A detailed closure plan to meet the requirements of this regulation, including final closure cost estimate pursuant to this part; and

(10) Any additional procedures implemented as a requirement of the Department as described in this regulation.

7. In the event of a fire at a facility, the facility must:

a. Verbally notify the appropriate regional office of the Department within twenty-four (24) hours. A written notification must be sent within seven (7) calendar days;

b. Cease accepting incoming waste or divert it to another area of the facility. If waste is diverted to another area of the facility, notification must be included as described in (a) above; and

c. Use the methods and equipment outlined in the fire prevention and response plan that is included in the operations plan approved by the Department.

F. Material Management for Permitted Facilities.

1. All piles of mulch and ground material shall be monitored and managed to prevent fire as described in the facility operational plan:

a. The temperature of each pile shall be measured weekly or as otherwise approved in the operational plan;

b. Temperature readings shall be taken every 50 feet along the length or around the circumference of a pile, at a depth of three to six feet;

c. Intervals and methods for monitoring temperatures and any alternatives not stated in this regulation must be included in the operational plan and approved in writing by the Department; and

d. A record of all temperature measurements taken shall be maintained and readily available to the Department upon request.

2. All land-clearing debris shall be ground at least once per fiscal year. Stumps or large debris that cannot be ground shall be removed from the facility for disposal or other management at least once per fiscal year.

3. All materials shall be maintained to:

a. Have sufficient space around piles of material to allow access of emergency fire-fighting equipment;

b. Have sufficient space around piles of material to allow loading or other activities described in the approved operational plan;

c. Allow monitoring of internal temperatures; and

d. Provide a safe working environment.

4. Within one (1) year of being ground, mulch and ground material must be bagged, added to a managed compost mass, transferred from the facility, or disposed of in accordance with a Department permit.

5. The working surface of the operational area of all permitted facilities shall be maintained to prevent standing water or uncontrolled releases.

G. Additional Operating Requirements for Type Two and Type Three Facilities.

1. The operation of all composting facilities shall follow acceptable management practices for composting methods that result in the aerobic, thermophilic decomposition of the solid organic constituents of the feedstock. The following composting methods will be allowed:

a. Passive leaf composting, in which composting leaves collected by local government programs are managed with little manipulation after they are mixed and piled; turning shall be performed at least quarterly or as needed to prevent odors;

b. The windrow composting method, in which the following requirements apply: Aerobic conditions at 131 degrees Fahrenheit or 55 degrees Celsius or greater shall be maintained in the composting mass for at least fifteen (15) consecutive days. During the high temperature period, the composting mass shall be turned at least five (5) times. The composting mass shall be turned before the internal temperature exceeds 160 degrees Fahrenheit or 71 degrees Celsius;

c. The aerated static pile composting method, in which the following requirements apply: Aerobic conditions shall be maintained during the composting process. The temperature of the composting mass shall be maintained at 131 degrees Fahrenheit or 55 degrees Celsius for at least three (3) consecutive days; or

d. The in-vessel composting method, in which the temperature of the composting mass shall be maintained at a minimum temperature of 131 degrees Fahrenheit or 55 degrees Celsius for at least three (3) consecutive days.

e. The use of other composting methods shall require written Department approval.

2. Temperature measurements shall be as follows:

a. The temperature of each composting mass shall be measured daily during the first week of active composting, and not less than weekly thereafter;

b. Temperature readings shall be taken every 50 feet along the length of a composting mass and from within the center of the mass;

c. In-vessel composting systems shall follow the manufacturer's recommendations for monitoring temperatures during active composting;

d. Intervals and methods for monitoring temperatures and any alternatives not stated in this regulation must be included in the operational plan and approved in writing by the Department; and

e. A record of all temperature measurements taken shall be maintained and readily available to the Department upon request.

3. The moisture content in the composting mass shall be monitored regularly and managed to achieve desired results.

4. Pile sizes and spacing. All materials shall be maintained to:

a. Allow the measurement of internal-pile temperatures of the compost mass as required;

b. Enable the compost mass to be turned as needed to result in the aerobic, thermophilic decomposition of the solid organic constituents of the feedstock;

c. Have sufficient space around the composting mass to allow loading and other activities described in the approved operational plan;

d. Have sufficient space around the composting mass to allow access of emergency fire-fighting equipment and procedures as described and approved in the facility operational plan; and,

e. Provide a safe working environment.

5. Material Management shall occur as follows:

a. Grass clippings shall be incorporated into the composting mass within twenty-four (24) hours of arrival at a ratio of no more than one part grass to three parts chipped or ground carbon-rich material by volume;

b. Food residuals and other putrescible, nitrogen-rich feedstocks shall be incorporated into the compost mass the same day of receipt or stored not more than seventy-two (72) hours in closed, air-tight, and leak-proof containers;

c. If manure is stored more than three (3) calendar days, the manure shall be stored on a concrete pad or other impervious surface and covered with an acceptable cover to prevent odors, vector attraction, and runoff. The cover should be vented properly with screen wire to let the gases escape. The edges of the cover should be properly anchored;

d. Category Three feedstocks shall be incorporated into the compost mass upon receipt or stored in a manner that is described in the operational plan and approved by the Department;

e. Source separated feedstocks shall not be combined until incorporated into the compost mass, except as described in the operational plan and approved by the Department;

f. Feedstocks shall be thoroughly mixed into the compost mass in accordance with a formulaic recipe that optimizes Carbon-to-Nitrogen ratios, moisture content, and porosity. Feedstocks with excessive moisture content shall be delivered onto a bed of woodchips or sawdust or otherwise managed to prevent escape of the liquids from the compost mass; and

g. All operations shall be performed to prevent the re-introduction of pathogens into materials that have undergone, or are in the process of, pathogen reduction.

6. Facilities shall identify any chemical changes to a feedstock, or changes to the chemical ratios of a feedstock, significant enough to alter the composting process or the quality of the compost produced, and shall request appropriate permit modifications from the Department for any operational plan changes required as a result of those changes.

7. The following information shall be maintained at all facilities that produce compost for sale or distribution to the public and made available to the Department upon request unless otherwise approved by the Department:

a. Daily and weekly temperature readings and moisture observations of each composting mass that is formulated;

b. Start-up dates for each composting mass that is formulated and the date for each time a composting mass is remixed or turned while composting;

c. Number of days required to produce the end product, by type; and

d. The results of all testing performed in accordance with the quality assurance requirements of this regulation and any corrective action taken to improve product quality to the standards in this regulation.

8. Any compost produced with Category Two or Category Three feedstocks and offered for sale or distribution to the public is required to meet the physical and biological standards listed in this regulation.

9. Compost Program Manager Certification shall be secured and maintained as follows:

a. Unless otherwise approved by the Department, within eighteen (18) months of the effective date of this regulation, all permitted Type Two and Type Three facilities are required to have an operator or one or more employees classified as a manager or supervisor who is duly certified as a compost program manager.

b. Persons who have achieved and maintain compost manager certification by the U.S. Composting Council (USCC), the Solid Waste Association of North America (SWANA), or another Department-approved training program shall be deemed certified by the Department.

c. Documentation of Compost Program Manager Certification shall be maintained at all permitted Type Two and Type Three facilities and made available to the Department upon request unless otherwise approved by the Department.

H. Quality Assurance and Testing Requirements for Finished Compost.

1. Any compost produced from Category Two or Category Three feedstocks and offered for sale or distribution to the public is required to meet the physical and biological standards listed in this section. Composite samples shall be collected, stored and analyzed in accordance with the procedures found in the U.S. Department of Agriculture publication "Test Methods for the Examination of Composting and Compost" (TMECC), or equivalent methodology recommended by the U.S. Environmental Protection Agency publication SW-846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods."

2. Compost from Type One facilities or compost made solely from Category One feedstocks with compliant records of time and temperature monitoring are presumed to meet the standard for biological contaminants and are not required to perform laboratory testing as described in this section.

3. All compost for sale or distribution to the public and produced from feedstocks other than Category One must be tested and meet the designation of Class A Exceptional Quality Compost or be designated for legal disposal, additional processing, or other use as approved by state or federal agencies having appropriate jurisdiction.

- 4. Class A exceptional quality compost:
  - a. Contains less than two percent (2%) physical contaminants by dry weight analysis;
  - b. Has a stability index rating of stable or very stable;
  - c. Meets Class A pollutant limits found in Table 1; and
  - d. Meets standards of this regulation for pathogen reduction.

 Table 1. Pollutant Standards: Maximum Allowable Concentration (milligrams per kilogram dry weight)

Pollutant	Class A
Arsenic	41
Cadmium	39
Copper	1500
Lead	300
Mercury	17
Nickel	420
Selenium	100
Zinc	2800

5. The distribution and use of exceptional quality compost is unrestricted and the consumer shall be advised to apply the product at agronomic rates based on product analysis, except that the use and distribution of compost produced from feedstocks generated by facilities permitted pursuant to R.61-67, Standards for Wastewater Facility Construction, shall be subject to all applicable requirements of R.61-9.

6. Compost Testing Frequency. The frequency of laboratory testing for pollutants, biological contaminants, and physical contaminants shall be based on the volume of compost produced annually by the facility as indicated in Table 2:

Table 2. Compost Testing Frequen
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Compost Quantity	Frequency
1-2500 tons	1 per quarter (or less as approved)
2501-6250 tons	1 per quarter
6251-17500 tons	1 per 2 months
17501 tons and above	1 per month

7. The composted product shall be analyzed for stability using methods as set forth in the USDA TMECC Section 05.08-A through Section 05.08-F and the Compost Stability Index Table 05.08-1.

8. All compost produced for sale or distribution is required by this regulation to meet the physical and biological contaminant standards in Table 3 by a testing method referenced in this regulation or an equivalent method allowed by the Department:

Physical contaminants (man-made inerts)	Less than 2 percent dry weight basis
Biological Contaminants (pathogens)	
	Less than 1,000 Most Probable Number (MPN) per gram, dry weight basis
Salmonella	Less than 3 MPN per 4 grams, dry weight basis

Table 3. Physical and Biological Contaminants Limits for Compost

a. All product quality assurance testing for pollutant standards and biological contaminants required by this regulation or as requested by the Department shall be performed by a South Carolina certified laboratory and reported in a format acceptable to the Department.

b. All products marketed in South Carolina as a soil amendment or fertilizer shall be registered by the product manufacturer with the Clemson University Department of Plant Industry or as otherwise required by law.

I. Additional Requirements for Permitted Facilities.

1. The Department may impose more stringent requirements than those outlined herein when additional measures are necessary, on a case-by-case basis, to protect public health and the environment from any potentially adverse effects. These requirements include, but are not limited to:

a. Analysis of individual feedstocks to identify any characteristics that may require special management or permit conditions;

b. Feedstock selection; the Department may determine on a case-by-case basis that a material shall not be used as feedstock due to its pollutant content or concentration, the material variability from the source, or its potential for creating adverse environmental effects;

c. Testing frequency and parameters;

d. Location, design, and operating criteria;

e. Monitoring and reporting, including but not limited to, monitoring of groundwater, surface water, soil, plant tissue, feedstocks and/or finished products;

f. Surface or pad requirements; or

g. Other requirements as necessary such as site assessments, groundwater sampling, and corrective action when environmental contamination from a permitted facility is suspected or confirmed.

2. The permittee may request that the Department remove from the permit the additional requirements described in this part if, after two (2) years, those processes are proven to the Department to be effective, as determined by the Department. In all cases, the Department shall retain the authority to determine the effectiveness of the process and/or feedstock mixture for the protection of human health, surface water standards, and groundwater standards.

J. Financial Assurance.

1. The requirements of this section apply to all permitted facilities except those owned and operated by a local government, by a region comprised of local governments, or by state or federal government entities whose debts and liabilities are the debts and liabilities of the state or the U.S.

2. Prior to receiving a permit, applicants shall fund a financial assurance mechanism as described in R.61-107.19, SWM: Solid Waste Landfills and Structural Fill Part I.E, and approved by the Department to ensure the satisfactory closure of the facility as required by this regulation.

3. The permittee shall calculate and declare in the permit application the maximum amount in cubic yards of feedstocks, in-process material, and waste material that could be stored at the facility. A final closure cost estimate is required to provide funding for the third party costs to properly dispose of the maximum amount of material that the facility can store at any given time and perform any corrective action for soils and groundwater that the Department may require. The cost estimate shall account for tipping fees, material hauling costs, grading and seeding the site, labor, and the cost for soliciting third party bids to complete closure and restore the site to conditions acceptable to the Department.

a. The maximum capacity of a site shall be calculated in cubic yards assuming compliance with all buffers and spacing requirements. The Department shall use an average cost of disposal per ton of material in Class II landfills, as reported in the most recent Solid Waste Management Annual Report, when calculating the amount of financial assurance necessary for a site.

b. During the active life of the facility, the permittee shall annually adjust the closure cost estimate when the disposal cost estimate increases substantially based on information published in the Solid Waste Management Annual Report.

c. The permittee shall increase the closure cost estimate and the amount of financial assurance provided if changes to the closure plan disposal costs, site conditions, or other factors increase the maximum cost of closure at any time during the site's remaining active life.

d. The permittee shall increase the closure cost estimate and the amount of financial assurance provided if a release to the environment occurs to include cost of groundwater monitoring, assessment, and corrective action if the Department determines that these measures are necessary at any time during the active life of the facility. Financial assurance shall be maintained and adjusted annually until the Department agrees that environmental conditions meet applicable standards.

e. At any time during the remaining life of the facility, the permittee may reduce the closure cost estimate and the amount of financial assurance provided for proper closure if the cost estimate exceeds the maximum cost of closure. The permittee shall submit justification for the reduction of the closure cost estimate and the amount of financial assurance to the Department for review and approval.

4. The permittee shall provide continuous coverage for closure until released from financial assurance requirements.

5. The Department may take possession of a financial assurance fund for failure to complete closure in accordance with Part III.K or failure to renew or provide an alternate acceptable financial assurance mechanism.

#### K. Closure.

All facilities shall conduct final closure in accordance with the operational plan submitted to the Department and with the following requirements:

1. Operators of permitted facilities shall provide to the Department written notice of intent to close and their proposed closure date;

2. Upon closing, permitted facilities shall immediately post closure signs at the facility;

3. Unless otherwise approved by the Department, within ninety (90) calendar days after closing, operators shall:

a. Remove all feedstocks, finished product, and wastes, except that mulch or Class A compost may be spread on the site to a maximum thickness of four inches if tilled into the soil prior to site stabilization;

b. As appropriate, grade land to promote positive drainage and stabilize the site to prevent erosion;

c. Appropriately manage all water collected in containment structures or ponds; and

d. Submit an annual report for the portion of the year during which the facility was operational, using the annual report form provided by the Department.

4. Permitted facilities with confirmed contamination shall amend its closure plan to include post-closure corrective action requirements for approval by the Department when a facility's remediation activities continue beyond a facility's closure.

5. Permitted facilities shall request that the Department inspect and approve closure. Upon Department approval of proper closure, the permittee shall be released from financial assurance requirements.

L. Permit Suspension or Revocation.

1. Whenever the Department finds that material or substantial violations demonstrate a disregard for, or inability to comply with, applicable laws or requirements, and these violations would make the continuation of the permit not in the best interest of human health and safety or the environment, the Department may, after a hearing, amend or revoke the permit as appropriate and necessary.

a. The Department shall give notice by certified mail to the permittee of facts or conduct that warrant the intended action, and

b. The permittee shall be given an opportunity to show compliance with all lawful requirements for the retention of the permit.

2. If the Department finds that public health, safety, or welfare imperatively requires emergency action, suspension of a permit may be ordered pending proceedings for revocation or other action.

3. If a suspension is issued to a permittee, it shall be issued per an order from the Department, which will direct a facility to cease operating or to cease accepting all types of feedstocks.

a. The suspension order will also include instructions for how the permitted facility can obtain compliance and a deadline by which the facility shall become compliant. Cited violations that may result in a suspension order include, but are not limited to, the following examples:

(1) A Department determination that a facility has exceeded its permitted capacity;

(2) A Department determination that a facility has not submitted to the Department the required amount of financial assurance, or the financial assurance that was submitted is no longer valid, has been cancelled, and not replaced for the facility site;

(3) A Department determination that a facility was issued a written directive or order with a deadline to become compliant but failed to do so by the communicated deadline;

(4) A Department determination that a materially false statement has been made by the facility in the application for a permit; or

(5) A Department determination that the facility has falsified or altered records that are required by this regulation.

b. The suspension shall last until the Department has determined that the facility is in compliance with its permit, applicable statutes or regulations, and/or a prior order, unless the Department designates a time that the facility's suspension will be rescinded.

c. The Department may decline to lift the permit suspension if a facility is cited for any additional violations during the initial suspension period. If a facility is cited for additional violations during the initial suspension period, the Department may only rescind the suspension after the facility achieves compliance with all violations cited by the Department.

d. All rescissions of a suspension shall be communicated to the facility by the Department in writing.

4. If, after a hearing, the Department determines that permit revocation is warranted, an administrative order revoking the permit will be issued.

Part IV. Permit Application.

A. Permit Application Process. The applicant shall submit a permit application to the Department. The permit application shall include one hard copy and one electronic copy of the following:

1. A completed and signed application form provided by the Department;

2. Tax map number for the site;

3. Proof of ownership or control of the property;

4. For Type Two or Type Three facilities, a signed statement, on a Department-provided form, from a South Carolina licensed professional engineer, certifying that the site design is compliant with the requirements of this regulation;

5. A vicinity map that shows the location of the facility and the area that is within one mile of the property boundary;

6. A site plan on a scale of not greater than 100 feet per inch that shall, at a minimum, identify the following:

a. The facility perimeter, the operational area, and all storage areas with measurements in feet;

b. Compliance with required buffers as outlined in this regulation;

c. Property lines, access roads, gates, fences, natural barriers, or other Department-approved means of preventing unauthorized access and dumping;

d. A topographical survey of the site depicting two-foot contours at a minimum, and six-inch contours for sites evaluated for consistency with the South Carolina Coastal Zone Management Plan;

e. A description of any Best Management Practices (BMPs) used for the management of storm water;

f. The location of, and distance to, any Waters of the State on site of the facility or within the buffer areas described in Part III.C;

7. An operational plan that shall contain all items as required under this regulation;

8. Any request for a variance as allowed by this regulation; and

9. A final closure cost estimate pursuant to this regulation.

B. Notice.

1. Within fifteen (15) days of submitting an application to the Department, an applicant for a prospective Type Two and/or Type Three facility shall give notice of the proposed activity. Notice shall be sent, via certified mail that a permit to operate has been applied for, to the county administrator, the county planning office, and all owners of real property as they appear on the county tax maps, as contiguous landowners of the proposed permit area, including properties that are across a road or any other right-of-way that may separate the parcels. This notice shall contain:

a. The name and address of the applicant;

b. The type of facility and what it will produce, for example, mulch, compost;

c. A detailed description of the location of the facility, using road numbers, street names, and landmarks, as appropriate;

d. A description of the feedstocks the facility will utilize;

e. Department locations (Central Office and appropriate Regional Office) where a copy of the permit application will be available for review during normal working hours; and

f. The Department address and contact name for submittal of comments and inquiries.

2. The applicant shall provide evidence of noticing as required in this regulation to the Department.

3. A comment period of not less than thirty (30) calendar days from the date of Noticing will be provided before issuance of a Department Decision.

4. Notice of the Department Decision regarding the permit application will be sent to the applicant, affected persons or interested persons who have asked to be notified, all persons who commented in writing to the Department, and the facility's host county. The use of certified mail to send Notice of the Department's Decision shall be at the discretion of the Department unless specifically requested in writing by an interested person.

C. Application Review and Permit Decision.

1. If an applicant submits an incomplete application, the Department shall notify the applicant in writing. If the requested information is not provided within one hundred eighty (180) calendar days of receipt of the notification, the application may be considered withdrawn. The Department will notify the applicant in writing when an application is considered withdrawn.

2. The Department shall deny a permit for a facility that it determines does not meet the requirements of this regulation.

3. The Department may include additional conditions in a permit when the Department determines that the operation requires safeguards to protect human health and safety or the environment.

D. Permit Modifications.

Permit modifications must be requested in writing and may not be implemented without prior written consent from the Department. The Department may require Noticing as described in this regulation for modifications that impact the allowable feedstock categories, that impact buffers, or that the Department determines may otherwise impact adjoining properties.

E. Transfer of Ownership.

1. The Department may, upon written request, transfer a permit, as appropriate, to a new permittee where no other change in the permit is necessary.

2. The proposed new owner of a permitted facility shall, prior to the scheduled change in ownership, submit to the Department:

a. A completed and signed application form provided by the Department;

b. A written agreement signed by both parties indicating the intent to change ownership or operating responsibility of the facility;

c. A disclosure statement in accordance with S.C. Code Section 44-96-300, except that local government and regions comprised of local governments are exempt from this requirement; and

d. Documentation of financial assurance as required.

3. The Department may approve transfer of the permit to the new owner provided:

a. The facility is in compliance with all permit requirements and with this regulation;

b. The new owner has agreed in writing to assume full responsibility in accordance with this regulation, the facility permit, and the approved operational plan; and

c. The new owner has funded an adequate financial assurance mechanism in accordance with the requirements of this regulation.

4. The previous owner shall maintain the existing financial assurance mechanism until the new owner can demonstrate financial responsibility in accordance with this regulation.

5. The new owner shall submit legal documentation of the transfer of ownership of the facility within fifteen (15) days of the actual transfer.

Part V. General Permits.

A. General Permit Issuance. The Department may issue one or more general permits for facilities described as Type One and Type Two facilities.

1. A general permit shall, at a minimum, outline the following:

a. Noticing requirements, including Intent to Operate and public Noticing;

b. Location, siting, and design criteria;

c. Operating, monitoring, and reporting criteria;

d. Financial assurance requirements; and

e. Closure requirements.

2. A general permit pursuant to this Section may be issued, modified, or terminated in accordance with applicable requirements, terms, and conditions of this regulation.

3. The Department shall publish a notice of any general permit issued, modified, or terminated.

B. Application for Coverage under a General Permit.

1. An operator seeking coverage under a General Permit shall request approval from the Department with a completed Notice of Intent form provided by the Department.

2. A Notice of Intent shall include signatures of the permit applicant and of the landowner, a signed certification that operations will be conducted in accordance with the General Permit, and evidence that the applicant has secured a financial assurance mechanism in accordance with the requirements of this regulation.

3. The applicant shall also provide a copy of the Notice of Intent to the appropriate local government.

4. A facility may begin operating under a General Permit after a written approval from the Department has been received by the facility operator. Written approval shall not be issued less than thirty (30) days of the date of submission of the Notice of Intent.

C. Corrective Measures and General Permit Revocation.

1. Upon a determination by the Department and written notification that the facility operating under a general permit poses an actual or potential threat to human health or the environment, the Department may require the permittee to implement corrective measures as appropriate.

2. Approval to operate under a General Permit may be revoked for failure to comply with the conditions of the General Permit or this regulation.

a. Whenever the Department finds that material or substantial violations demonstrate a disregard for, or inability to comply with a general permit, and that these violations would make continuation of the approval to operate under a general permit not in the best interest of human health and safety or the environment, the Department may, after a hearing, revoke the approval to operate as appropriate and necessary.

b. For the purposes of this regulation, "hearing" means a conference between the Department and a permittee, during which the permittee is given opportunity to respond to a written notice of alleged violation, and may be accompanied by legal and/or technical counsel, at the conference.

c. If, after a hearing, the Department determines that approval to operate under authority of a general permit should be revoked, an administrative order revoking the approval will be issued.

61-107.4 Appendix: Feedstock Categories

A. Feedstock Categories.

This Appendix defines categories of common organic feedstocks for composting. The feedstock characteristics of Carbon-to-Nitrogen ratio, moisture, pathogen content, source variability, non-compostable contaminants, trace metals, and toxic metals content are considered when assessing appropriate facility design features and quality assurance monitoring necessary to produce beneficial products in an environmentally protective process. The Department will use these characteristics to assign the category and level of risk posed for any feedstock not listed here. Any mixture of feedstocks for composting shall assume the level of risk for the most problematic feedstock in the mixture.

1. Feedstock Category One.

Category One feedstocks have a high Carbon-to-Nitrogen ratio and pose limited risk of contamination from pathogens, trace metals, hazardous constituents, or physical contaminants that are not compostable. These feedstocks also have low moisture content. Grass clippings have a lower Carbon-to-Nitrogen ratio than other Category One feedstocks, but are included in this category because they are commonly collected with leaf and limb debris. This category includes only:

a. Yard trimmings, leaves, and grass clippings;

b. Land-clearing debris;

c. Wood, woodchips, and sawdust, from untreated and unpainted wood that has not been in direct contact with hazardous constituents;

d. Agricultural crop field residuals;

e. Compostable bags commonly used for collecting and transporting yard trimmings, leaves, and grass clippings; and

f. Similar materials as specifically approved in writing by the Department.

2. Feedstock Category Two.

Category Two feedstocks have a lower Carbon-to-Nitrogen ratio than Category One feedstocks, have a high moisture content, and are more likely to contain pathogens, trace metals, or physical contaminants that are not compostable. This category includes only the following source-separated materials:

a. Non-meat food processing wastes, including marine shells and dairy processing wastes;

b. Produce and non-meat food preparation residuals generated by wholesale or retail sales establishments or food service establishments;

c. Plate scrapings including cooked meats generated by food service establishments;

d. Manufactured compostable products and waste paper products that are otherwise unsuitable for recycling;

e. Animal manures and materials incidental to its collection as defined in this regulation;

f. Residual organics from anaerobic digesters or other waste-to-energy conversion processes utilizing only Category One or Category Two feedstocks; and

g. Industrial wastes/sludges that meet the waste characterization requirements found in R.61-107.19, Part IV, Section A for disposal into a Class II Landfill; and

h. Similar materials as specifically approved in writing by the Department.

3. Feedstock Category Three.

This category includes feedstocks that have the most risk from trace metals, source variability, physical contaminants, pathogens, and other properties that may be detrimental to plants, soils, or living organisms in high concentrations. These feedstocks require more intensive analysis and monitoring prior to being incorporated into the active composting area and require approval for composting by the Department on a case-by-case basis. This category includes:

a. Sewage sludge;

b. Industrial sludges, except as specifically identified in Section A.2 of this Appendix;

c. Drinking water treatment sludge;

d. Fats, oils, and greases (FOG);

e. Animal-derived residuals except as specifically identified in Section A.2 of this Appendix;

f. Residual organics from anaerobic digesters or other waste-to-energy conversion processes utilizing Category Three feedstocks;

g. Other industrially produced non-hazardous organic residuals not previously categorized in this Appendix; and

h. Other organic materials not prohibited below, as approved by the Department.

B. Prohibited Feedstocks. Composting of materials containing the following items is not allowable under this regulation:

1. Municipal solid waste, except those activities under which after a two-year period of operation in compliance with a permit issued under authority of R.61-107.10, SWM: Research, Development, and Demonstration Permit Criteria, have been determined by the Department to have adequately achieved their objectives and satisfactorily protected public health, safety, and the environment;

2. Friable and non-friable asbestos as defined by R.61-86.1, Standards Of Performance For Asbestos Projects;

3. Biomedical or infectious wastes as defined by R.61-105, Infectious Waste Management;

4. Hazardous waste as defined by Resource Conservation and Recovery Act (RCRA), Public Law 94-580, and R.61-79, Hazardous Waste Management Regulations, promulgated pursuant to the South Carolina Hazardous Waste Management Act (SCHWMA), as amended, S.C. Code Ann. Sections 44-56-10 et seq.;

5. Materials for compost or mulch production that contain or are contaminated with Polychlorinated biphenyl (PCB) where concentrations are greater than quantifiable detection limits;

6. Source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended;

7. Radioactive material managed pursuant to R.61-63, Radiological Materials (Title A); and

8. Materials resulting from coal combustion, including but not limited to, fly ash, bottom ash, boiler slag, and flue gas desulfurization materials.

# **Fiscal Impact Statement:**

The amendments have no substantial fiscal or economic impact on the state or its political subdivisions. There are no anticipated additional costs 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: R.61-107.4, Solid Waste Management: Compost and Mulch Production from Land-clearing Debris, Yard Trimmings and Organic Residuals.

Purpose: The Department amends R.61-107.4, Solid Waste Management: Compost and Mulch Production from Land-clearing Debris, Yard Trimmings and Organic Residuals, to improve environmental protection, to clarify the applicability of regulatory requirements, and to ensure adequate financial resources are available to remove waste and properly close facilities. Changes correct typographical errors, improve the regulation's organizational structure, and provide corrections for consistency, clarification, reference, punctuation, codification, formatting, and spelling, to improve the overall text of the regulation.

Legal Authority: 1976 Code Section 44-96-10 et seq., as amended.

Plan for Implementation: The DHEC Regulation Development Update (accessible at <u>http://www.scdhec.gov/Agency/RegulationsAndUpdates/RegulationDevelopmentUpdate/</u>) 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 amendments and any associated information.

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

The Department amends R.61-107.4 to clarify the applicability of the regulation, to update definitions, to improve environmental protection by adding fire prevention and material management requirements, and to ensure adequate financial assurance is available to properly close facilities.

The Department also amends to correct typographical errors, citation errors, and other errors and omissions that have come to the Department's attention. These include correcting regulation references, updating definitions, adding and/or omitting language and punctuation, clarification, reorganizing sections for consistency, and other such changes.

The amendments seek to simplify, clarify, and correct elements of the Department's solid waste composting regulations while supporting the Department's goal of promoting and protecting the health of the public and the environment in an efficient and effective manner.

#### DETERMINATION OF COSTS AND BENEFITS:

The Department does not anticipate any significant increase in costs to the state or its political subdivisions resulting from these proposed revisions. Staff time associated with a new requirement for a letter of concurrence for conditionally exempt facilities can be absorbed at current staffing levels.

Changes to the method for calculating closure costs will benefit both the Department and the regulated community by clarifying the amount of financial assurance needed by regulated facilities. This change may result in increased cost estimates for some facilities and decreased cost estimates for others.

The requirement for visual markers will also help improve the accuracy of cost estimates. Improving the accuracy of cost estimates may provide a cost savings to the state by helping ensure adequate financial assurance is secured, thus decreasing the likelihood that public funding would be needed to remove waste and properly close a facility, should it cease operating.

Political subdivisions that operate compost facilities may see a small cost related to implementing the requirements for visual markers and for measuring mulch pile temperatures; however there may also be a benefit of a decreased likelihood of compost facility fires, reducing the need for emergency response by the state and/or local governments.

# UNCERTAINTIES OF ESTIMATES:

There are no uncertainties of estimates relative to the costs to the state or its political subdivisions.

EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH:

These amendments seek to provide continued state-focused protection of the environment and public health.

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

The state's authority to adequately oversee solid waste composting and wood-grinding facilities would be compromised if these amendments are not adopted in South Carolina. Without the changes, the state would lack the authority necessary to ensure that facility operators are being adequately protective of the environment, and the state would be unable to ensure that financial resources are available to properly close a facility.

## **Statement of Rationale:**

Here below is the Statement of Rationale pursuant to S.C. Code Section 1-23-110(h):

The Department amends R.61-107.4, Solid Waste Management: Compost and Mulch Production from Land-clearing Debris, Yard Trimmings and Organic Residuals, to clarify changes made to the regulation in 2014, to improve environmental protection, and to correct typographical errors, citation errors, and other errors and omissions. These amendments expand and clarify definitions, expand and clarify permit exemptions, expand and clarify operational criteria, improve environmental safety, and help ensure adequate financial assurance will be available to the Department to properly close a facility should it cease operating. The changes improve the regulation's organizational structure, and provide corrections for consistency, clarification, reference, punctuation, codification, formatting, and spelling to improve the overall text of the regulation.

# Document No. 4997 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.

61-43. Standards for the Permitting of Agricultural Animal Facilities.

# Synopsis:

The Department of Health and Environmental Control ("Department") amends R.61-43, Standards for the Permitting of Agricultural Animal Facilities, to incorporate Act 139 of 2018, which amended S.C. Code Sections 44-1-60 and 46-45-80 and added Section 44-1-65. S.C. Code Section 44-1-65 establishes specific requirements for review and appeal of decisions by the Department regarding the permitting, licensing, certification, or other

approval of poultry and other animal facilities, except for swine facilities. Section 44-1-60 sets procedures for reviewing permits for poultry and other animal facilities, except swine facilities, relating to appeals from Department decisions giving rise to contested cases. Section 46-45-80 includes provisions regarding setback distances for poultry and other animal facilities, except swine facilities, so as to prohibit requiring additional setback distances if established distances are achieved, allow waiver of the established setback distances in certain circumstances, and other purposes.

The Department also amends the regulation to correct typographical errors, citation errors, and other errors and omissions that have come to the Department's attention. These include correcting form references and regulation references, updating definitions, adding and/or omitting language and punctuation, clarification, reorganizing sections for consistency, and other such changes.

The Department published a Notice of Drafting in the June 26, 2020, South Carolina State Register.

## **Instructions:**

Replace R.61-43, Standards for the Permitting of Agricultural Animal Facilities, in its entirety with this amendment.

# Text:

61-43. Standards for the Permitting of Agricultural Animal Facilities.

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

# Table of Contents

## Part 50 General Definitions.

- Part 100 Swine Facilities.
  - 100.10. Purpose, Applicability, Inactive Facilities, and Facilities Permitted Prior to the Effective Date of the Regulation.
  - 100.20. Permits and Compliance Period.
  - 100.30. Exclusions.
  - 100.40. Relationship to Other Regulations.
  - 100.50. Permit Application Requirements (Animal Facility Management Plan Submission Requirements).
  - 100.60. Public Notice Requirements.
  - 100.70. Permit Decision Making Process.
  - 100.80. Swine Facility, Lagoon, Treatment System, and Manure Storage Pond Siting Requirements.
  - 100.90. General Requirements for Swine Manure Lagoons, Treatment Systems, and Swine Manure Storage Ponds.
  - 100.100. Manure Utilization Area Requirements.
  - 100.110. Spray Application System Requirements.
  - 100.120. Frequency of Monitoring for Swine Manure.
  - 100.130. Dead Swine Disposal Requirements.
  - 100.140. Other Requirements.
  - 100.150. Odor Control Requirements.
  - 100.160. Vector Control Requirements.
  - 100.170. Record Keeping.
  - 100.180. Reporting.
  - 100.190. Training Requirements.
  - 100.200. Violations.
- Part 200 Animal Facilities (other than swine).

- 200.10. Purpose, Applicability, Inactive Facilities, and Facilities Permitted Prior to the Effective Date of the Regulation.
- 200.20. Permits and Compliance Period.
- 200.30. Exclusions.
- 200.40. Relationship to Other Regulations.
- 200.50. Permit Application Requirements (Animal Facility Management Plan Submission Requirements).
- 200.60. Public Notice Requirements.
- 200.70. Permit Decision Making Process.
- 200.80. Animal Facility, Lagoon, Treatment System, and Manure Storage Pond Siting Requirements.
- 200.90. General Requirements for Animal Manure Lagoons, Treatment Systems, and Animal Manure Storage Ponds.
- 200.100. Manure Utilization Area Requirements.
- 200.110. Spray Application System Requirements.
- 200.120. Frequency of Monitoring for Animal Manure.
- 200.130. Dead Animal Disposal Requirements.
- 200.140. Other Requirements.
- 200.150. Odor Control Requirements.
- 200.160. Vector Control Requirements.
- 200.170. Record Keeping.
- 200.180. Reporting.
- 200.190. Training Requirements.
- 200.200. Violations.
- Part 300 Innovative and Alternative Technologies.
- 300.10. General.
- 300.20. Submittal Requirements.
- 300.30. Requirements in Lieu of Requirements Under Part 100 and Part 200 of This Regulation.
- 300.40. Innovative and Alternative Treatment Technologies.
- 300.50. Exceptional Quality Compost.
- 300.60. Public Notice Requirements.
- Part 400 Manure Broker/Land Applier Operations.
  - 400.10. Purpose and Applicability.
  - 400.20. Permits and Compliance Period.
  - 400.30. Relationship to Other Regulations.
  - 400.40. Permit Application Procedures (Broker/Land Applier Management Plan Submission Requirements).
  - 400.50. Permit Decision Making Process.
  - 400.60. Manure Utilization Area Requirements.
  - 400.70. Other Requirements.
  - 400.80. Odor Control Requirements.
  - 400.90. Vector Control Requirements.
  - 400.100. Record Keeping.
  - 400.110. Reporting.
  - 400.120. Training Requirements.
  - 400.130. Violations.
- Part 500 Integrator Registration Program.
  - 500.10. General.
  - 500.20. Submittal Requirements.
  - 500.30. Certificate of Integrator Registration.
  - 500.40. Reporting.
  - 500.50. Other Requirements.
  - 500.60. Violations.
- Part 600 Severability.

# PART 50 GENERAL DEFINITIONS

For purposes of this regulation, the following definitions apply:

"Active Animal Facility" means a facility with a minimum of 30,000 pounds normal production animal live weight and in production.

"Affected Person" means a property owner with standing within a one (1)-mile radius of the proposed building footprint or permitted poultry facility or other animal facility, except a swine facility, who is challenging on his own behalf the permit, license, certificate, or other approval for the failure to comply with the specific grounds set forth in the applicable Department regulations governing the permitting of poultry facilities and other animal facilities, other than swine facilities.

"Agricultural animal" means an animal confined in an agricultural facility.

"Agricultural facility" means a lot, building, or structure, which is used for the commercial production of animals in an animal facility.

"Agronomic rate" means the animal manure and other animal by-products' application rate designed: (1) to provide the amount of nitrogen needed by the food crop, feed crop, fiber crop, cover crop, or vegetation grown on the land; (2) to minimize the amount of nitrogen in the animal manure that passes below the root zone of the crop or vegetation grown on the land to groundwater; (3) to provide the amount of other organic and inorganic plant nutrients which promote crop or vegetative growth, such as calcium-carbonate equivalency; and (4) to provide the amount of phosphorus needed by the crop or vegetation grown on the land without causing an excessive buildup of phosphorus in the soil.

"Animal" means any domesticated animal.

"Animal by-product" means a secondary or incidental product of animal production that may include bedding, spilled feed, water or soil, milking center washwater, contaminated milk, hair, feathers, dead animals or other debris. This definition may also refer to dead animal or animal manure compost.

"Animal facility" means an agricultural facility where animals are confined and fed or maintained for a total of forty-five (45) calendar days or more in a twelve (12)-month period and crops, vegetative, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. Structures used for the storage of animal manure and other animal by-products from animals in the operation also are part of the animal facility. Two (2) or more animal facilities under common ownership or management are considered to be a single animal facility if they are adjacent.

"Animal Facility Management Plan" means a plan prepared by the United States Department of Agriculture's Natural Resources Conservation Service (USDA-NRCS) or a professional engineer detailing the management, handling, treatment, storage, or utilization of manure generated in an animal facility. This plan shall include facility management details and a detailed map of each manure utilization area showing all buffer zones and setbacks, a description of the land use, the crops grown on the site, the timing for application of manure to the land and a land use agreement if the site is not owned by the permittee.

"Animal Feeding Operation" means a lot or facility where animals have been, are, or will be stabled or confined and fed for a total of forty-five (45) calendar days or more in any twelve (12)-month period.

"Animal manure" means animal excreta or other commonly associated organic animal manures including, but not limited to, bedding, litter, feed losses, or water mixed with the manure.

"Annual animal manure application rate" means the maximum amount of animal manure that can be agronomically applied to a unit area of land during any 365-day period.

"Annual constituent loading rate" means the maximum amount of a constituent that can be applied to a unit area of a manure utilization area during any 365-day period.

"Application rate" means the amount of manure applied at any one time.

"Approval to Operate (ATO)" means a letter from the Department granting approval to place the facility into operation.

"Average animal live weight" means the sum of the average exit weight of the animal from the facility and the average entry weight divided by two, as shown by the following formula:

Average animal live weight = (Average Exit Weight + Average Entry Weight)/2

"Broker" means a person who accepts or purchases animal manure or other animal by-products from agricultural facilities and transfers this product to a third party for land application.

"Certification of Construction" means a document, certified by the consultant, PE, or NRCS staff, that a certain construction project has been completed in accordance with the terms, conditions, and specifications contained in the permit of applicable regulations.

"Closed facility" means an animal facility that has ceased operations (no confined animals at the facility) and is no longer in production, and all lagoons and waste storage ponds have been properly closed out and cannot be placed back into operation without a new permit.

"Commercial Facility" means an animal facility that produces animals or animal by-products for commercial sale, boards animals, rents animals, or provides a service utilizing the animals for a fee.

"Compost" means an organic soil conditioner that has been stabilized to a humus-like product, is free of viable human and plant pathogens and plant seeds, does not attract insects or vectors, can be handled and stored without nuisance, and is beneficial to the growth of plants.

"Composting" means the biological decomposition and stabilization of organic substrates, under conditions that allow development of thermophilic temperatures as a result of biologically produced heat, to produce a final product that is stable, free of pathogens and plant seeds, and can be beneficially applied to land. Composting requires special conditions of moisture and aeration to produce thermophilic temperatures.

"Concentrated Animal Feeding Operation (CAFO)" means as defined by the Environmental Protection Agency (EPA).

"Confined Animal Manure Management (CAMM) Certification" means an operator, manager, or owner of an animal facility or manure utilization area, has received certification by completing a class and passing an exam that is provided by Clemson University, Clemson Extension, the South Carolina Department of Health and Environmental Control, and the USDA Natural Resource Conservation Service.

"Constituent limit" means a numerical value that describes the amount of a constituent allowed per unit amount of animal manure (e. g., milligrams per kilogram of total solids); the amount of a constituent that can be applied to a unit area of land (e. g., pounds per acre); or the volume of a material that can be applied to a unit area of land (e.g., gallons per acre). "Cover crop" means a vegetative crop, including, but not limited to, oats, wheat, or barley; grasses; or other crop grown for agronomic use or to maintain topsoil and prevent soil erosion.

"Critical Habitat" means the term used to define those areas of habitat containing physical and biological features that are essential for an endangered or threatened species to recover and that require special management or protection.

"Cumulative constituent loading rate" means the maximum amount of a constituent that can be applied to an area of land.

"Cumulative impacts" means an increase or enlarging of impact to the environment or community by the successive addition or accumulation of animal facilities in an area.

"CWA" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Pub. L. 92-500, as amended by Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483, and Pub. L. 97-117, 33 U.S.C. 1251 et seq. Specific references to sections within the CWA shall be according to Pub. L. 92-500 notation.

"Deemed Permitted Facility" means an agricultural animal facility that held a valid permit from the Department for their swine facility prior to July 1, 1996, or for their animal facility prior to June 26, 1998.

"Department" means the South Carolina Department of Health and Environmental Control.

"Discharge" means any release, emission or dismissal of sewage, industrial waste, agriculture waste, or other waste into any Waters of the State, whether treated or not.

"Downwind Receptors" means virtual three-dimensional coordinates placed off site where the concentrations of emissions would be measured for comparison to air quality standards.

"Dry manure" means manure, bedding, litter, feed losses, or composted animal material (animal manure or dead animals) that is not in a liquid form. Dry animal manure can normally be easily handled with a shovel or other similar equipment and it can be placed in piles without liquid manure or leachate drainage occurring.

"Dry weight basis" means calculated on the basis of having been dried at 105 degrees Celsius until reaching a constant mass (i.e., essentially 100 percent solids content).

"EPA" means the United States Environmental Protection Agency.

"Ephemeral stream" means a stream that flows only in direct response to rainfall or snowmelt in which discrete periods of flow persist no more than twenty-nine (29) consecutive days per event.

"Evergreen Buffer" means plants such as trees, shrubs, or grasses that have foliage that remain green and functional through at least more than one growing season and are not deciduous.

"Excessive Mortality" means total animal mortality in any one twenty-four (24)-hour period that exceeds the design capacity of the normal method of dead animal disposal. This may include utilizing the barns to compost the excessive mortality.

"Expansion" means an increase in the permitted number of animals or normal production animal live weight that will result in physical construction at the facility. An animal manure treatment lagoon that is converted to an animal manure storage pond is considered an expansion of the facility. For facilities permitted prior to 1998, where the treatment/storage design function was not clearly specified, the Department shall review the facility's operation records and compliance history to determine the current function and condition of the manure handling

structures. If the existing structure can handle additional animals, without physical alteration, significant changes in the original function of the structure, or any significant increase in odor, the Department may allow this increase in animals without classifying the change as an expansion.

"Feedlot" means an animal feeding operation (AFO) which is used in intensive animal farming for finishing livestock.

"FEMA" means the Federal Emergency Management Agency.

"Feed crops" means crops produced primarily for consumption by animals. These include, but are not limited to corn, grains, and grasses.

"Fiber crops" means crops including, but not limited to, flax and cotton.

"Floodplain" means land adjacent to water bodies that periodically becomes temporarily inundated with water during or after rainfall events. The land inundated from a flood whose peak magnitude would be experienced on an average of once every 100 years is the 100-year floodplain. The 100-year flood has a one percent (1%) probability of occurring in one given year.

"Food crops" means crops produced primarily for human consumption. These include, but are not limited to, fruits, vegetables, and grains.

"Footprint" means the area of ground covered by an agricultural facility (i.e., the part of the property where the animal facility is constructed).

"Freeboard" means additional capacity in a storage/treatment structure designed to provide a safety margin of storage in the event that a rainfall occurs when the structure is full. The design storm is normally a twenty-five (25) year storm of twenty-four (24) hours duration.

"Groundwater" means water below the land surface in the saturated zone.

"Inactive Facility" means an animal facility that is not considered in production, but the facility and/or lagoon(s)/waste pond(s) have not been properly closed out. The owner/operator/permittee will continue to pay the annual fees throughout the inactive period of the permit, will be required to maintain the facility and/or lagoon(s)/waste storage pond(s), and will be inspected by the Department on a routine basis.

"Integrator" or "Integrating company" means any entity or person(s) who contracts with agricultural animal producers to grow animals to be supplied to this person(s) at the time of removal from the animal growing houses or facilities and exercises substantial operational control over an animal facility, along with the owner/operator of the facility. Substantial operational control includes, but is not limited to, the following: directs the activities of persons working at the animal facility either through a contract, direct supervision, or on-site participation; owns the animals; or specifies how the animals are grown, fed, or medicated. This definition does not include independent producers that contract with other independent producers to accomplish a portion of the animal growing process under contract.

"Intermittent stream" means a stream that generally has a defined natural watercourse, which does not flow year-round but flows beyond periods of rainfall or snowmelt.

"Lagoon" means an impoundment used in conjunction with an animal facility, the primary function of which is to store or stabilize, or both, manure, organic wastes, wastewater, and contaminated runoff.

"Land application" means the spraying or spreading of manure or other animal by-products onto the land surface; the injection of manure below the land surface into the root zone; or the incorporation of manure into the soil so that the manure can either condition the soil or fertilize crops or vegetation grown in the soil.

"Land Applier" means any person who accepts or purchases manure or other animal by-products from agricultural facilities for use as a fertilizer or soil enhancer on land either owned, leased, or managed by the land applier.

"Large Animal Facility" means an animal facility (excluding swine facilities) that has a capacity for more than 500,000 pounds and less than 1,000,000 pounds of normal production animal live weight at any one time.

"Large Swine Facility" means a swine facility with a capacity for greater than 500,000 pounds and less than 1,000,000 pounds of normal production animal live weight at any one time.

"Liquid manure" means manure that by its nature, or after being diluted with water, can be pumped easily and is removed, either intermittently or continuously, from an animal lagoon, manure storage pond, or treated effluent from other types of animal manure treatment systems.

"Manure" means the fecal and urinary excretion of livestock and poultry. This material may also contain bedding, spilled feed, water, or soil. It may also include wastes not associated with livestock excreta, such as milking center washwater, contaminated milk, hair, feathers, or other debris. Manure may be described in different categories as related to solids and moisture content, such as dry manure and liquid manure.

"Manure storage pond" means a structure used for impounding or storing manure, wastewater, and contaminated runoff as a component of an agricultural manure management system. Manure is stored for a specified period of time, one (1) year or not less than ninety (90) calendar days, and then the pond is emptied. This definition does not include tanks or other similar vessels.

"Manure utilization area" means land on which animal manure (including swine manure) is spread as a fertilizer and is synonymous with land application site or land application area

"Mass Burial Site" means an area of land approved by the Department designated to be a mass burial site for excessive mortality.

"NRCS" means the Natural Resources Conservation Service of the United States Department of Agriculture.

"NRCS-CPS" means the Natural Resources Conservation Service's Conservation Practice Standards as given in the USDA-NRCS, SC Handbook of Conservation Practices.

"Normal production animal live weight at any one time" means the maximum number of animals at the facility at any one time multiplied by the average animal live weight of those animals.

"Notice of Intent (NOI)" means a document provided by the Department used by an applicant to notify the surrounding property owners of the applicant's intent to construct a permitted animal facility.

"Nuisance" means a condition causing annoyance or danger to a limited number of persons or to the general public as determined by the Department.

"Operator" means the person(s) who manage(s) a permitted animal facility and may be CAMM certified.

"Outstanding Recreational or Ecological Resource Waters (ORW)" means waters which are of exceptional recreational, ecological importance, or of unusual value. Such waters may include, but are not limited to: waters in national or state parks or wildlife refuges; waters supporting threatened or endangered species; waters under

the National Wild and Scenic Rivers Act or South Carolina Scenic Rivers Act; waters known to be significant nursery areas for commercially important species or known to contain significant commercial or public shellfish resources; or waters used for or having significant value for scientific research and study.

"Owner" means the proprietor of any facility of activity subject to this regulation.

"Pasture" means land on which animals feed directly on feed crops including, but not limited to, legumes, grasses, grain stubble, or stover.

"Permit" means any license, certificate, registration, variance, or other approval issued by or required by the Department or any of its divisions, pursuant to any statute or regulation.

"Permit Extension" means a one (1)-year extension with justification that must be applied for in writing ten (10) calendar days prior to the permit expiration date.

"Permit Modification" means a minor or moderate change to a facility's permit that is considered, as determined by the Department, to not change the general operations of the permitted site but is necessary to continue the regulated operation of the facility. Permit Modifications are not required to be Public Noticed.

"Permittee" means any person authorized to conduct any activity or business pursuant to a valid permit issued by or filed with the Department.

"Permitting Decision" means any decision by the Department to issue, modify, deny, or withdraw the permit.

"Person" means any individual, public or private corporation, political subdivision, association, partnership, corporation, municipality, state or federal agency, industry, co-partnership, firm, trust, estate, any other legal entity whatsoever, or an agent or employee thereof.

"Plant Available Nitrogen (PAN)" means the quantity of nitrogen made available during the growing season after fertilizing materials are applied. A certain amount of the nitrogen is immobilized, and the remaining nitrogen is available to the plant.

"Potable water well" means any well designed and/or constructed to produce potable water for consumption by humans or animals.

"Producer" means a person who grows or confines animals; a person responsible for the manure produced at an animal facility; a person processing manure; and/or a person responsible for the land application of manure.

"Production" means a facility that meets the permit requirements based on 30,000 pounds of Normal Production Animal Live Weight.

"Professional Engineer" or "Engineer" means a person who, by reason of his or her special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design, acquired by professional education and practical experience, is qualified to practice engineering, all as attested by his or her legal registration as a professional engineer in South Carolina.

"Public Hearing" means a proceeding, properly noticed in accordance with applicable state and federal laws, during which comments are received and testimony is taken to establish a record of concern prior to an administrative action by the Department.

"Public Notice" means the notice of an application or of proposed agency action published in accordance with applicable statutes and regulations.

"Range land" means open land with indigenous vegetation.

"Ranged Animal Facility" means the size of the range area is sufficient to allow for the natural degradation or utilization of the manure with no adverse impact to the environment. Ranged facilities shall also maintain adequate vegetative buffers between the animal range and the adjacent property lines and/or Waters of the State to mitigate runoff from reaching adjacent property and/or Waters of the State.

"Replacement in Kind" means construction of the same size or less of animal growing barn(s), and the same number or less of animal live weight, at the same location as the barn(s) being replaced.

"Residence" means a permanent inhabited dwelling, any existing church, school, hospital, or any other structure which is routinely occupied by the same person or persons more than twelve (12) hours per day or by the same person or persons under the age of eighteen (18) for more than two (2) hours per day, except those owned by the applicant.

"Rolling Average" means the laboratory results from the most recent analysis averaged with the previous manure analysis for a particular form of manure. The rolling average analysis sequence should be restarted after any major modification or changes to the lagoon/waste storage pond.

"Routinely" means a regular course of procedure.

"Runoff" means rainwater or other liquid that drains overland on any part of a land surface and runs off of the land surface.

"Seasonal High Water Table" means the surface between the zone of saturation and the zone of aeration, where the pore water pressure is equal to atmospheric pressure, and which exhibits the shallowest average water depth in relation to the surface during the wettest season.

"Small Animal Facility" means an animal facility (other than swine) that has a capacity for 500,000 pounds of normal production animal live weight or less at any one time.

"Small Swine Facility" means a swine facility with a capacity for 500,000 pounds of normal production animal live weight or less at any one time.

"Source Water Protection Area" means an area either above and/or below ground that is the source of water for a public drinking water system via a surface water intake or a water supply well that is designated by the State for increased protection.

"South Carolina National Heritage Corridor" means a National Heritage Area, federally designated in 1996, spanning seventeen (17) counties and 320 miles across South Carolina, and committed to promoting and preserving the cultural, natural, and historic resources of South Carolina.

"State" means South Carolina.

"Surface Water Runoff" means the flow of water that occurs when excess stormwater, meltwater, or other sources flows over the Earth's surface.

"Swine" means a domesticated animal belonging to the porcine species.

"Swine by-product" means a secondary or incidental product of swine production that may include bedding, spilled feed, water or soil, hair, dead swine, or other debris. This definition may also refer to dead swine or swine manure compost.

"Swine facility" means an agricultural facility where swine are confined and fed or maintained for a total of forty-five (45) calendar days or more in a twelve (12)-month period and crops, vegetative, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. Structures used for the storage of swine manure from swine in the operation are also part of the swine facility. Two or more swine facilities under common ownership or management are considered a single swine facility if they are adjacent or utilize a common system for swine manure treatment and/or storage. For any new or expanding swine facility, the combined normal production of all swine facilities owned by the producer, and of all swine facilities owned by corporations having a common majority shareholder in common with the producer, within 25 miles of the new or expanding facility shall be used to determine the normal production of the new or expanding swine facility. For example, when a new facilities within 25 miles of the new or expanding swine facility is 400,000 pounds, the proposed swine facility's normal production is 1,100,000 (300,000 + 400,000 + 400,000) pounds.

"Swine manure" means swine excreta or other commonly associated organic animal manures including, but not limited to, bedding, litter, feed losses, or water mixed with the manure.

"Vector" means a carrier that is capable of transmitting a pathogen from one organism to another including, but not limited to, flies and other insects, rodents, birds, and vermin.

"Waiver" means a document recording the deferral of a right, claim, or privilege.

"Waste Storage Pond" means an earthen waste impoundment that temporarily stores organic wastes such as manure and wastewater.

"Wastewater" means any water that, during the confinement of animals or the handling, storage, or treatment of manure, dead animals, and litter, comes into contact with the animals, manure, litter, or spilled feed. Wastewater includes, but is not limited to, wash waters, contaminated milk, and storm water (except storm water runoff from land application areas where the application of manure has been properly applied) that comes into contact with manure.

"Watershed" means a drainage area contributing to a river, lake, or stream.

"Waters of the State" means lakes, bays, sounds, ponds, impounding reservoirs, springs, artesian wells, rivers, perennial and navigable streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial limits of the State, and all other bodies of water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially within or bordering the State or within its jurisdiction. This definition does not include ephemeral or intermittent streams. This definition includes wetlands as defined in this section.

"Wetlands" means lands that have a predominance of hydric soil, are inundated or saturated by water or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions, and, under normal circumstances, do support a prevalence of hydrophytic vegetation. Normal circumstances refer to the soil and hydrologic conditions that are normally present without regard to whether the vegetation has been removed. Wetlands shall be identified through the confirmation of the three wetlands criteria: hydric soil, hydrology, and hydrophytic vegetation. All three criteria shall be met for an area to be identified as wetlands. Wetlands generally include swamps, marshes, and bogs.

"X-Large Animal Facility" means an animal facility (excluding swine) with 1,000,000 pounds or more of normal production animal live weight at any one time.

"X-Large Swine Facility" means a swine facility with 1,000,000 pounds or more of normal production animal live weight at any one time.

# PART 100 SWINE FACILITIES

# 100.10. Purpose, Applicability, Inactive Facilities, and Facilities Permitted Prior to the Effective Date of the Regulation.

A. Purpose.

1. To establish standards for the growing or confining of swine, processing of swine manure and other swine by-products, and land application of swine manure and other swine by-products in such a manner as to protect the environment, and the health and welfare of citizens of the State from pollutants generated by this process.

2. To establish standards, which consist of general requirements, constituent limits, management practices, and operational standards, for the utilization of swine manure and other swine by-products generated at swine facilities. Standards included in this part are for swine manure and other swine by-products applied to the land.

3. To establish standards for the frequency of monitoring and record keeping requirements for producers who operate swine facilities.

4. To establish standards for the proper operation and maintenance of swine facilities.

5. To establish criteria for swine facilities' and manure utilization areas' location as they relate to protection of the environment and public health. The location of swine facilities and manure utilization areas as they relate to zoning in an area is not covered in this regulation. Local county or municipal governments may have zoning requirements and this regulation neither interferes with nor restricts such zoning requirements. Permit applicants should contact local municipal and county authorities to determine any local requirements that may be applicable.

B. Applicability.

1. This part applies to:

- a. All new swine facilities;
- b. All expansions of existing swine facilities;
- c. New manure utilization areas for existing swine facilities;
- d. All inactive facilities; and
- e. All facilities and lagoon closures.
- 2. This part applies to all swine manure and other swine by-products applied to the land.
- 3. This part applies to all land where swine manure and other swine by-products are applied.

C. Inactive Facilities.

1. If a swine facility is inactive for two (2) years or less, a producer may resume operations of the facility under the same conditions by which it was previously permitted by notifying the Department in writing that the facility is being operated again.

2. For swine facilities that have been inactive for more than two (2) years but less than five (5) years, the Department shall review the existing permit and modify its operating conditions as necessary prior to the facility being placed back into operation.

3. For swine facilities that have been inactive for more than five (5) years, the producer shall properly close out any lagoon, treatment system, or manure storage pond associated with the facility. The closeout shall be accomplished in accordance with R.61-82, Proper Closeout of Wastewater Treatment Facilities. The permittee shall submit a closeout plan that meets at a minimum NRCS-CPS within a time frame prescribed by the Department. Additional time may be granted by the Department to comply with the closeout requirement or to allow a producer to apply for a new permit under this regulation, as appropriate.

4. If a swine facility is inactive for more than five (5) years, the permit is considered expired and the producer shall apply for a new permit. All requirements under this regulation shall be met before the facility can resume operations.

5. During the closeout of the facilities and/or lagoons/waste storage ponds, annual fees are required to be paid until proper closeout is certified and approved.

D. Facilities Permitted Prior to the Effective Date of the Regulation.

1. All existing swine facilities with permits issued by the Department before July 1, 1996, do not need to apply for a permit as they are deemed permitted swine facilities unless they have been inactive for more than two (2) years or expand operations. These facilities shall meet the following sections of Part 100: Section 100.20 (Permits and Compliance Period); Section 100.90 items A, G, and N-T (General Requirements for Lagoons, Treatment Systems, and Manure Storage Ponds); Section 100.100 (Manure Utilization Area Requirements); Section 100.110.G.-J. (Spray Application System Requirements); Section 100.120 A, C, and D (Frequency of Monitoring for Swine Manure); Section 100.130 A, B, C items 2-3 (Dead Swine Disposal Requirements); Section 100.140 A, C-J (Other Requirements); Section 100.150 B-G (Odor Control Requirements); Section 100.160 B-D (Vector Control Requirements); Section 100.200 (Violations). The capacity of a deemed permitted facility is the maximum capacity of the existing lagoon, treatment system, or manure storage pond as determined using swine lagoon, treatment system, or manure storage pond capacity design standards of the United States Department of Agriculture's Natural Resource Conservation Service.

2. All existing swine facilities with permits issued by the Department between July 1, 1996, and the effective date of this regulation do not need to apply for a new permit if they hold a valid permit from the Department, unless they have been inactive for more than two (2) years. These facilities shall meet all the requirements of this regulation.

3. All existing swine facilities that were constructed and placed into operation prior to July 1, 1996, but have never received an agricultural permit from the Department, shall apply for a permit from the Department. These facilities shall meet all the requirements of this regulation, as the Department determines appropriate. The Department shall review the site and make a determination on a case-by-case basis on which requirements are applicable.

4. An existing facility may be required to submit for approval an updated Animal Facility Management Plan on a case-by-case basis by the Department. The Department shall notify the permittee in writing of this requirement. The permittee has six (6) months or an agreed upon time frame from the date of notification to submit an updated Animal Facility Management Plan. Failure to submit the updated plan within this time frame is a violation of the South Carolina Pollution Control Act and this regulation, and may result in permit revocation.

5. Both the setbacks and other requirements for manure utilization areas shall be met when a new manure utilization area (MUA) is added by the owner of any swine facility regardless of when the facility was permitted.

6. If an existing facility regulated under Part 200 of this regulation proposes to convert to a swine facility, it shall be considered a new swine facility under this regulation. Converted facilities shall be permitted as new swine facilities and meet all criteria for new swine facilities before they begin operation as a swine facility.

7. If an existing swine facility proposes to expand operations or increase the number of permitted swine such that it falls into a new size classification, the facility shall be considered a new swine facility in that size classification under this regulation. The facility shall meet all the requirements for the new classification.

## 100.20. Permits and Compliance Period.

A. Permit Requirement. Swine manure and other swine by-products from a new or expanded swine facility can only be generated, handled, stored, treated, processed, or land applied in the State in accordance with a permit issued by the Department under the provisions of this part. Existing producers that are required by the Department to update their Animal Facility Management Plan shall meet the requirements of this part to the extent practical as determined by the Department.

B. Permits issued under this regulation are no-discharge permits.

C. The requirements in this part shall be implemented through a permit issued to any producer who operates a swine facility where swine manure and other swine by-products are generated, handled, treated, stored, processed, or land applied.

D. The requirements under this part may be addressed in permits issued to producers who only land apply swine manure and other swine by-products.

E. Notification Requirements. The permittee shall notify the Department in writing and receive written Departmental approval, except as otherwise noted, prior to any change in operations at a permitted facility, including, but not limited to, the following:

1. Change in ownership and control of the facility. The Department has thirty (30) calendar days from the receipt of a complete and accurate notification of transfer of ownership to either: request additional information regarding the transfer or the new owner; deny the transfer; or approve the transfer. If the Department does not act within thirty (30) calendar days, the transfer is automatically approved. If additional information is requested by the Department in a timely manner, the Department shall act on this additional information, when it is received, within the same time period as the initial notification.

2. Increase in the permitted number of swine.

3. Increase in the normal production animal live weight of the existing permitted swine facility.

4. Addition of manure utilization areas.

5. Change in swine manure and other swine by-products treatment, handling, storage, processing, or utilization.

6. Change in method of dead swine disposal.

F. Permit modifications for items 100.20.E.3 and 100.20.E.5 for facilities regulated under this part, which shall result in expansions, shall adhere to the requirements of this part and other applicable statutes, regulations, or guidelines.

G. Permit modification for items 100.20.E.2-3 which result in an expansion may be required to obtain new written waivers or agreements for reduction of setbacks from adjoining property owners (if applicable).

### 100.30. Exclusions.

The following do not require permits from this part unless specifically required by the Department under Section 100.30.G.

A. Existing swine facilities that are deemed permitted under Section 100.10.D.1. are excluded from applying for a new permit unless an expansion is proposed, new manure utilization areas are added, or as required by the Department. New manure utilization areas added to an existing facility shall meet the appropriate requirements in this part. However, deemed permitted facilities shall meet the requirements of this regulation as outlined in Section 100.10.D (Purpose, Applicability, Inactive Facilities, and Facilities Permitted Prior to the Effective Date of the Regulation).

B. Except as given in Section 100.30.G, swine facilities that do not have a lagoon, manure storage pond, or liquid manure treatment system, having 10,000 pounds or less of normal production animal live weight at any one time, are excluded from obtaining a permit from the Department. However, these facilities shall have and implement an Animal Facility Management Plan for their facility that meets the requirements of this regulation.

C. Except as given in Section 100.30.G, swine facilities that do not have a lagoon, manure storage pond, or liquid manure treatment system, having more than 10,000 pounds of normal production animal live weight at any one time and less than 30,000 pounds of normal production animal live weight at any one time, are excluded from obtaining a permit from the Department. However, these facilities shall submit an Animal Facility Management Plan to the Department and implement an Animal Facility Management Plan for their facility that meets the requirements of this regulation.

D. Except as given in Section 100.30.G, ranged swine facilities where the size of the range area is sufficient to allow for natural degradation or utilization of the swine manure with no adverse impact to the environment are excluded from obtaining a permit from the Department. Ranged facilities shall also maintain adequate vegetative buffers between the swine range and Waters of the State.

E. Except as given in Section 100.30.G, swine facilities that are not classified as swine for commercial purposes are excluded from obtaining a permit from the Department.

F. Except as given in Section 100.30.G, swine facilities that hold valid permits issued by the Department are not required to obtain a new permit if they decide to replace in kind any of the swine growing houses.

G. Swine facilities exempted under Sections 100.30.A, B, C, D, E, and F may be required by the Department to obtain a permit. The Department shall visit the site before requiring any of these facilities to obtain a permit.

# 100.40. Relationship to Other Regulations.

The following regulations are referenced throughout this part and may apply to facilities covered under this regulation.

A. Applications, application fees, and the time schedules governing the review of applications, and annual operating fees are addressed in R.61-30, Environmental Protection Fees.

B. The proper closeout of wastewater treatment facilities are addressed in R.61-82, Proper Closeout of Wastewater Treatment Facilities. This includes swine lagoons and manure storage ponds.

C. Setbacks and construction specifications for potable water wells and monitoring wells shall be in accordance with R.61-71, Well Standards.

D. Permits for air emissions from incinerators are addressed in R.61-62, Air Pollution Control Regulations and Standards.

E. Disposal of swine lagoon sludge in a municipal solid waste landfill unit is addressed in R.61-107.19, Solid Waste Management: Solid Waste Landfills and Structural Fill.

F. Disposal of swine manure with domestic or industrial sludge is addressed in R.61-9, Water Pollution Control Permits, and permitted under R.61-9.

G. Laboratory certification is addressed in R.61-81, State Environmental Laboratory Certification Program.

H. Water Classifications and Standards are addressed in R.61-68.

# 100.50. Permit Application Procedures (Animal Facility Management Plan Submission Requirements).

A. Preliminary Site Evaluations. The Department shall perform a preliminary evaluation of the proposed site at the request of the applicant. Written requests for a preliminary site inspection shall be made using a form provided by the Department. The Department shall not schedule a preliminary site inspection until all required information specified in the form has been submitted to the Department. This evaluation should be performed prior to preparation of the Animal Facility Management Plan. Once the preliminary site inspection is performed, the Department shall issue an approval or disapproval letter for the proposed site.

B. A producer who proposes to build a new swine facility or expand an existing swine facility shall make application for a permit under this part using an application form provided by the Department. The following information shall be included in the application package.

1. A completed and accurate application form.

2. An Animal Facility Management Plan prepared by qualified Natural Resources Conservation Service (NRCS) personnel or a S.C. registered professional engineer (PE). Other qualified individuals, such as certified soil scientists or S.C. registered professional geologists (PG), may prepare the land application component of an Animal Facility Management Plan. The Animal Facility Management Plan shall, at a minimum, contain:

a. Facility name, address, telephone numbers, email address (if applicable), county, and National Pollutant Discharge Elimination System Permit or other permit number (if applicable);

b. Facility location description and the zoning or land use restrictions in this area (this information is available from the county);

c. Applicant's name, address, email, and telephone number (if different from above);

d. Operator's name and CAMM number;

e. Facility capacity;

i. Number of swine;

ii. Pounds of normal production animal live weight at any one time;

iii. Amount in gallons of swine manure generated per year;

iv. Description of swine manure storage and storage capacity of lagoon, treatment system, or manure storage pond (if applicable); and

- v. Description of swine manure and other swine by-products treatment (if any).
- f. Concentration of constituents in swine manure including, but not limited to, the constituents given below:

i. Nutrients.

- (a) Nitrate. (Only needed for aerobic treatment systems)
- (b) Ammonium-Nitrogen.
- (c) Total Kjeldahl Nitrogen (TKN).
- (d) Organic Nitrogen (Organic Nitrogen = TKN Ammonium Nitrogen)
- (e)  $P_2O_5$
- (f) K<sub>2</sub>O (potash).
- ii. Constituents.
  - (a) Copper.
  - (b) Zinc.

iii. Name, address, S.C. lab certification number, and telephone number of the laboratory conducting the analyses.

iv. For new swine facilities, swine manure analysis information does not have to be initially submitted as the Department shall use swine manure analysis from similar sites or published data (such as: Clemson University, American Society of Agricultural Engineers, Midwest Planning Service Document, NRCS Technical Guide or equivalent) in the review of the application. Analysis of the actual swine manure generated shall be submitted to the Department six (6) months after a new swine facility starts operation or prior to the first application of swine manure to a manure utilization area, whichever occurs first. If this analysis is significantly different from the estimated analysis used in the permitting decision, the Department may require a permit modification as necessary to address the situation. Analysis shall be conducted by Clemson University Extension Service or a laboratory certified by the Department. This laboratory shall have and maintain certification for the constituents to be analyzed.

g. Swine manure and other swine by-products handling and application information shall be included as follows:

i. A crop management plan which includes the time of year of the swine manure and other swine by-products application and how it relates to crop type, crop planting, and harvesting schedule (if applicable) for all manure utilization areas;

ii. Name, address, email, and telephone number of the producer(s) that will land apply the swine manure and other swine by-products if different from the permittee;

iii. Type of equipment used to transport and/or spread the swine manure and other swine by- products (if applicable); and

iv. For spray application systems, plans and specifications with supporting details and design calculations for the spray application system.

h. Facility and manure utilization area information shall be included (as appropriate):

i. Name, address, and tax map number of landowner and location of manure utilization area(s);

ii. List previous calendar years that swine manure and/or dry manure and other swine by-products were applied and application amounts, where available;

iii. Facility and manure utilization area location(s) on maps drawn to approximate scale including:

(a) Topography (7.5' minutes or equivalent) and drainage characteristics (including ditches);

(b) Adjacent land usage (within 1/4 mile of property line minimum) and location of inhabited dwellings and public places showing property lines and tax map number;

(c) All known water supply wells on the applicant's property and within 500 feet of the facility's footprint of construction or within 200 feet of any manure utilization areas;

(d) Adjacent surface water bodies (including ephemeral and intermittent streams);

(e) Swine manure utilization area boundaries and buffer zones;

(f) right-of-ways (Utilities, roads, etc.);

(g) Soil types as given by soil tests or soil maps, a description of soil types, and boring locations (as applicable);

(h) Recorded plats, surveys, or other acceptable maps that include property boundaries; and

(i) Information showing the 100-year and 500-year floodplain as determined by FEMA.

iv. For manure utilization areas not owned by the permit applicant, a signed agreement between the permit applicant and the landowner acceptable to the Department detailing the liability for the land application. The agreement shall include, at a minimum, the following:

(a) Producer's name, farm name, farm address, CAMM number, and county in which the farm is located;

(b) Landowner's name, address, email, phone number;

(c) Location (map with road names, tax map numbers, and county identified) of the land to receive manure application;

(d) Field acreage, acreage less setbacks, and crops grown;

(e) Name of manure hauler;

(f) Name of manure applier;

(g) A statement that land is not included in any other management plans and manure or compost from another farm is not being applied on this land; and any manure utilization areas that are included in multiple

Animal Facility Management Plans, identify the names of all facilities that include this manure utilization area in their plan; and

(h) A signed statement which informs the landowner that he is responsible for spreading and utilizing this manure in accordance with the requirements of the Department and this regulation.

3. Groundwater monitoring well details and proposed groundwater monitoring program (if applicable).

4. The Animal Facility Management Plan shall contain an odor abatement plan for the swine facility, lagoon, treatment system, manure storage pond, and manure utilization areas. For more specific details, see Section 100.150 (Odor Control Requirements).

5. A Vector Abatement Plan shall be included for the swine facility, lagoon, treatment system, manure storage pond, and manure utilization areas. For more specific details, see Section 100.160 (Vector Control Requirements).

6. The Dead Swine Disposal Plan shall include written details for the handling and disposal of dead swine. Plans should include method of disposal, any construction specifications necessary, and management practices. See Section 100.130 (Dead Swine Disposal Requirements) for more detailed information.

7. A Soil Monitoring Plan shall be developed for all manure utilization areas. See Section 100.100 (Manure Utilization Area Requirements) for more detailed information.

8. Plans and specifications for all other manure treatment or storage structures, such as holding tanks or manure storage sheds.

9. All "Notice of Intent to Build or Expand a Swine Facility" forms as provided by the Department and a tax map (or equivalent) to scale showing all neighboring property owners and identifying which property has inhabited dwellings that are required to be notified. See Section 100.60 (Public Notice Requirements) for more detailed information.

10. An Emergency Plan. The emergency plan shall, at a minimum, contain a list of entities or agencies the producer shall contact in the event of lagoon, treatment system, or manure storage pond breach, mass animal mortality, fire, flood, or other similar type problem. For facilities in the coastal areas of the State, the emergency plan shall address actions to be taken by a producer during hurricane season (such as providing additional freeboard during that time) and when advance warning is given on any extreme weather condition.

11. All waivers as specified in Section 100.80 (Facility, Lagoon, Treatment System, and Manure Storage Pond Siting Requirements), if applicable.

12. Application fee and the first year's operating fee as established by R.61-30.

C. The Department may request an applicant to provide any additional information deemed necessary to complete or correct deficiencies in the swine facility permit application prior to processing the application or issuing, modifying, or denying a permit.

D. Applicants shall submit all required information in a format acceptable to the Department.

E. An application package for a permit is complete when the Department receives all of the required information which has been completed to its satisfaction. Incomplete submittal packages may be returned to the applicant by the Department.

F. Application packages for permit modifications must contain the information applicable to the requested modification or any additional information the Department deems necessary.

## 100.60. Public Notice Requirements.

A. Small Swine Facilities.

1. For persons seeking to construct a new small swine facility, the applicant shall:

a. Notify all adjoining property owners and people residing on property within 1/4 mile (1,320 feet) of the proposed location of the facility (footprint of construction and manure storage pond) of the applicant's intent to build a swine facility.

b. Notify the parties listed in A.1.a. of this section using an NOI form provided by the Department. The NOI shall advise the adjoining property owners that they may send comments on the proposed animal facility directly to the Department.

2. For persons seeking to construct a new small swine facility or expand an established small swine facility, the Department shall post a Public Notice of application received, for fifteen (15) business days, on the Department's website. The Department may also post up to four (4) notices, in the four (4) cardinal directions around the perimeter of the property or in close proximity to the property, in visible locations as determined by the Department.

3. For small swine facilities, the Department shall review all comments received. If the Department receives twenty (20) or more letters from different people living in a 2-mile radius of the proposed facility requesting a meeting or the Department determines significant comment exists, a meeting shall be held to discuss and seek resolution to the concerns prior to a permit decision being made. All persons who have submitted written comments shall be invited in writing to the meeting. First Class US mail service, email, or hand delivery to the address of the interested party shall be used by the Department for the meeting invitation. However, if the Department determines that the number of persons who submitted written comments is significant, the Department shall publish a notice of the public meeting in a local newspaper of general circulation instead of notifying each individual by First Class mail. In addition, the Department shall notify all group leaders and petition organizers in writing or email. Agreement of the parties is not required for the Department to make a permit decision.

B. Large Swine Facilities.

1. For persons seeking to construct a new large swine facility or expand an established large swine facility, the applicant shall:

a. Notify all adjoining property owners and people residing on property within 1/4 mile (1,320 feet) of the proposed location of the facility (footprint of construction and manure storage pond) of the applicant's intent to build a swine facility.

b. Notify the parties listed in B.1.a. of this section using an NOI form provided by the Department. The NOI shall advise the adjoining property owners that they may send comments on the proposed animal facility directly to the Department.

2. For persons seeking to construct a new large swine facility or expand an established large swine facility, the Department shall:

a. Post a Public Notice of application received, for fifteen (15) business days, on the Department's website. The Department may also post up to four (4) notices, in the four (4) cardinal directions around the

perimeter of the property or in close proximity to the property, in visible locations as determined by the Department;

b. Notify the appropriate county commission;

c. Notify the appropriate water supply district (owners or operators of any potable surface water treatment plant located downstream from the proposed swine facility that could reasonably be expected to be adversely impacted if a significant problem arose); and

d. Notify any person who asked to be notified.

3. First Class US mail service, email, or hand delivery to the address of a person to be notified shall be used by the Department for the notifications in Section 100.60.B.2.b-d. If the Department determines that members of the same group or organization have submitted comments or a petition, the Department shall only notify all groups, organization leaders, and petition organizers in writing or email. The Department shall ask these leaders and organizers to notify their groups or any concerned citizens who signed the petitions.

4. The notice shall contain instructions for public review and comment to the Department on the proposed construction and operation of the swine facility. The notice shall allow for a minimum fifteen (15) business-day comment period.

5. If the Department receives twenty (20) or more letters or emails from different people living in a 2-mile radius of the proposed facility requesting a public meeting or the Department determines there is significant public interest, the Department shall conduct a public meeting and shall provide notice of the public meeting in accordance with the notice requirements provided for in Section 100.60.B.2.a-d. The initial public notice and meeting notice can be combined into one (1) notice.

C. Additional requirements for X-large swine facilities.

1. For persons seeking to construct a new X-large swine facility or expand an established X-large swine facility, the applicant shall notify all property owners and person(s) residing on property within one mile (5,280 feet) of the proposed location of the X-large swine facility (footprint of construction and manure storage pond) by certified mail. The notification must include the following information:

a. Name and address of the person proposing to construct an X-large swine facility;

b. The type of swine facility, the design capacity, and a description of the proposed swine manure management system;

c. The name and address of the preparer of the Animal Facility Management Plan;

d. The address of the local Natural Resources Conservation Service (NRCS) office; and

e. A statement, approved by the Department, informing the adjoining property owners and property owners within 1 mile of the proposed facility, that they may submit written comments or questions to the Department.

2. The applicant shall conduct a minimum of one public meeting to present to the public the proposed project, its purpose, design, and environmental impacts. The applicant shall provide at least thirty (30) calendar days notice of the meeting date and time by advertisement in a local newspaper of general circulation in the area of the proposed facility. The public meeting notice can be combined into one (1) notice in combination with the notice run by the Department. However, the applicant must provide information concerning the date, time, and

location of the public meeting at the time of application. The minutes of the public meeting, proof of advertisement, and opinions derived from the meeting must be submitted to the Department.

3. The Department shall conduct a public meeting and shall provide notice of the public meeting in accordance with the notice requirements provided for in Section 100.60.B.2.a-d. The initial public notice and meeting notice can be combined into one (1) notice. The Department shall provide at least thirty (30) calendar days notice of the meeting.

D. For properties that have multiple owners or properties that are in an estate with multiple heirs, the applicant shall send an NOI to construct an animal facility by certified mail to each individual. This notice shall serve as notice to these multiple property owners of the applicant's intent to build a swine facility.

E. When comments are received by email, the Department shall acknowledge receipt of the comment by email. These comments shall be handled in the same manner as written comments received by postal mail.

F. The Department shall consider all relevant comments received in determining a final permit decision.

G. The Department shall send notice of the permit decision to issue or deny the permit to the applicant, all persons who commented in writing to the Department, and all persons who attended the public meeting, if held. First Class US mail service, email, or hand delivery to the address of a person to be notified shall be used by the Department for the decision notification. However, if the Department determines that members of the same group or organization have submitted comments or a petition, the Department shall only notify all group leaders and petition organizers in writing or email. The Department shall ask these leaders and organizers to notify members of their groups or any concerned citizens who signed the petitions.

H. For permit issuances, the Department shall publish a notice of issuance of a permit to construct or expand a swine facility on the Department's website.

I. For permit denials, the Department shall give the permit applicant a written explanation which outlines the specific reasons for the permit denial.

J. For permit denials, the Department may publish a notice of decision on the Department's website.

K. The Department shall include, at a minimum, the following information in the public notices: the name and location of the facility, a description of the operation and the method of manure and other swine by-products handling, instructions on how to appeal the Department's decision, the time frame for filing an appeal, the date of the decision, and the date upon which the permit becomes effective.

#### 100.70. Permit Decision Making Process.

A. No permit shall be issued before the Department receives a complete application package.

B. The agricultural program of the Department is not involved in local zoning and land use planning. Local government(s) may have more stringent requirements for agricultural animal facilities. The permittee is responsible for contacting the appropriate local government(s) to ensure that the proposed facility meets all the local requirements.

C. After the Department has received a complete application package, a technical review shall be conducted by the Department. The Department may request any additional information or clarification from the applicant or the preparer of the Animal Facility Management Plan to help with the determination on whether a permit should be issued or denied. If a permit application package meets all applicable requirements of this part, a permit may be issued.

D. A preliminary site inspection shall be made by the Department before a complete application package is received by the Department.

E. The Department shall consider the cumulative impacts including, but not limited to, impacts from evaporation; storm water; and other potential and actual point and nonpoint sources of pollution runoff; levels of nutrients or other elements in the soils and nearby waterways; groundwater or aquifer contamination; pathogens or other elements; and the pollution assimilative capacity of the receiving waterbody. These cumulative impacts will be considered prior to permitting new or expanded swine facilities. Alternative manure and other swine by-products treatment and utilization methods may be required in watersheds which are nutrient-sensitive waters, or impaired by pathogens.

F. The Department shall act on all permits to prevent, as far as reasonably possible considering relevant standards under state and federal laws, an increase in pollution of the waters and air of the State from any new or enlarged sources.

G. The Department also shall act on all permits so as to prevent degradation of water quality due to the cumulative and secondary effects of permit decisions. Cumulative and secondary effects are impacts attributable to the collective effects of a number of swine facilities in a defined area and include the effects of additional projects similar to the requested permit proposed on sites in the vicinity. All permit decisions shall ensure that the swine facility and manure treatment and utilization alternative with the least adverse impact on the environment will be utilized. To accomplish this, new and expanding facilities, except X-large swine facilities, shall use the best available technology economically achievable for the handling, storage, processing, treatment, and utilization of manure. New and expanding X-large swine facilities shall use the best available technology for the handling, storage, processing, treatment, and utilization of manure. Cumulative and secondary effects shall include, but are not limited to, runoff from land application of swine manure and a swine facility; evaporation and atmospheric deposition of elements; ground-water or aquifer contamination; the buildup of elements in the soil; and other potential and actual point and nonpoint sources of pollution in the vicinity.

H. The setback limits given in Part 100 are siting requirements. The Department shall evaluate the following factors to determine if any special conditions are necessary:

- 1. Latitude and Longitude;
- 2. Down-wind receptors; and
- 3. Nutrient Management Plan.

I. When a permit is issued it shall contain an issue date, an effective date, and, when applicable, a construction expiration date. The effective date shall be at least fifteen (15) calendar days after the issue date to allow for any appeals. If a timely appeal is not received, the permit shall be effective on the effective date.

J. The swine facility, lagoon, treatment system, or manure storage pond can be built only when the permit is effective. The facility cannot be placed into operation until the Department grants a written Approval to Operate (ATO).

K. To receive an ATO, the producer shall have the preparer of the Animal Facility Management Plan submit in writing, to the Department, the following information:

1. Certification that the construction of the structural components (such as the facility footprint, the lagoon, treatment system and/or manure storage pond) has been completed in accordance with the approved Animal Facility Management Plan and the requirements of this regulation;

2. Certification that no portion of the facility has been constructed in the 100-year floodplain;

3. Certification for containment of structural failures, if applicable; and

4. Certification for lagoon or manure storage pond lining, if applicable.

L. The Department shall conduct a final inspection before granting approval to a producer to begin operations.

M. The Department shall grant written approval for the producer to begin operations after it has received the information in 100.70.K and the satisfactory results of a final inspection.

N. Swine Facility Permit Construction Expiration and Extensions.

1. Construction permits issued by the Department for agricultural animal facilities shall be given two (2) years from the effective date of the permit to start construction and three (3) years from the effective date of the permit to complete construction.

2. If the proposed construction as outlined in the permit is not started prior to the construction start expiration date, the construction permit is invalid unless an extension in accordance with this regulation is granted.

3. If construction is not completed and the facility is not placed into operation prior to the construction completion expiration date, the construction permit is invalid unless an extension in accordance with this regulation is granted.

4. If only a portion of the permitted facility (animal growing houses and associated manure treatment and/or storage structures are completely constructed, but not all houses originally permitted were constructed) is completed prior to the construction completion expiration date, the construction for the remainder of the permit may be utilized within the permit life. The permittee shall obtain Departmental approval prior to utilizing the permit in this manner. The Department may require that the permittee submit additional information or update the Animal Facility Management Plan prior to approval.

5. Extensions of the construction permit start and completion dates may be granted by the Department. The permittee shall submit a written request explaining the delay and detailing any changes to the proposed construction. This request shall be received no later than the expiration date that the permittee proposes to extend. The maximum extension period shall not exceed one (1) year. There shall be no more than two (2), one (1)-year extension periods per permit to construct, granted.

O. Permits issued under this regulation for all swine facilities shall be renewed at least every seven (7) years.

P. An expired permit (final expiration date for renewal) issued under this part continues in effect until a new permit is effective if the permittee submits a complete application, to the satisfaction of the Department, at least one hundred eighty (180) calendar days before the existing permit expires. The Department may grant permission to submit an application later than the deadline for submission stated above, but no later than the permit expiration date. If the facility has been closed for any two (2) consecutive years since the last permit was issued, the provision for the expiring permit remaining in effect does not apply since the permit is no longer valid. Permittees shall notify the Department in writing within thirty (30) calendar days before going out of business.

Q. Permit renewal applications shall meet all the requirements of this regulation as the Department determines appropriate. The Department shall review the site and make a determination on a case-by-case basis on which requirements are applicable.

R. No permit will be issued to an applicant who contracts with an integrator or integrating company unless the permit is in accordance with the approved cumulative environmental and public health impact assessment plan as required in part 500.20 (Submittal Requirements) of this regulation.

#### 100.80. Swine Facility, Lagoon, Treatment System, and Manure Storage Pond Siting Requirements.

A. Siting Requirements applicable to all small swine facilities and the lagoons, treatment systems, and/or manure storage ponds associated with them.

1. The minimum separation distance between a swine facility (not including a lagoon, treatment system, manure storage pond, or manure utilization area) and a potable water well (excluding the applicant's well) is 200 feet. The minimum separation distance between a swine facility (not including a lagoon, treatment system, manure storage pond, or manure utilization area) and a potable water well owned by the applicant is 50 feet (as required by R.61-71).

2. The minimum separation distance between a lagoon, treatment system, or a manure storage pond and a public or private human drinking water well (excluding the applicant's well) is 500 feet. The minimum separation distance between a lagoon, treatment system, or manure storage pond and a potable water well owned by the applicant is 100 feet.

3. Except for site drainage, the minimum separation distance required between a ditch or swale, which drains directly into Waters of the State (including ephemeral and intermittent streams) and a swine facility, swine lagoon, treatment system, or manure storage pond is 100 feet.

4. The minimum separation distance required between a swine facility, lagoon, treatment system, or manure storage pond and ephemeral or intermittent streams is 100 feet.

5. The minimum separation distance required between a small swine facility (not including the lagoon, treatment system, or manure storage pond) and Waters of the State (excluding ephemeral and intermittent streams) is 100 feet.

6. The minimum separation distance required between a small swine lagoon, treatment system, or manure storage pond and Waters of the State (excluding ephemeral and intermittent streams) is 500 feet.

7. If the Waters of the State (not including ephemeral and intermittent streams) are designated Outstanding Resource Waters, Critical Habitat Waters of federally endangered species, or Shellfish Harvesting Waters, the minimum separation distance required between a small swine lagoon, treatment system, or a manure storage pond and Waters of the State (not including ephemeral and intermittent streams) is 1,320 feet (1/4 mile).

8. For small swine facilities the separation distance required between a swine growing area (pens or barns not including range areas) and the lot line of real property owned by another person is 400 feet and 1,000 feet from the nearest residence.

9. For small swine facilities the separation distance required between a lagoon, treatment system, or manure storage pond and the lot line of real property owned by another person is 600 feet and 1,000 feet from the nearest residence.

10. The distances in items 8 and 9 above can be reduced by written consent of the adjoining property owner, unless a swine facility is located on the adjacent property or within 1,000 feet of the property line. Written consent is not needed when the Department reduces the distances under the requirements of Part 300.

B. Siting Requirements applicable to all large swine facilities, and the lagoons, treatment systems, and manure storage ponds associated with the facility.

1. The minimum separation distance between a large swine facility (not including a lagoon, treatment system, manure storage pond, or manure utilization area) and a potable water well (excluding the applicant's well) is 200 feet. The minimum separation distance between a swine facility (not including a lagoon, treatment system, manure storage pond, or manure utilization area) and a potable water well owned by the applicant is 50 feet (as required by R.61-71).

2. The minimum separation distance between a lagoon, treatment system, or a manure storage pond, and a public or private human drinking water well (excluding the applicant's well) is 500 feet. The minimum separation distance between a lagoon, treatment system, or manure storage pond and a potable water well owned by the applicant is 100 feet.

3. Except for site drainage, the minimum separation distance required between a ditch or swale, which drains directly into Waters of the State (including ephemeral and intermittent streams) and a swine facility, swine lagoon, treatment system, or manure storage pond associated with a large swine facility is 100 feet.

4. The minimum separation distance required between a large swine facility, lagoon, treatment system, or manure storage pond, associated with the facility and ephemeral or intermittent streams is 200 feet.

5. The minimum separation distance required between a large swine facility (not including the lagoon, treatment system, or manure storage pond) and Waters of the State (including ephemeral and intermittent streams) is 200 feet.

6. The minimum separation distance required between a large swine lagoon, treatment system, or manure storage pond and Waters of the State (not including ephemeral and intermittent streams) is 1,320 feet (1/4 mile). If the Waters of the State (not including ephemeral and intermittent streams) are designated Outstanding Resource Waters, Critical Habitat Waters of federally endangered species, or Shellfish Harvesting Waters, the minimum separation distance required between a lagoon, treatment system, or manure storage pond and Waters of the State (not including ephemeral species, or Shellfish Harvesting Waters, the minimum separation distance required between a lagoon, treatment system, or manure storage pond and Waters of the State (not including ephemeral and intermittent streams) is 2,640 feet (½ mile). A minimum 100-foot wide vegetative water quality buffer of plants and trees is required to be installed and maintained on the site between the facility and any down slope Waters of the State. Sites with existing vegetation may qualify to utilize the existing vegetation for a buffer, if the vegetation is deemed sufficient. For new facilities constructed in areas where natural vegetation is not present, the Department shall evaluate these sites on a case-by-case basis to determine the amount of vegetative buffer that shall be planted. However, each site shall be required at a minimum to provide a vegetative buffer that meets the current NRCS standards.

7. The minimum separation distance required between a large swine facility (growing area, pens or barns not including range areas) and real property owned by another person is 1,000 feet.

8. For large swine facilities, the minimum separation distance required between a lagoon, treatment system, or a manure storage pond and real property owned by another person is 1,250 feet.

9. The minimum separation distance required between large swine facilities is 2 miles.

10. A separation distance to adjacent land as provided in items 7 and 8 above does not apply to a swine facility, lagoon, treatment system, or manure storage pond which is constructed or expanded, if the titleholder of adjoining land to the concentrated swine operation executes a written waiver with the title holder of the land where the swine facility is established or proposed to be located, under terms and conditions that the parties negotiate. The written waiver becomes effective only upon the recording of the waiver in the office of the Register of Deeds of the county in which the benefited land is located. The filed waiver precludes enforcement of 100.80.B.7 and 8 as it relates to the swine facility and to real property owned by another person. The permittee shall submit a copy of the document with the recording stamp to the Department. The separation distances shall not be reduced or waived if a swine facility is located on the adjacent property or within 1,000 feet of the property line.

C. Siting requirements applicable to X-large swine facilities and the lagoons, treatment systems, and manure storage ponds associated with the facility are as follows:

1. The minimum separation distance required between an X-large swine facility and Waters of the State (including ephemeral and intermittent streams) is 2,640 feet (½ mile).

2. The minimum separation distance required between an X-large swine lagoon, treatment system, or manure storage pond and Waters of the State (including ephemeral and intermittent streams) is 2,640 feet (½ mile). If the Waters of the State (not including ephemeral and intermittent streams) are designated Outstanding Resource Waters, Critical Habitat Waters of federally endangered species, or Shellfish Harvesting Waters, the minimum separation distance required between a lagoon, treatment system, or manure storage pond and Waters of the State (not including ephemeral and intermittent streams) is 3,960 feet (3/4 mile). A minimum 100-foot wide vegetative water quality buffer of plants and trees is required to be installed and maintained on the site between the facility and any down slope Waters of the State. Sites with existing vegetation may qualify to utilize the existing vegetation is not present, the Department shall evaluate these sites on a case-by-case basis to determine the amount of vegetative buffer that shall be planted. However, each site shall be required, at a minimum, to provide a vegetative buffer that meets the current NRCS standards.

3. The minimum separation distance required between an X-large swine facility (including the lagoon, treatment system, and manure storage pond) and real property owned by another person or a residence (excluding the applicant's residence) is 1,750 feet.

4. The minimum separation distance between an X-large swine facility (including a lagoon, treatment system, or manure storage pond) and a potable water well (excluding the applicant's well) is 1,750 feet. The minimum separation distance between a swine facility (including a lagoon, treatment system, or manure storage pond) and a potable water well owned by the applicant is 100 feet (as required by R.61-71).

5. The minimum separation distance required between X-large swine facilities is 25 miles.

D. A new swine facility or an expansion of an established swine facility may not be located in the 100-year floodplain.

E. Water (a pond) that is completely surrounded by land owned by the permit applicant and has no connection to other water is excluded from the setback requirements outlined in this part.

F. All lagoon and manure storage pond setbacks contained in this part shall be measured from the outside toe of the dike.

G. Setback limits given in this part are minimum siting requirements, except those not labeled as minimum requirements, which are absolutes. On a case-by-case basis the Department may require additional separation distances to the minimum setbacks applicable to swine facilities. See Section 100.70.H. for specific criteria evaluated for determining if greater setbacks should be required.

# 100.90. General Requirements for Swine Manure Lagoons, Treatment Systems, and Swine Manure Storage Ponds.

A. The lagoon, treatment system, or manure storage pond shall be designed by a professional engineer or an NRCS engineer and the construction shall be certified by the design engineer or professional engineer licensed in S.C. It is a violation of this regulation and the South Carolina Pollution Control Act for the owner or operator of the facility to make modifications or physical changes to the lagoon, treatment system, or manure storage pond without the prior approval of the Department and supervision of NRCS or a professional engineer. Plans and specifications for lagoon, treatment system, or manure storage pond modifications shall be designed and

certified by NRCS or a professional engineer and submitted to the Department for approval prior to the modification.

B. Swine manure lagoons and manure storage ponds shall be designed at a minimum to NRCS-CPS. The lagoon or manure storage pond shall be designed to provide a minimum storage capacity for manure, wastewater, normal precipitation less evaporation, normal runoff, and residual solids accumulation for the twenty-five (25) year - twenty-four (24) hour storm event (precipitation and associated runoff) and at least one and one half  $(1 \frac{1}{2})$  feet of freeboard. New X-large swine facilities shall be designed to provide storage capacity for all the above-mentioned items, including the fifty (50) year - twenty-four (24) hour storm event (precipitation and associated runoff) and at least 2 feet of freeboard.

C. All lagoons and storage ponds constructed or expanded after the date of this regulation shall be provided with a geomembrane liner, designed with an initial specific discharge rate of less than 0.0156 feet/day in order to protect groundwater quality. Lagoons and manure storage ponds at X-large swine facilities within delineated source water protection areas or vulnerable recharge areas, as determined by the Department, shall be lined with a geomembrane liner such that the vertical hydraulic conductivity does not exceed 5 x 10<sup>-7</sup> cm/sec. Geomembrane liners, at a minimum, shall meet NRCS-CPS. For existing lagoons or manure storage ponds lined using only soils with low permeability rates (e.g., clay), the Department shall require appropriate documentation to demonstrate that the computed soil permeability of the liner is sufficient to prevent seepage greater than the initial specific discharge rate. Appropriate certification shall be provided by the preparer of the Animal Facility Management Plan that the NRCS-CPS for lining lagoons and/or manure storage ponds with soils have been met.

D. Lagoons and manure storage ponds at swine facilities shall not exceed one million cubic feet of total volume, unless the lagoon or manure storage pond implements a design to control the discharge from a failed lagoon, treatment system, or manure storage pond so that it never enters Waters of the State.

E. Large swine facilities are prohibited from utilizing open anaerobic lagoons or manure storage ponds. These facilities shall utilize best available technology that is economically achievable for the manure handling, treatment, storage, and utilization.

F. X-Large swine facilities are prohibited from utilizing open lagoons or manure storage ponds. These facilities shall utilize best available technology for the manure handling, treatment, storage, and utilization. Lagoons and manure storage ponds utilized at X-large swine facilities shall be designed with airtight covers. Air pollution control devices utilizing the Best Available Technology shall be installed on all lagoon cover vents and openings to remove ammonia, hydrogen sulfide, methane, formaldehyde, and any other organic and inorganic air pollutants, which may be required by the Department. Such air pollution control devices shall meet all the requirements of the Department and appropriate air quality permits shall be obtained. "Best Available Technology" means, for the air emissions purpose of this regulation, the rate of emissions which reflects the most stringent emissions limitations required by any State regulation or permit, existing at the time the application is made, for all pollutants emitted from this source category; or, the most stringent emissions limit achieved in actual practice, whichever is more stringent.

G. If seepage results in either an adverse impact to groundwater or a significant adverse trend in groundwater quality occurs, as determined by the Department, the lagoon or manure storage pond shall be repaired at the owner's or operator's expense. Assessment and/or additional monitoring (more wells, additional constituents, and/or increased sampling frequency) may be required by the Department to determine the extent of the seepage. The repairs and/or assessment shall be completed in accordance with an implementation schedule approved by the Department. The Department may require groundwater corrective action.

H. Manure and other swine by-products shall not be placed directly in or allowed to come into contact with groundwater and/or surface water. The minimum separation distance between the lowest point of the lagoon and/or manure storage pond and the seasonal high water table beneath the lagoon and/or manure storage pond is 2 feet. If a geomembrane liner is installed, then the minimum separation distance is 1 foot from the seasonal

high water table. Designs that include controlled drainage for water table adjustment shall be evaluated by the Department on a case-by-case basis, and may include additional monitoring and groundwater control requirements. If a design is proposed for water table adjustment, the design shall not impact wetlands. Groundwater monitoring wells may be required to be installed and monitored at a frequency as given in the permit for the facility in situations where a liner is used to allow the lowest point of a lagoon to be less than 2 feet to the seasonal high water table.

I. Owners of lagoons and manure storage ponds at large and X-large swine facilities shall be required to install at least one (1) up-gradient and two (2) down-gradient monitoring wells at a depth which the Department considers appropriate around the lagoon or series of lagoons in order to monitor groundwater quality. For small swine facilities, the Department may require monitoring wells upon Department review of the submittal package.

J. A groundwater monitoring plan shall be submitted with the permit application to the Department. All applicable State certification requirements regarding well installation, laboratory analyses, and report preparation shall be met. Groundwater monitoring wells shall be sampled at least once annually by qualified personnel, at the expense of the permittee. Monitoring wells at X-large swine facilities must be sampled at least quarterly, unless more frequent sampling is specified in the permit. The results shall be submitted to the Department in accordance with the specified permit requirements. Groundwater monitoring results shall be maintained by the producer for eight (8) years. The Department may conduct routine and random visits to the swine facility to sample the monitoring wells.

K. The monitoring wells shall be properly installed and sampled prior to use of the lagoon or manure storage pond. All monitoring wells shall be sampled in accordance with the parameters identified in the permit such that a background concentration level can be established.

L. Before the construction of a lagoon and/or a manure storage pond, the owner or operator shall remove all under-drains that exist from previous agricultural operations that are under the lagoon or manure storage pond and/or within 25 feet of the outside toe of the proposed lagoon or manure storage pond dike. This requirement does not include under-drains that are approved as a part of a design that includes controlled drainage for water table adjustment.

M. Lagoons and manure storage ponds at X-large swine facilities shall install automated lagoon level monitoring devices.

N. Proper water levels in lagoons and manure storage ponds, as per plans and specifications, shall be maintained at all times by the permittee. The Department may require specific lagoon or manure storage pond volume requirements in permits. An approved marker shall be installed to measure waste levels.

O. If a lagoon, treatment system, or manure storage pond, or all of these, breaches or fails, the owner or operator of the swine facility shall immediately notify the Department, the appropriate local government officials, and the owners or operators of any potable surface water treatment plant located downstream from the swine facility that could reasonably be expected to be adversely impacted.

P. Lagoons, treatment systems, and manure storage ponds shall be completely enclosed with an acceptable fence, unless a fence waiver is obtained from the Department.

Q. Lagoons and manure storage ponds shall have at least four (4) warning signs posted in the four (4) cardinal directions around the perimeter of the structure. These signs must read, "Warning - Deep and Polluted Water".

R. Vegetation on the dikes and around the lagoon or manure storage pond should be kept below a maximum height of 18 inches. Trees or deeply rooted plants shall be prevented from growing on the dikes or within 25 feet of the outside toe of the dikes of the lagoon, treatment systems, or manure storage pond. Existing trees on the dikes shall be evaluated by NRCS staff or a dam engineer licensed in South Carolina to determine if they should be removed or remain.

S. Livestock or other animals that could cause erosion or damage to the dikes of the lagoon or manure storage pond shall not be allowed to enter the lagoon or manure storage pond, or graze on the dike or within 25 feet of the outside toe of the dike.

T. The Department shall require existing facilities, regardless of size, with a history of manure handling, treatment, and disposal problems related to a lagoon, to phase out the existing lagoon and incorporate new technology.

#### 100.100. Manure Utilization Area Requirements.

A. Application Rates. The Department shall approve an Animal Facility Management Plan that establishes an application rate for each manure utilization area based on the agronomic application rate of the specific crop(s) being grown. Other factors considered are the manure and other swine by-products' impact on the environment, animals, and people living in the vicinity. The application rate shall also be based on the limiting constituent (either a nutrient or other constituent as given in item 100.100.B). In developing annual constituent loading rates and cumulative constituent loading rates, the Department shall consider:

## 1. Soil type;

2. Type of vegetation growing in land-applied area;

- 3. Proximity to 100-year floodplain;
- 4. Location in watershed;
- 5. Nutrient sensitivity of receiving land and waters;
- 6. Soil nutrient testing in conjunction with soil productivity information;
- 7. Nutrient, copper, zinc, and constituent content of the manure and other swine by-products being applied;
- 8. State Approved Source Water Protection Area;
- 9. Proximity to other point and nonpoint sources;

10. Slope of land (anything over ten percent (10%) must use runoff best management practices, runoff controls, or conservation features as per NRCS);

- 11. Distance to water table or groundwater aquifer;
- 12. Timing of manure application to coincide with vegetative cover growth cycle;
- 13. Timing of harvest of vegetative cover;
- 14. Hydraulic loading limitations;
- 15. Soil assimilative capacity;

16. Type of vegetative cover and its nutrient uptake ability;

17. Method of land application; and

18. Aquifer vulnerability.

B. Constituent Limits for Land Application of Swine manure and other swine by-products.

1. The Department may establish constituent limits in permits on a case-by-case basis on swine manure and other swine by-products to be land applied. Swine manure and other swine by-products containing only the standard constituents at normal concentrations as given by commonly accepted reference sources, such as Clemson University, American Society of Agricultural Engineers, Midwest Planning Service Document, or NRCS, can be land applied at or below agronomic rates without any specific constituent limits in a permit. When the swine manure or other swine by-products analysis indicates there are levels of copper, or other constituents of concern, the Department shall establish constituent limits in permits for each constituent of concern to ensure the water quality standards of R.61-68 are maintained. For these cases, the producer shall comply with the following criteria:

a. Constituent Limits. If swine manure and other swine by-products subject to a constituent limit is applied to land, either:

i. the cumulative loading rate for each constituent shall not exceed the rates in Table 1 of Section 100.100; or

ii. the concentration of each constituent in the swine manure and other swine by-products shall not exceed the concentrations in Table 2 of Section 100.100.

b. Constituent concentrations and loading rates - swine manure.

i. Cumulative constituent loading rates.

TABLE 1 OF SECTION 100.100 - CUMULATIVE CONSTITUENT LOADING RATES					
Cumulative Constituent Loading Rate					
Constituent	(kilograms per hectare)	(pounds per acre)			
Copper	1500	1339			
Zinc	2800	2499			

ii. Constituent concentrations.

TABLE 2 OF SECTION 100.100 - CONSTITUENT CONCENTRATIONS				
Monthly Average Concentrations				
Constituent	Dry weight basis (milligrams per kilogram)			
Copper	1500			
Zinc	2800			

## iii. Annual constituent loading rates.

TABLE 3 OF SECTION 100.100 - ANNUAL CONSTITUENT LOADING RATES					
Annual Constituent Loading Rate					
	(kilograms per hectare	(pounds per acre	(pounds per acre per		
	per 365-day period)	365-day period)			
Constituent					
Copper	75	67			
Zinc	140	125			

c. Additional constituent limits may be required, from the application information or subsequent monitoring in a permit thereafter, but such needs shall be assessed on an individual project basis.

d. Swine manure and other swine by-products shall not be applied subject to the cumulative constituent loading rates in Table 1 of Section 100.100.B.1 to land if any of the rates in Table 1 of Section 100.100.B.1 have been reached unless the constituent is removed from the manure and other swine by-products.

e. Swine manure and other swine by-products shall not be applied to land during a 365-day period after the annual application rate in Table 3 of Section 100.100.B.1 has been reached.

f. If swine manure and other swine by-products subject to the cumulative constituent loading rates in Table 1 of Section 100.100.B.1 have not been applied to the site, then the cumulative rates apply.

g. If swine manure and other swine by-products subject to the cumulative constituent loading rates in Table 1 of Section 100.100.B.1 have been applied to the site and the cumulative amount of each constituent is known, the cumulative amount of each constituent applied to the site shall be used to determine the additional amount of each constituent that can be applied to the site in accordance with Section 100.100.B.1.a.i (cumulative loading rate shall not exceed the cumulative constituent loading rate).

h. Manure application shall not exceed the agronomic rate of application for plant available nitrogen (PAN) for the intended crop(s) on an annual basis. For those years that fertilizer is land applied, manure in combination with the fertilizer shall not exceed the agronomic rate of nutrient utilization of the intended crop(s).

2. Any producer who confines swine shall ensure that the applicable requirements in this part are met when the swine manure and other swine by-products are applied to the land.

3. Swine manure and other swine by-products shall not be applied to land that is saturated from recent precipitation, flooded, frozen, or snow-covered. Swine manure and other swine by-products shall not be applied during inclement weather or when a significant rain event is forecasted to occur within forty-eight (48) hours, unless approved by the Department in an emergency situation.

4. Swine manure and other swine by-products shall not be placed directly in groundwater.

5. All land application equipment, (e.g. Spreader, injection) when used once or more per year, shall be calibrated at least annually by the person land applying. A permit may require more frequent calibrations to ensure proper application rates. The two (2) most recent calibration records should be retained by the producer and made available for Department review upon request. If the land application equipment has not been used in over a year, the equipment shall be calibrated prior to use.

6. Swine manure and other swine by-products shall not be applied to the land except in accordance with the requirements in this part.

7. A producer who supplies swine manure and other swine by-products to another person for land application shall provide the person who will land apply the manure and other swine by-products with the concentration of plant available nitrogen, phosphorus, potassium, and the concentration of all other constituents listed in the permit. The producer shall also supply the person who will land apply the manure with a copy of the crop management plan included in their Animal Facility Management Plan.

8. Swine manure and other swine by-products shall not be applied to or discharged onto a land surface when the vertical separation between the ground surface and the seasonal high water table is less than 1.5 feet at the time of application, unless approved by the Department on a case-by-case basis. For special cases, no land application can occur when the vertical separation from the ground surface to the water table is less than 1.5 feet at the time of application unless a situation is deemed an emergency with departmental concurrence.

9. Soil sampling (usually 6-8 inch depth) shall be conducted for each field prior to manure application to determine the appropriate application rate. Each field should be sampled at least once per year. If manure application frequency shall be less than once per year, then at least one (1) soil sample shall be taken prior to returning to that field for land application. All new manure utilization areas shall be evaluated using the NRCS-CPS to determine the suitability for application and the limiting nutrient (nitrogen or phosphorus). However, fields that are high in phosphorus may also be required to incorporate additional runoff control or soil conservation features as directed by the Department.

10. Soil sampling to a depth of 18 inches may be required by the Department within forty-five (45) calendar days after each application of swine manure, but no more than two (2) times per year if the application frequency is more than twice per year. This sampling shall be performed for at least three (3) years after the initial application on at least one (1) representative manure utilization area for each crop grown to verify the estimated calculated swine manure application rates for the utilization areas. The date of manure application and the date of sampling shall be carefully recorded. The sampling shall be conducted at depths of 0 to 6 inches, 6 to 12 inches, and 12 to 18 inches with nitrates and phosphorus being analyzed.

11. The results of the pre-application and post-application sampling shall be used by the crop farmer to adjust as necessary, the amount of swine manure to be applied to a manure utilization area to meet the agronomic application rate for the crop(s) to be grown. These results shall be submitted to the Department at the time of application for permit renewal.

12. Additional soil sampling to greater depths may be required by the Department on a case-by-case basis to ensure there is no potential for groundwater contamination.

13. The permittee shall obtain the following information needed to comply with the requirements in this part:

a. A manure transfer contract shall be developed for the producer to use with any person who is accepting manure in quantities greater than 12 tons per recipient per year. The contract should contain, at a minimum, the following information:

i. Name, address, county and telephone number of the person who is purchasing or accepting animal manure and other animal by-products;

ii. Manure nutrient composition (pounds per ton of plant available nitrogen, phosphorus, and potassium) to be filled in or provided by the producer. This information shall be obtained from the manure analysis results and the producer shall provide this information on the manure transfer contract.

iii. Land application field information;

iv. Physical description (acreage, crop, soil type);

v. Soil test results (phosphorus, zinc, and copper in pounds/acre); and

vi. Recommended application rates (nitrogen, phosphorus, and potassium in pounds/acre as reported on a soil test).

b. Attach a copy of a soils map, topographic map, county tax map, plat, FSA map, or a site plan sketch that includes the following information:

i. Manure application area with setbacks outlined;

ii. Known water supply wells within 100 feet of the property line;

iii. Adjacent surface waters, including ditches, streams, creeks, and ponds; and

iv. Identification of roads and highways to indicate location.

c. Description of application equipment and name of person to land apply manure;

d. Signed agreement that informs the landowner that he or she is responsible and liable for land applying the animal manure and other animal by-products in accordance with this regulation; and

e. A copy of the land application requirements shall be provided to the recipient of the manure.

14. All persons who routinely accept manure from a producer, in quantities greater than 12 tons per recipient per year, shall be listed in the approved Animal Facility Management Plan. The Animal Facility Management Plan shall include the appropriate manure utilization area information for the sites routinely used by other persons. The producer shall inform the applier of their responsibility and have a signed manure transfer contract to properly manage the land application of manure to prevent discharge of pollutants to Waters of the State (including ephemeral and intermittent streams). The person accepting the manure may be required by the Department to have an Animal Facility Management Plan and a permit for his or her manure utilization areas.

15. All persons who accept manure from a producer, in quantities less than 12 tons per recipient per year are responsible for land applying the manure in accordance with these requirements and must have a signed agreement with the producer explaining their responsibility to comply with this regulation. The Department may require the persons(s) land applying the manure to correct any problems that result from the application of manure.

16. Swine manure shall not be applied to cropland more than thirty (30) calendar days before planting or during dormant periods for perennial species, unless otherwise approved by the Department in an emergency situation.

17. When the Department receives nuisance complaints on a land application site, the Department may restrict land application of animal manure on this site completely or during certain time periods.

18. The Department may require manure to be disked in immediately.

19. Manure (solid or liquid) shall only be applied when weather and soil conditions are favorable and when prevailing winds are blowing away from nearby dwellings. Animal manure should not be applied to land when the soil is saturated, flooded, during rain events, or when a significant rain event is forecasted to occur within forty-eight (48) hours, unless otherwise approved by the Department in an emergency situation.

20. Manure shall not be spread in the floodplain if there is danger of a major runoff event, unless the manure is incorporated during application or immediately after application.

21. If the manure is stockpiled outside, the manure shall be stored on a concrete pad or other approved pad (such as plastic or clay lined) and covered on a daily basis (unless otherwise specified in the permit) with an acceptable cover to prevent odors, vector attraction, and runoff. The cover should be vented properly with screen wire to let the gases escape. The edges of the cover should be properly anchored.

22. If a producer, who contracts to transfer the swine manure and other swine by-products produced at his or her facility, changes brokers, he or she must submit notification and a new broker contract for approval to the Department.

23. The body of vehicles transporting manure shall be wholly enclosed and, while in transit, be kept covered with a canvas cover provided with eyelets and rope tie-downs, or any other approved method that shall prevent blowing or spillage of loose material or liquids. Should any spillage occur during the transportation of the manure, the owner/operator shall take immediate steps to clean up the manure.

C. Setbacks for manure utilization areas (MUA) for small, large, and X-large swine facilities.

1. Siting Requirements applicable to all manure utilization areas associated with all swine facilities.

a. The minimum separation distance required between a manure utilization area and a residence is 300 feet. If there are no residences within 300 feet of the manure utilization area, manure can be applied up to the property line. The 300-foot setback may be waived with the consent of the owner of the residence. If the application method is injection or immediate (same day) incorporation, manure may be applied up to the property line. The setbacks are imposed at the time of application. The Department may impose these setbacks on previously approved sites to address problems on a case-by-case basis.

b. The minimum separation distance required between a manure utilization area and Waters of the State (not including ephemeral and intermittent streams), ditches, and swales that drain directly into Waters of the State (not including ephemeral and intermittent streams) is 100 feet.

c. The minimum separation distance required between a manure utilization area and ephemeral and intermittent streams is 100 feet when spray application is the application method, 75 feet when incorporation is the application method. When incorporation is accomplished within twenty-four (24) hours of the initial application, the distance can be reduced to 50 feet.

d. The minimum separation distance required between a manure utilization area and ditches and swales that drain directly into ephemeral and intermittent streams is 50 feet.

e. The minimum separation distance required between a manure utilization area and a potable drinking water well is 200 feet.

2. Water (pond) that is completely surrounded by land owned by the applicant and has no connection to surface water is excluded from the setback requirements outlined in this part.

3. The Department may establish in permits additional application buffer setbacks for property boundaries, roadways, residential developments, dwellings, water wells, drainage ways, and surface water (including ephemeral and intermittent streams) as deemed necessary to protect public health and the environment. Factors taken into consideration in the establishment of additional setbacks would be swine manure application method, adjacent land usage, public access, aerosols, runoff prevention, adjacent groundwater usage, aquifer vulnerability, and potential for vectors and odors.

D. The Department may establish additional permitting restrictions based upon soil and groundwater conditions to ensure protection of the groundwater and surface Waters of the State (including ephemeral and intermittent streams). Criteria may include, but is not limited to, soil permeability, clay content, depth to bedrock,

rock outcroppings, aquifer vulnerability, proximity to State Approved Source Water Protection Area, and depth to the seasonal high groundwater table.

E. The Department may establish permit conditions to require that swine manure and other swine by-products application rates remain consistent with the lime and fertilizer requirements for the cover, feed, food, and fiber crops based on Southeastern land grant universities' published lime and fertilizer recommendations (such as the Lime and Fertilizer Recommendations, Clemson Extension Services).

F. Groundwater Monitoring for Manure Utilization Areas.

1. For X-large swine facilities, at least one (1) up-gradient and two (2) down-gradient groundwater monitoring wells shall be installed for each drainage basin intersected by the manure utilization areas. The location, design, and construction specifications for the monitoring wells shall be submitted in the application package. The information shall be reviewed and approved by the Department prior to permit issuance. The permit will contain specific requirements for sampling the groundwater monitoring wells, including the frequency and parameters for sampling.

2. For small and large swine facilities, the Department may require groundwater monitoring at manure utilization areas as appropriate.

3. The Department may establish minimum requirements in permits for soil and/or groundwater monitoring for manure utilization areas. Factors taken into consideration in the establishment of soil and groundwater monitoring shall include groundwater depth, operation flexibility, application frequency, type of swine manure and other swine by-products, size of manure utilization area, aquifer vulnerability, proximity to a State Approved Source Water Protection Area, and loading rate.

a. The Department may establish pre-application and post-application site monitoring requirements in permits for limiting nutrients or limiting constituents as determined by the Department.

b. The Department may establish permit conditions, which require the permittee to reduce, modify, or eliminate the swine manure and other swine by-products applications based on the results of this monitoring data.

c. The Department may modify, revoke and reissue, or revoke a permit based on the monitoring data.

G. The Department may require periodic monitoring of any wet weather ditches or perennial streams which are in close proximity to any manure utilization areas.

#### 100.110. Spray Application System Requirements.

A. Spray application of swine manure using irrigation equipment. This includes all methods of surface spray application, including, but not limited to, fixed gun application, traveling or mobile gun application, or center pivot application.

B. New X-large swine facilities are prohibited from utilizing spray application systems for manure application. Manure must be incorporated into the manure utilization fields using subsurface injection at a depth of not less than 6 inches.

C. Manure utilization area slopes shall not exceed ten percent (10%) unless approved by the Department. The Department may require that slopes be less than ten percent (10%) based on site conditions.

D. Swine manure distribution systems shall be designed so that the distribution pattern optimizes uniform application.

E. Hydraulic Application Rates.

1. Application rates shall normally be based on the agronomic rate for the crop to be grown at the manure utilization area. As determined by soil conditions, the hydraulic application rate may be reduced below the agronomic rate to ensure no surface ponding, runoff, or excessive nutrient migration to the groundwater occurs.

2. The hydraulic application rate may be limited based on constituent loading including any constituent required for monitoring under this regulation.

F. Swine manure and other swine by-products shall not be applied when the vertical separation between the ground surface and the seasonal high water table is less than 1.5 feet at the time of application, unless approved by the Department on a case-by-case basis. For special cases, no land application can occur when the vertical separation from the ground surface to the water table is less than 1.5 feet at the time of application unless a situation is deemed an emergency with Departmental concurrence.

G. Conservation measures, such as terracing, strip cropping, etc., may be required in specific areas determined by the Department as necessary to prevent potential surface runoff from entering or leaving the manure utilization areas. The Department may consider alternate methods of runoff controls that may be proposed by the applicant, such as berms.

H. For swine facilities, a system for monitoring the quality of groundwater may also be required for the proposed manure utilization areas. The location of all the monitoring wells shall be approved by the Department. The number of wells, constituents to be monitored, and the frequency of monitoring shall be determined on a case-by-case basis based upon the site conditions such as type of soils, depth of water table, aquifer vulnerability, proximity to State Approved Source Water Protection Area, etc.

I. If an adverse trend in groundwater quality is identified, further assessment and/or corrective action may be required. This may include an alteration to the permitted application rate or a cessation of manure application in the impacted area.

J. Spray application systems shall be designed and operated in such a manner to prevent drift of liquid manure onto adjacent property.

# 100.120. Frequency of Monitoring for Swine Manure.

A. The producer and/or integrator shall be responsible for having representative samples based on Clemson University Extension Service recommendations of the swine manure collected and analyzed at least once per year and when the feed composition significantly changes. The constituents to be monitored shall be given in the permit. The analyses shall be used to determine the amount of swine manure to be land applied. In order to ensure that the permitted application rate (normally the agronomic rate) is met, the application amount shall be determined using a rolling average of the previous analyses. The Department shall establish minimum requirements for the proper method of sampling and analyzing of swine manure. Facilities with permits that do not specify which constituents to monitor shall monitor for ammonium-nitrogen, Total Kjeldahl Nitrogen (TKN), organic nitrogen (organic nitrogen = TKN - ammonium nitrogen),  $P_2O_5$ , and  $K_2O$ .

B. The Department may require nitrogen, potassium, phosphorus, the constituents listed in Table 1 and Table 2 of Section 100.100 (Manure Utilization Area Requirements), and any other constituent contained in a permit to be monitored prior to each application.

C. Permittees do not have to analyze for any constituent they can demonstrate, to the satisfaction of the Department, is not present in their swine manure.

D. All monitoring shall be done in accordance with collection procedures in Standard Methods for Analysis of Water and Wastewater or other Department guidelines. Analysis shall be conducted by Clemson University Extension Service or a laboratory certified by the Department. This laboratory shall have and maintain certification for the constituents to be analyzed.

## 100.130. Dead Swine Disposal Requirements.

A. Dead swine disposal shall be done as specified in the approved Animal Facility Management Plan. The Dead Swine Disposal Plan shall include the following:

1. Primary Method for the handling and disposal of normal mortality on the farm.

2. Alternate Method for the handling and disposal of excessive mortality at the facility. The normal method of disposal may not be sufficient to handle an excessive mortality situation. Each producer shall have a Department-approved emergency or alternate method to dispose of excessive mortality. Excessive mortality burial sites shall be preapproved by the Department prior to utilization.

B. Burial.

1. Burial pits may be utilized for emergency conditions, as determined by the Department, when the primary method of disposal is not sufficient to handle excessive mortality.

2. Burial pits shall not be located in the 100-year floodplain.

3. Soil type shall be evaluated for leaching potential.

4. Burial pits shall not be located or utilized on sites that are in areas that may adversely impact surface or groundwater quality or further impact impaired water bodies.

5. The bottom of the burial pit may not be within 2 feet of the seasonal high groundwater table.

6. No burial site shall be allowed to flood with surface water.

7. Swine placed in a burial site shall be covered daily with sufficient cover (6 inches per day minimum) to prohibit exhumation by feral animals.

8. When full, the burial site shall be properly capped (minimum 2 feet) and grassed to prohibit erosion.

9. Proposed burial pit sites shall be approved by the Department. The Department may conduct a geologic review of the proposed site prior to approval.

10. The Department may require any new or existing producers to utilize another method of dead swine disposal if burial is not managed according to the Dead Swine Disposal Plan or repeated violations of these burial requirements occur or adverse impact to surface or groundwater is determined to exist.

11. The Department may require groundwater monitoring for dead animal burial pits on a case-by-case basis. The Department shall consider all of the facts including, but not limited to, the following: depth to the seasonal high water table; aquifer vulnerability; proximity to a State Approved Source Water Protection Area; groundwater use in the area; distance to adjacent surface waters; number of dead animals buried; and frequency of burial in the area.

C. Incinerators.

1. For facilities proposing an incinerator for dead swine disposal, either a permit for the air emissions shall be obtained from the Department's Bureau of Air Quality before the incinerator can be built or the following criteria shall be met in order to qualify for an exemption from an air permit:

a. The emission of particulate matter shall be less than 1 pound per hour at the maximum rated capacity.

b. The incinerator shall be a package incinerator that meets the requirements from the Department's Bureau of Air Quality; and

c. The incinerator shall not exceed an opacity limit of ten percent (10%).

2. Incinerators used for dead swine disposal shall be properly operated and maintained. Operation shall be as specified in the owner's manual provided with the incinerator. The owner's manual shall be kept on site and made available to Department personnel upon request.

3. The use of the incinerator to dispose of waste oil, hazardous waste, or any other waste chemical is prohibited. The use of the incinerator shall be limited to dead swine disposal only unless otherwise approved by the Department's Bureau of Air Quality.

D. Composters used for dead swine disposal shall be designed by a professional engineer or an NRCS representative and operated in accordance with the approved Animal Facility Management Plan. Packaged composters shall be approved on a case-by-case basis.

E. Disposal of dead swine in a municipal solid waste landfill shall be in accordance with R.61-107.19.

F. Disposal of swine carcasses or body parts into manure lagoons, treatment systems, storage ponds, Waters of the State, ephemeral and intermittent streams, ditches, and swales is prohibited.

G. Disposal of animal carcasses or body parts by rendering shall be approved by the Department and include a signed contract with the rendering company.

H. Other methods of dead animal disposal that are not addressed in this regulation may be proposed in the Dead Animal Disposal Plan.

# 100.140. Other Requirements.

A. There shall be no discharge of pollutants from the operation into surface Waters of the State (including ephemeral and intermittent streams). There shall be no discharge of pollutants into groundwater, which could cause groundwater quality not to comply with the groundwater standards established in R.61-68.

B. On a case-by-case basis, the Department may impose additional or more stringent requirements for the management, handling, treatment, storage, or utilization of swine manure and other swine by-products.

C. The following cases shall be evaluated for additional or more stringent requirements:

1. Source water protection. Facilities and manure utilization areas located within a State-approved source water protection area.

2. 303(d) Impaired Water Bodies List. Facilities and manure utilization areas located upstream of an impaired waterbody.

3. Proximity to Outstanding Resource Waters, trout waters, shellfish waters, or potential to adversely affect a federally listed endangered or threatened species, its habitat, or a proposed or designated critical habitat.

4. Aquifer Vulnerability Area is an area where groundwater recharge may affect an aquifer.

D. If an adverse impact to the Waters of the State, including ephemeral and intermittent streams, or groundwater from swine manure and other swine by-products handling, storage, treatment, or utilization practices are documented, through monitoring levels exceeding the standards set forth in R.61-68 or a significant adverse trend occurs, the Department may require the producer responsible for the swine manure and other swine by-products to conduct an investigation to determine the extent of impact. The Department may require the producer to remediate the water to within acceptable levels as set forth in R.61-68.

E. No manure may be released from a swine manure lagoon, treatment system, or storage pond or the premises of a swine facility to Waters of the State, including ephemeral and intermittent streams.

F. Swine medical waste cannot be disposed into swine lagoons, treatment systems, or manure storage ponds, or land applied with swine manure and other swine by-products.

G. In the event of a discharge from a swine lagoon, treatment system, or manure storage pond, the permittee is required to notify the Department immediately, within twenty-four (24) hours of the discharge.

H. When the Department determines that a nuisance exists at a swine facility, the permittee shall take action to correct the nuisance to the degree and within the time frame designated by the Department.

I. Permittees shall maintain all-weather access roads to their facilities at all times.

## 100.150. Odor Control Requirements.

A. The Animal Facility Management Plan shall contain an odor abatement plan for the swine facility, lagoon, treatment system, manure storage pond, and manure utilization areas. The plan shall consist of the following:

1. Operation and maintenance practices which are used to eliminate or minimize undesirable odor levels in the form of a Best Management Plan for Odor Control;

- 2. Use of treatment processes for the reduction of undesirable odor levels;
- 3. Additional setbacks from property lines beyond the minimum setbacks given in this part;
- 4. Other methods as may be appropriate; or
- 5. Any combination of these methods.

B. Producers shall utilize Best Management Practices normally associated with the proper operation and maintenance of a swine facility, lagoon, treatment system, manure storage pond, and any manure utilization area to ensure an undesirable level of odor does not exist.

C. No producer may cause, allow, or permit emission into the ambient air of any substance or combination of substances in quantities that an undesirable level of odor is determined to result unless preventive measures of the type set out below are taken to abate or control the emission to the satisfaction of the Department. When an odor problem comes to the attention of the Department through field surveillance or specific complaints, the Department shall determine if the odor is undesirable.

D. If the Department determines an undesirable level of odor exists, the Department may require these abatement or control practices, including, but not limited to, the following:

1. Remove or dispose of odorous materials;

2. Methods in handling and storage of odorous materials that minimize emissions;

a. Dry to a moisture content of fifty percent (50%) or less;

b. Solids separation from liquid manure, and composting of solids;

c. Use disinfection to kill microorganisms present in manure;

d. Aerate manure;

e. Anaerobic digestion in a sealed vessel;

f. Compost solid manure and other swine by-products;

g. Utilize odor control additives.

3. Prescribed standards in the maintenance of premises to reduce odorous emissions;

a. Filtration (biofilters or other filter used to remove dust and odor) of ventilation air;

b. Keep animals clean and separate from manure;

c. Adjust number of animals confined in the pens or paddocks in accordance with Clemson University Animal Space Guidelines;

d. Frequent removal of manure from animal houses;

e. Add a layer of water in the shallow pits after the manure is removed;

f. Feeding areas should be kept dry, and waste feed accumulation should be minimized;

g. Maintain feedlot surfaces in a dry condition (twenty-five to forty percent (25 to 40% moisture content), with effective dust control;

h. Proper maintenance of the dead swine disposal system;

i. Cover or reduce the surface area of manure and other swine by-products storage. (Vents shall be provided for release of pressure created by manure gases if completely sealed covers are used);

j. Plant trees around or downwind of the manure and other swine by-products storage and treatment facilities (trees shall not be planted within 25 feet of the toe of the dike);

k. Incorporate manure and other swine by-products immediately after land application; and

1. Select appropriate times for land application.

4. Best Available Technology to reduce odorous emissions.

E. Nothing in this section prohibits an individual or group of persons from bringing a complaint against a swine facility, including problems at lagoons, treatment systems, manure storage ponds, and manure utilization areas.

F. If the permittee fails to control or abate the odor problems at a swine facility, lagoon, treatment system, manure storage pond, and any manure utilization area to the satisfaction and within a time frame determined by the Department, the permit may be revoked. If the permittee fails to control or abate the odor problems at land application sites, approval for land application of manure on the manure utilization area in question may be revoked. Additional land may be required to be added to the Animal Facility Management Plan, if necessary, to provide a sufficient amount of land for manure utilization.

#### 100.160. Vector Control Requirements.

A. The Vector Abatement Plan shall, at a minimum, consist of the following:

1. Best management practices used at the swine facility, lagoon, treatment system, manure storage pond, and manure utilization areas to ensure there is no accumulation of organic or inorganic materials to the extent and in such a manner as to create a harborage for rodents or other vectors that may be dangerous to public health.

2. A list of specific actions to be taken by the producer if vectors are identified as a problem at the swine facility, lagoon, treatment system, manure storage pond, or any manure utilization area. These actions should be listed for each vector problem, e.g., actions to be taken for fly problems, actions to be taken for rodent problems, etc.

B. No producer may cause, allow, or permit vectors to breed or accumulate in quantities that result in a nuisance level, as determined by the Department.

C. For an existing facility, if the Department determines a vector problem exists, the Department may require these abatement or control practices, including, but not limited to, the following:

1. Remove and properly dispose of vector infested materials;

2. Methods in handling and storage of materials that minimize vector attraction;

a. Remove spilled or spoiled feed from the house as soon as practicably possible, not to exceed forty-eight (48) hours, unless otherwise approved by the Department;

b. Remove and properly dispose of dead animals as soon as practicably possible, not to exceed twenty-four (24) hours, unless otherwise approved by the Department;

c. Increase the frequency of manure removal from animal houses;

d. Prevent solids buildup in the pit storage or on the floors or walkways;

e. Remove excess manure packs along walls and curtains;

f. Compost solid manure and other swine by-products;

g. Appropriate use of vector control chemicals, poisons, or insecticides (take caution to prevent insecticide resistance problems);

h. Utilize traps, or electrically charged devices;

i. Utilize biological agents;

j. Utilize Integrated Pest Management; and

k. Incorporate manure and other swine by-products immediately (within twenty-four (24) hours) after land application.

3. Prescribed standards in the maintenance of premises to reduce vector attraction;

- a. Remove standing water that may be a breeding area for vectors;
- b. Keep animals clean or separated from manure;
- c. Keep facility clean and free from trash or debris;
- d. Properly utilize and service bait stations;
- e. Keep feeding areas dry, and minimize waste feed accumulation;

f. Keep grass and weeds mowed around the facility and manure storage or treatment areas;

g. Maintain the dead swine disposal system;

h. Cover or reduce the surface area of manure and other swine by-products storage. (Vents shall be provided for release of pressure created by manure gases if completely sealed covers are used);

i. Properly store feed and feed supplements;

j. Conduct a weekly vector monitoring program;

k. Be aware of insecticide resistance problems, and rotate use of different insecticides;

1. Prevent and repair leaks in waterers, water troughs or cups; and

m. Ensure proper grading and drainage around the buildings to prevent rain water from entering the buildings or ponding around the buildings.

4. Utilize the best available control technology to reduce vector attraction and breeding.

#### 100.170. Record Keeping.

A. A copy of the approved Animal Facility Management Plan, including approved updates, and a copy of the permit(s) issued to the producer shall be retained by the permittee for as long as the swine facility is in operation.

B. All application information submitted to the Department shall be retained by the permittee for eight (8) years. However, if the facility was permitted prior to June 26, 1998, and the permittee has previously discarded these documents since there was no requirement to maintain records at that time, this requirement shall not apply.

C. Records shall be developed for each manure utilization area. These records shall be kept for eight (8) years. The records shall include the following:

1. For each time swine manure and other swine by-products are applied to the site, the amount of swine manure and other swine by-products applied (in gallons per acre or pounds per acre, as appropriate), the date and time of the application, and the location of the application;

2. All sampling results for swine manure that is land applied;

- 3. All soil monitoring results;
- 4. All groundwater monitoring results, if applicable; and
- 5. Crops grown.

D. Records for the facility to include the following on a monthly basis:

- 1. Animal count and the normal production animal live weight; and
- 2. Mortality count and method of disposal.

E. Records for lagoon, treatment system, or manure storage pond operations to include the following:

- 1. Monthly water levels of the lagoon, treatment system, and manure storage pond; and
- 2. Groundwater monitoring results, if applicable.

F. All records retained by the producer shall be kept at either the facility, an appropriate business office, or other location as approved by the Department.

G. All records retained by the producer shall be made available to the Department during normal business hours for review and copying, upon request by the Department.

#### 100.180. Reporting.

A. All large and X-large swine operations shall submit, on a form approved by the Department, the following on an annual basis or more frequently if required by a permit or regulation:

1. All manure sampling results for the last year, if applicable, and the latest rolling average concentration for the land limiting constituent;

- 2. All soil monitoring results, if applicable;
- 3. All groundwater monitoring results, if applicable;
- 4. Calculated application rates for all manure utilization areas; and

5. The adjusted application rates, if applicable, based on the most recent swine manure sampling, soil samples, and crop yields. The application rate change could also be due to a change in field use, crop grown, or other factors.

B. The Department may require small swine facilities to submit annual reports on a case-by-case basis.

C. The Department may establish permit conditions to require a swine facility to complete and submit a comprehensive report every five (5) years. The Department shall review this report to confirm that the permitted nutrient application rates have not been exceeded. Based on the results of the review, additional soil and/or groundwater monitoring requirements, permit modification, and/or corrective action may be required.

## 100.190. Training Requirements.

A. An owner/operator of a new or existing swine facility, lagoon, manure storage pond, or manure utilization area shall complete a training program on the operation of swine manure management created by Clemson University, i.e. (CAMM).

B. Owners/Operators of new and existing swine facilities shall be required to pass a test and become certified as a part of the training program created by Clemson University.

C. The certification shall be completed by owners/operators of new facilities prior to start-up of operations.

D. The certification shall be completed by owners/operators of existing facilities within two (2) years of the effective date of this regulation. The certification program shall be completed by owners/operators involved in a transfer of ownership within one (1) year of the transfer of ownership approval.

E. The certification shall be maintained as long as the facility remains in operation.

F. Failure to obtain the certification as provided in this Section shall be deemed a violation of this regulation.

G. Additional Training and Certification Requirements for X-Large Swine Facilities:

1. The Department shall classify all manure treatment systems serving X-large swine facilities, giving due regard to size, types of work, character, and volume of manure to be treated, and the use and nature of the land resources receiving the manure.

2. Manure treatment systems may be classified in a group higher than indicated at the discretion of the Department by reason of the following:

a. Incorporation in the treatment system of complex features which cause the treatment system to be more difficult to operate than usual; or

b. A waste stream that is unusually difficult to treat; or

c. Conditions of flow; or

d. Use of the receiving lands requiring an unusually high degree of system operation control; or

e. Combinations of such conditions or circumstances.

3. The classifications for biological treatment systems are based on the following groups:

a. Group I - B. All agricultural manure treatment systems which include one (1) or more of the following units: primary settling, chlorination, sludge removal, Imhoff tanks, sand filters, sludge drying beds, land spraying, grinding, screening, oxidation, and stabilization ponds.

b. Group II - B. All agricultural manure treatment systems which include one (1) or more of the units listed in Group I-B and, in addition, one (1) or more of the following units: sludge digestion, aerated lagoon, and sludge thickeners.

c. Group III - B. All agricultural manure treatment systems which include one (1) or more of the units listed in Groups I-B and II-B and, in addition, one (1) or more of the following: trickling filters, secondary settling, chemical treatment, vacuum filters, sludge elutriation, sludge incinerator, wet oxidation process, contact aeration, and activated sludge (either conventional, modified, or high rate processes).

d. Group IV - B. All agricultural manure treatment systems which include one (1) or more of the units listed in Groups I-B, II-B, and III-B and, in addition, treat manure having a raw five (5)-day biochemical oxygen demand of 5,000 pounds per day or more.

4. The classifications for physical chemical manure treatment systems are based on the following groups:

a. Group I-P/C. All agricultural manure treatment systems which include one (1) or more of the following units: primary settling, equalization, pH control, and oil skimming.

b. Group II-P/C. All agricultural manure treatment systems which include one (1) or more of the units listed in Group I-P/C and, in addition, one (1) or more of the following units: sludge storage, dissolved air flotation, and clarification.

c. Group III-P/C. All agricultural manure treatment systems which include one (1) or more of the units listed in Groups I-P/C and II-P/C and, in addition, one (1) or more of the following: oxidation/reduction reactions, cyanide destruction, metals precipitation, sludge dewatering, and air stripping.

d. Group IV-P/C. All agricultural manure treatment systems which include one (1) or more of the units listed in Groups I-P/C, II-P/C, and III-P/C and, in addition, one (1) or more of the following: membrane technology, ion exchange, tertiary chemicals, and electrochemistry.

5. It shall be unlawful for any person or corporation to operate an agricultural manure treatment system at an X-large swine facility unless the operator-in-charge holds a valid certificate of registration issued by the Board of Certification of Environmental Systems Operators in a grade corresponding to the classification of the agricultural manure treatment system supervised by him or her.

## 100.200. Violations.

A. Persons who violate this regulation or any permit issued under this regulation are subject to the penalties in Sections 48-1-320 (Criminal Penalties) and 48-1-330 (Civil Penalties) of the South Carolina Pollution Control Act.

B. X-Large swine facilities shall be assessed automatic penalties (up to \$10,000 per day per violation) for the following violations:

1. Lagoon, treatment system, or manure storage pond breach, or loss of containment that is not the direct result of an Act of God.

2. Manure Utilization Area runoff due to improper manure application methods.

3. Discharge to groundwater on site causing groundwater to exceed any water quality standard established in R.61-68.

C. Second occurrence of any of the violations outlined in 100.200.B. at an X-large swine facility shall result in immediate revocation of the permit and the automatic assessment of appropriate penalties.

D. Immediate cessation of manure application will also be enforced on sites where groundwater quality is adversely affected.

E. Any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required by the Department to be maintained as a condition in a permit, or who alters or falsifies the results

obtained by such devices or methods, shall be deemed to have violated a permit condition and shall be subject to the penalties provided for pursuant to Sections 48-1-320 and 48-1-330 of the S.C. Code of Regulations.

## PART 200 ANIMAL FACILITIES (OTHER THAN SWINE)

# 200.10. Purpose, Applicability, Inactive Facilities, and Facilities Permitted Prior to the Effective Date of the Regulation.

A. Purpose.

1. To establish standards for the growing or confining of animals, processing of animal manure and other animal by-products, and land application of animal manure and other animal by-products in such a manner as to protect the environment, and the health and welfare of citizens of the State from pollutants generated by this process.

2. To establish standards, which consist of general requirements, constituent limits, management practices, and operational standards, for the utilization of animal manure and other animal by-products generated at animal facilities. Standards included in this part are for animal manure and other animal by-products applied to the land.

3. To establish standards for the frequency of monitoring and record keeping requirements for producers who operate animal facilities.

4. To establish standards for the proper operation and maintenance of animal facilities.

5. To establish criteria for animal facilities' and manure utilization areas' location as they relate to protection of the environment and public health. The location of animal facilities and manure utilization areas as they relate to zoning in an area is not covered in this regulation. Local county or municipal governments may have zoning requirements and this regulation neither interferes with nor restricts such zoning requirements. Permit applicants should contact local municipal and county authorities to determine any local requirements that may be applicable.

B. Applicability.

- 1. This part applies to:
  - a. All new animal facilities;
  - b. All expansions of existing animal facilities;
  - c. New manure utilization areas for existing animal facilities;
  - d. All inactive facilities; and
  - e. All facilities and lagoon closures.
- 2. This part applies to all animal manure and other animal by-products applied to the land.
- 3. This part applies to all land where animal manure and other animal by-products are applied.
- C. Inactive Facilities.

1. If an animal facility is inactive for two (2) years or less, a producer may resume operations of the facility under the same conditions by which it was previously permitted by notifying the Department in writing that the facility is being operated again.

2. For animal facilities that have been inactive for more than two (2) years but less than five (5) years, the Department shall review the existing permit and modify its operating conditions as necessary prior to the facility being placed back into operation.

3. For all other than swine animal facilities that have been inactive for five (5) or more years, the producer shall properly close out any lagoon, treatment system, or manure storage pond associated with the facility. The closeout shall be accomplished in accordance with R.61-82. The permittee shall submit a closeout plan that meets, at a minimum, NRCS-CPS within a time frame prescribed by the Department. Additional time may be granted by the Department to comply with the closeout requirement or to allow the producer to apply for a new permit under this regulation, as appropriate.

4. If an animal facility is inactive for more than five (5) years, the permit is considered expired and the producer shall apply for a new permit and all requirements of this regulation shall be met before the facility can resume operations.

5. During the closeout of the facilities and/or lagoons/waste storage ponds, annual fees are required until proper closeout is certified and approved.

D. Facilities Permitted Prior to the Effective Date of the Regulation.

1. All existing animal facilities with permits issued by the Department before June 26, 1998, do not need to apply for a new permit as they are deemed permitted (deemed permitted animal facilities) unless they have been inactive for more than two (2) years or expand operations. These facilities shall meet the following sections of Part 200: Section 200.20 (Permits and Compliance Period); Section 200.90.A, D, and J-O (General Requirements for Animal Manure Lagoons, Treatment Systems, and Animal Manure Storage Ponds); Section 200.100. (Manure Utilization Area Requirements); Section 200.110.H-I (Spray Application System Requirements); Section 200.120.A, C-D (Frequency of Monitoring for Animal Manure); Section 200.130.A, B, and C.2.-3. (Dead Animal Disposal Requirements); Section 200.140.A, C-I (Other Requirements); Section 200.150.B-F (Odor Control Requirements); Section 200.160.B-D (Vector Control Requirements); Section 200.170 (Record Keeping); Section 200.180 (Reporting); Section 200.190 (Training Requirements); and Section 200.200 (Violations). The capacity of a deemed permitted facility that does not have a lagoon is the number of animals and normal production animal live weight permitted by the Department prior to the effective date of this regulation. For deemed permitted facilities with lagoons, the capacity is the maximum capacity of the existing animal manure lagoon, treatment system, and animal manure storage pond as determined using the appropriate animal manure lagoon, treatment system, and animal manure storage pond capacity design criteria of the United States Department of Agriculture's Natural Resource Conservation Service.

2. All existing animal facilities with permits issued by the Department between June 26, 1998, and the effective date of this regulation do not need to apply for a new permit if they hold a valid permit from the Department, unless they have been inactive for more than two (2) years. These facilities shall meet all the requirements of this regulation.

3. All existing animal facilities that were constructed and placed into operation prior to June 26, 1998, but have never received an agricultural permit from the Department, shall apply for a permit from the Department. This facility shall meet all the requirements of this regulation as the Department determines appropriate. The Department shall review the site and make a determination on a case-by-case basis on which requirements are applicable.

4. An existing animal facility may be required to submit an updated Animal Facility Management Plan on a case-by-case basis by the Department. The Department shall notify the permittee in writing of this requirement. The permittee has six (6) months or an agreed upon time frame from the date of notification to submit an updated Animal Facility Management Plan. Failure to submit the updated plan within this time frame is a violation of the South Carolina Pollution Control Act and this regulation, and may result in permit revocation.

5. Both the setbacks and other requirements for manure utilization areas shall be met when a new manure utilization (MUA) area is added by the owner of any animal facility regardless of when the facility was permitted.

6. If an existing animal facility regulated under this part proposes to convert to a swine facility, it shall be considered a new swine facility under this regulation. Converted facilities shall be permitted as new swine facilities and meet all criteria for new swine facilities before they begin operation as a swine facility.

## 200.20. Permits and Compliance Period.

A. Permit Requirement. Animal manure and other animal by-products from a new or expanded animal facility can only be generated, handled, stored, treated, processed, or land applied in the State in accordance with a permit issued by the Department under the provisions of this part. Existing producers that are required by the Department to update their Animal Facility Management Plan shall meet the requirements of this part to the extent practical as determined by the Department.

B. Permits issued under this regulation are no-discharge permits.

C. The requirements in this part shall be implemented through a permit issued to any producer who operates an animal facility where animal manure and other animal by-products are generated, handled, treated, stored, processed, or land applied.

D. The requirements under this part may be addressed in permits issued to producers who only land apply animal manure and other animal by-products.

E. Notification Requirements. The permittee shall notify the Department in writing and receive written Departmental approval, except as otherwise noted, prior to any change in operations at a permitted facility, including, but not limited to, the following:

1. Change in ownership and control of the facility. The Department has thirty (30) calendar days from the receipt of a complete and accurate notification of transfer of ownership to either: request additional information regarding the transfer or the new owner; deny the transfer; or approve the transfer of ownership. If the Department does not act within thirty (30) calendar days, the transfer is automatically approved. If additional information is requested by the Department in a timely manner, the Department shall act on this additional information, when it is received, within the same time period as the initial notification.

2. Increase in the permitted number of animals.

3. Addition of manure utilization areas.

4. Change in animal manure and other animal by-products treatment, handling, storage, processing, or utilization.

5. Change in method of dead animal disposal.

F. Permit modifications for items 200.20.E.2 and 200.20.E.4 for facilities regulated under this part, which will result in expansions, shall adhere to the requirements of this part and other applicable statutes, regulations, or guidelines.

G. Permit modification for item 200.20.E.2 which result in an expansion may be required to obtain new written waivers or agreement for reduction of setbacks from adjoining property owners (if applicable).

## 200.30. Exclusions.

The following do not require permits from this part unless specifically required by the Department under item 200.30.G.

A. Existing animal facilities that are deemed permitted under Section 200.10.D.1 are excluded from applying for a new permit unless an expansion is proposed, new manure utilization areas are added, or as required by the Department. However, deemed permitted facilities shall meet the requirements of this regulation as outlined in Section 200.10.D (Purpose, Applicability, Inactive Facilities, and Facilities Permitted Prior to the Effective Date of the Regulation).

B. Except as given in Section 200.30.G, animal facilities with only ranged animals, and no lagoon, treatment system, or manure storage pond is associated with the facility, are excluded from obtaining a permit from the Department. The range area shall be of sufficient size to allow for natural degradation or utilization of the animal manure with no adverse impact to the environment. Ranged facilities shall also maintain adequate vegetative buffers between the animal range and Waters of the State.

C. Except as given in Section 200.30.G, animal facilities, which do not have a lagoon, manure storage pond, or liquid manure treatment system, having 10,000 pounds or less of normal production animal live weight at any one time are excluded from obtaining a permit from the Department. However, these facilities shall have and implement an Animal Facility Management Plan for their facility that meets the requirements of this regulation.

D. Except as given in Section 200.30.G, animal facilities, which do not have a lagoon, manure storage pond, or liquid manure treatment system, having more than 10,000 pounds of normal production animal live weight at any one time and having less than 30,000 pounds of normal production animal live weight at any one time are excluded from obtaining a permit from the Department. However, these facilities shall submit an Animal Facility Management Plan to the Department and implement an Animal Facility Management Plan for their facility that meets the requirements of this regulation.

E. Except as given in Section 200.30.G, animal facilities that are not classified as commercial facilities are excluded from obtaining a permit from the Department.

F. Except as given in Section 200.30.G, animal facilities that hold valid permits issued by the Department are not required to obtain a new permit if they decide to replace in kind any of the animal growing houses.

G. Animal facilities exempted under Sections 200.30.A, B, C, D, E, and F may be required by the Department to obtain a permit. The Department shall visit the site before requiring any of these facilities to obtain a permit.

#### 200.40. Relationship to Other Regulations.

The following regulations are referenced throughout this part and may apply to facilities covered under this regulation.

A. Application and annual operating fees are addressed in R.61-30, Environmental Protection Fees.

B. The proper closeouts of wastewater treatment facilities are addressed in R.61-82, Proper Closeout of Wastewater Treatment Facilities. This includes animal lagoons and manure storage ponds.

C. Setbacks and construction specifications for potable water wells and monitoring wells shall be in accordance with R.61-71, Well Standards.

D. Permits for air emissions from incinerators are addressed in R.61-62, Air Pollution Control Regulations and Standards.

E. Disposal of animal manure in a municipal solid waste landfill unit is addressed in R.61-107.19, Solid Waste Management: Solid Waste Landfills and Structural Fill.

F. Disposal of animal manure with domestic or industrial sludge is addressed in R.61-9, Water Pollution Control Permits, and permitted under R.61-9.

G. Laboratory certification is addressed in R.61-81, State Environmental Laboratory Certification Program.

H. Water Classifications and Standards are addressed in R.61-68.

## 200.50. Permit Application Procedures (Animal Facility Management Plan Submission Requirements).

A. Preliminary Site Evaluations. The Department shall perform a preliminary evaluation of the proposed site at the request of the applicant. Written requests for a preliminary site inspection shall be made using a form provided by the Department. The Department shall not schedule a preliminary site inspection until all required information specified in the form has been submitted to the Department. This evaluation should be performed prior to preparation of the Animal Facility Management Plan. Once the preliminary site inspection is performed, the Department shall issue an approval or disapproval letter for the proposed site.

B. A producer who proposes to build a new animal facility or expand an existing animal facility shall make application for a permit under this part using an application form provided by the Department. The following information shall be included in the application package.

1. A completed and accurate application form.

2. An Animal Facility Management Plan prepared by qualified Natural Resources Conservation Service (NRCS) personnel or a S.C. registered professional engineer (PE). Other qualified individuals, such as certified soil scientists or S.C. registered professional geologists (PG), may prepare the land application component of an Animal Facility Management Plan. The Animal Facility Management Plan shall, at a minimum, contain:

a. Facility name, address, telephone numbers, email address (if applicable), county, and National Pollutant Discharge Elimination System Permit or other permit number (if applicable);

b. Facility location description and the zoning or land use restrictions in this area (this information is available from the county);

c. Applicant's name, address, email, and telephone number (if different from above);

d. Operator's name and CAMM number (if available)

e. Facility capacity;

i. Number and type of animals;

ii. Pounds of normal production animal live weight at any one time;

iii. Amount of animal manure and other animal by-products generated per year (gallons for liquid animal manure and pounds for dry animal manure);

iv. Amount in tons of any scraped or separated solid animal manure and other animal by-products generated per year (if applicable);

v. Description of animal manure and other animal by-products storage and storage capacity of lagoon, treatment system, or manure storage pond (if applicable); and

vi. Description of animal manure and other animal by-products treatment (if any).

f. Concentration of constituents in liquid animal manure including, but not limited to, the constituents given below:

i. Nutrients.

(a) Nitrate (only needed for aerobic systems).

(b) Ammonium-Nitrogen.

(c) Total Kjeldahl Nitrogen (TKN).

(d) Organic-Nitrogen (TKN - Ammonium-Nitrogen).

(e)  $P_2O_5$ .

(f) K<sub>2</sub>O (potash).

ii. Constituents.

- (a) Arsenic.
- (b) Copper.
- (c) Zinc.

iii. Name, address, S.C. lab certification number, and telephone number of the laboratory conducting the analyses.

iv. For new animal facilities, liquid animal manure analysis information does not have to be submitted as the Department shall use manure analyses from similar sites or published data (such as: Clemson University, American Society of Agricultural Engineers, Midwest Planning Service Document, NRCS Technical Guide or equivalent) in review of the application. Analysis of the actual animal manure generated shall be submitted to the Department twelve (12) months after a new animal facility starts operation or prior to the first application of animal manure to a manure utilization area, whichever occurs first. If this analysis is significantly different from the estimated analysis used in the permitting decision, the Department may require a permit modification as necessary to address the situation. Analysis shall be conducted by a laboratory certified by the Department. This laboratory shall have and maintain certification for the constituents to be analyzed.

g. Concentration of constituents in dry animal manure including, but not limited to, the following:

i. Nutrients (on a dry weight basis).

- (a) Total Kjeldahl Nitrogen (mg/kg).
- (b) Total inorganic nitrogen (mg/kg).
- (c) Total ammonia nitrogen (mg/kg) and Total nitrate, nitrogen (mg/kg).
- (d)  $P_2O_5$  (mg/kg).
- (e) K<sub>2</sub>O (mg/kg).
- (f) Calcium Carbonate equivalency (if animal manure is alkaline stabilized).

ii. Constituents (on a dry weight basis).

- (a) Arsenic (mg/kg).
- (b) Copper (mg/kg).
- (c) Zinc (mg/kg).

iii. Name, address, S.C. lab certification number, and telephone number of the laboratory conducting the analyses.

iv. For new animal facilities, dry animal manure analysis information does not have to be submitted as the Department shall use manure analyses from similar sites or published data (such as: Clemson University, American Society of Agricultural Engineers, Midwest Planning Service Document, NRCS Technical Guide or equivalent) in review of the application. Analysis of the actual dry animal manure generated shall be submitted to the Department twelve (12) months after a new animal facility starts operation or prior to the first application of animal manure to a manure utilization area, whichever occurs first. If this analysis is significantly different from the estimated analysis used in the permitting decision, the Department may require a permit modification as necessary to address the situation. Analysis shall be conducted by a laboratory certified by the Department. This laboratory shall have and maintain certification for the constituents to be analyzed.

h. Animal manure and other animal by-products handling and application information shall be included as follows:

i. A crop management plan which includes the time of year of the animal manure application and how it relates to crop type, crop planting, and harvesting schedule (if applicable) for all manure utilization areas;

ii. Name, address, and telephone number of the producer(s) that will land apply the animal manure and other animal by-products if different from the permittee;

iii. Type of equipment used to transport and/or spread the animal manure and other animal by-products (if applicable); and

iv. For spray application systems, plans and specifications with supporting details and design calculations for the spray application system.

i. Facility and manure utilization area information shall be included (as appropriate):

i. Name, address, and tax map number of landowner and location of manure utilization area(s);

ii. List previous calendar years that animal manure and other animal by-products were applied and application amounts, where available;

iii. Facility and manure utilization area location(s) on maps drawn to approximate scale including:

(a) Topography (7.5' or equivalent) and drainage characteristics (including ditches);

(b) Adjacent land usage (within 1/4 mile of property line minimum) and location of inhabited dwellings and public places showing property lines and tax map number;

(c) All known water supply wells on the applicant's property and within 200 feet of the facility's property line or within 200 feet of any manure utilization areas;

(d) Adjacent surface water bodies (including ephemeral and intermittent streams);

(e) Animal manure utilization area boundaries and buffer zones;

(f) right-of-ways (Utilities, roads, etc.);

(g) Soil types as given by soil tests or soils maps, a description of soil types, and boring locations (if applicable);

(h) Recorded plats, surveys, or other acceptable maps that include property boundaries; and

(i) Information showing the 100-year and 500-year floodplain (as determined by FEMA).

iv. For manure utilization areas not owned by the permit applicant, a signed agreement between the permit applicant and the landowner acceptable to the Department detailing the liability for the land application. The agreement shall include, at a minimum, the following:

(a) Producer's name, farm name, farm address, CAMM number, and county in which the farm is located;

(b) Landowner's name, address, phone number;

(c) Location (map with road names, tax map numbers, and county identified) of the land to receive manure application;

(d) Field acreage, acreage less setbacks, and crops grown;

(e) Name of manure hauler;

(f) Name of manure applier;

(g) A statement that land is not included in any other management plans and manure or compost from another farm is not being applied on this land; and any manure utilization areas that are included in multiple Animal Facility Management Plans, identify the names of all facilities that include this manure utilization area in their plan; and

(h) A signed statement which informs the landowner that he or she is responsible for spreading and utilizing this manure in accordance with the requirements of the Department and this regulation.

3. Groundwater monitoring well details and proposed groundwater monitoring program (if applicable).

4. The Animal Facility Management Plan shall contain an odor abatement plan for the animal facility, lagoon, treatment system, manure storage pond, and manure utilization areas. For more specific details, see Section 200.150 (Odor Control Requirements).

5. A Vector Abatement Plan shall be included for the animal facility, lagoon, treatment system, manure storage pond, and manure utilization areas. For more specific details see Section 200.160 (Vector Control Requirements).

6. The Dead Animal Disposal Plan shall include written details for the handling and disposal of dead animals. Plans should detail method of disposal, any construction specifications necessary, and management practices. See Section 200.130 (Dead Animal Disposal Requirements) for specific requirements on dead animal disposal.

7. A Soil Monitoring Plan shall be developed for all manure utilization areas. See Section 200.100 (Manure Utilization Area Requirements) for more detailed information.

8. Plans and specifications for all other manure treatment or storage structures, such as holding tanks or manure storage sheds.

9. All "Notice of Intent to Build or Expand an Animal Facility" forms provided by the Department and a tax map (or equivalent) to scale showing all neighboring property owners and identifying which property has inhabited dwellings. See Section 200.60 (Public Notice Requirements) for more detailed information.

10. An Emergency Plan. The emergency plan should, at a minimum, contain a list of entities or agencies the producer shall contact in the event of lagoon, treatment system, or manure storage pond breach, mass animal mortality, fire, flood, or other similar type problem. For facilities in the coastal areas of the state, the emergency plan should address actions to be taken by a producer during hurricane season (such as providing additional freeboard during that time) and when advance warning is given on any extreme weather condition.

11. All waivers as specified in Section 200.80 (Facility, Lagoon, Treatment System, and Manure Storage Pond Siting Requirements), if applicable.

12. Application fee and first year's operating fee as established by R.61-30.

C. The Department may request an applicant to provide any additional information deemed necessary to complete or correct deficiencies in the animal facility permit application prior to processing the application or issuing, modifying, or denying a permit.

D. Applicants shall submit all required information in a format acceptable to the Department.

E. An application package for a permit is complete when the Department receives all of the required information which has been completed to its satisfaction. Incomplete submittal packages may be returned to the applicant by the Department.

F. Application packages for permit modifications only need to contain the information applicable to the requested modification or any additional information the Department deems necessary.

#### 200.60. Public Notice Requirements.

A. For new animal facilities, the applicant shall notify all property owners within 1,320 feet of the proposed location of the facility (footprint of construction) of the applicant's intent to build an animal facility. The applicant shall use a notice of intent form provided by the Department. The Department shall post the Public Notice of application received on the Department's website for fifteen (15) business days. The Department may

also post up to four (4) notices, in the four (4) cardinal directions around the perimeter of the property or in close proximity to the property, in locations visible to the public within the public right-of-ways determined by the Department. The notice of intent on the Department's website shall advise adjoining property owners that they can send comments on the proposed animal facility directly to the Department.

B. For properties that have multiple owners or properties that are in an estate with multiple heirs, the Department, shall publish a notice of intent to construct an animal facility on the Department's website. This notice on the Department's website shall serve as notice to these multiple property owners of the producer's intent to build an animal facility.

C. For existing animal facilities seeking to expand their current operations, the Department shall post the Public Notice of application received on the Department's website for fifteen (15) business days. The Department may also post up to four (4) notices in the four (4) cardinal directions around the perimeter of the property or in close proximity to the property, in locations visible to the public right-of-way or as determined by the Department.

D. The Department shall review all comments received. If the Department receives twenty (20) or more letters from different "Affected Persons" requesting a meeting or the Department determines significant comment exists, a meeting shall be held to discuss and seek resolution to the concerns prior to a permit decision being made. All persons who have submitted written comments shall be invited in writing to the meeting. First Class US mail service, email, or hand delivery to the address of a person to be notified shall be used by the Department for the meeting invitation. However, if the Department determines that the number of persons who submitted written comments is significant, the Department shall publish a notice of the public meeting on the Department's website instead of notifying each individual by First Class mail or email. In addition, the Department shall notify all group leaders and petition organizers in writing. Agreement of the parties is not required for the Department to make a permit decision.

E. When comments are received by email, the Department shall acknowledge receipt of the comment by email. These comments shall be handled in the same manner as written comments received by postal mail.

F. The Department shall consider all relevant comments received in determining a permit decision.

G. The Department shall give notice of the permit decision to issue or deny the permit to the applicant, all persons who commented in writing to the Department, and all persons who attended the meeting, if held. First Class US mail service or email shall be used by the Department for the notice of decision. However, if the Department determines that members of the same group or organization have submitted comments or a petition, the Department shall only notify all group leaders and petition organizers in writing. The Department shall ask these leaders and organizers to notify their groups or any concerned citizens who signed the petitions.

H. For permit issuances, the Department shall publish a notice of issuance of a permit to construct or expand an animal facility on the Department's website.

I. For permit denials, the Department shall give the permit applicant a written explanation, which outlines the specific reasons for the permit denial.

J. For permit denials, the Department shall publish a notice of decision on the Department's website.

K. The Department shall include, at a minimum, the following information in the public notices on permit decisions: the name and location of the facility; a description of the operation and the method of manure handling; instructions on how to appeal the Department's decision; the time frame for filing an appeal; the date of the decision; and the date upon which the permit becomes effective.

## 200.70. Permit Decision Making Process.

A. No permit shall be issued before the Department receives a complete application package.

B. The agricultural program of the Department is not involved in local zoning and land use planning. Local government(s) may have more stringent requirements for agricultural animal facilities. The permittee is responsible for contacting the appropriate local government(s) to ensure that the proposed facility meets all the local requirements.

C. After the Department has received a complete application package, a technical review shall be conducted by the Department. The Department may request any additional information or clarification from the applicant or the preparer of the Animal Facility Management Plan to help with the determination on whether a permit should be issued or denied. If a permit application package meets all applicable requirements of this part, a permit may be issued.

D. A preliminary site inspection shall be made by the Department before a complete application package is received by the Department.

E. The Department shall act on all permits to prevent, so far as reasonably possible considering relevant standards under state and federal laws, an increase in pollution of the waters and air of the State from any new or enlarged sources.

F. The setback limits given in Part 200 are siting requirements. The Department shall evaluate the following factors to determine if any special conditions are necessary:

- 1. Latitude and Longitude;
- 2. Down-wind receptors; and
- 3. Nutrient Management Plan.

G. When a permit is issued, it shall contain an issue date, an effective date, and, when applicable, a construction expiration date. The effective date shall be at least fifteen (15) calendar days after the issue date to allow for any appeals. If a timely appeal is not received, the permit shall be effective on the effective date.

H. An expired permit (final expiration date for renewal) issued under this part continues in effect until a new permit is effective if the permittee submits a complete application, to the satisfaction of the Department, at least one hundred eighty (180) calendar days before the existing permit expires. The Department may grant permission to submit an application later than the deadline for submission stated above, but no later than the permit expiration date. If the facility has been closed for any two (2) consecutive years since the last permit was issued, the provision for the expiring permit remaining in effect does not apply since the permit is no longer valid. Permittees shall notify the Department in writing within thirty (30) calendar days of when they go out of business.

I. The animal facility, lagoon, treatment system, or manure storage pond can be built only when the permit is effective. The facility cannot be placed into operation until the Department has issued a written Approval to Operate (ATO).

J. To receive an ATO, the producer shall have the preparer of the Animal Facility Management Plan submit to the Department written certification that the construction has been completed in accordance with the approved Animal Facility Management Plan and the requirements of this regulation.

K. The Department shall conduct a final inspection before granting an ATO to a producer to begin operations.

L. The Department shall grant written approval for the producer to begin operations after it has received the certification statement in 200.70.J and the results of the final inspection are satisfactory.

M. Animal Facility Construction Permit Expiration and Extensions.

1. Construction permits issued by the Department for agricultural animal facilities shall be given two (2) years from the effective date of the permit to start construction and three (3) years from the effective date of the permit to complete construction.

2. If the proposed construction as outlined in the permit is not started prior to the construction start expiration date, the construction permit is invalid unless an extension in accordance with this regulation is granted.

3. If construction is not completed and the facility is not placed into operation prior to the construction completion expiration date, the construction permit is invalid unless an extension in accordance with this regulation is granted.

4. If a portion of the permitted facility (some of the animal growing houses are completely constructed, but not all houses originally permitted were constructed) is completed prior to the construction completion expiration date, the construction for the remainder of the permit may be utilized within the permit life. The permittee shall obtain Departmental approval prior to utilizing the permit in this manner. The Department may require that the permittee submit additional information or update the Animal Facility Management Plan prior to approval.

5. Extensions of the permit construction start and completion expiration dates may be granted by the Department. The permittee shall submit a written request explaining the delay and detailing any changes to the proposed construction. This request shall be received no later than the expiration date that the permittee proposes to extend. The maximum extension period shall not exceed one (1) year. There shall be no more than two (2), one (1)-year extension periods per permit to construct, granted.

## 200.80. Animal Facility, Lagoon, Treatment Systems, and Manure Storage Pond Siting Requirements.

A. Siting requirements applicable to all animal facilities.

1. The minimum separation distance between an animal facility (animal growing areas, houses, pens or barns, not including range areas or manure utilization areas) and a public or private drinking water well (excluding the applicant's well) is 200 feet. The minimum separation distance between an animal facility and a potable water well owned by the applicant is 50 feet (as required by R.61-71).

2. The minimum separation distance between an animal facility and Waters of the State (including ephemeral and intermittent streams) located down slope from the facility is 100 feet.

3. Except for site drainage, the minimum separation distance required between an animal facility and a ditch or swale located down slope from the facility is 50 feet.

4. A new animal facility or an expansion of an established animal facility shall not be located in the 100-year floodplain.

5. The separation distance required between a small animal facility or growing areas (pens or barns not including range areas) and the lot line of real property owned by another person is 200 feet and 1,000 feet from the nearest residence.

6. The separation distance required between large or X-large animal facilities or growing areas (pens or barns not including range areas) and the lot line of real property owned by another person is 400 feet and 1,000 feet from the nearest residence.

B. Siting requirements applicable to all animal lagoons, treatment systems, and manure storage ponds.

1. The minimum separation distance between a lagoon, treatment system, or manure storage pond and a public or private drinking water well (excluding the applicant's well) is 200 feet. The minimum separation distance between an animal lagoon, treatment system, or manure storage pond and a potable water well owned by the applicant is 100 feet.

2. Except for site drainage, the minimum separation distance required between an animal lagoon, treatment system, or manure storage pond and a ditch or swale located down slope from the facility is 50 feet.

3. The minimum separation distance required between an animal lagoon, treatment system, or manure storage pond and Waters of the State (including ephemeral and intermittent streams) located down slope from the facility is 100 feet. If the Waters of the State are designated Outstanding Resource Waters, Critical Habitat Waters of federally endangered species, or Shellfish Harvesting Waters, the minimum separation distance required between a lagoon, treatment system, or manure storage pond and Waters of the State is 500 feet.

4. A new animal lagoon, treatment system, or manure storage pond or an expansion of an established animal lagoon, treatment system, or manure storage pond shall not be located in the 100-year floodplain.

5. The separation distance required between a small animal facility lagoon, treatment system, or manure storage pond and real property owned by another person is 300 feet or 1,000 feet from the nearest residence.

6. The separation distance required between a large animal facility lagoon, treatment system, or manure storage pond and real property owned by another person is 500 feet and 1,000 feet from the nearest residence.

7. The separation distance required between an X-large animal facility lagoon, treatment system, or manure storage pond and real property owned by another person is 600 feet and 1,320 feet from the nearest residence.

C. Siting requirements applicable to all dry animal manure and other animal by-products treatment or storage facilities (including, but not limited to, stacking sheds, burial sites, incinerators, manure, and dead animal composters).

1. The minimum separation distance between a dry animal manure and other animal by-products treatment or storage facility and a public or private drinking water well (excluding the applicant's well) is 100 feet. The minimum separation distance between a dry animal manure and other animal by-products treatment or storage facility and a potable water well owned by the applicant is 50 feet.

2. Except for site drainage, the minimum separation distance required between a dry animal manure and other animal by-products treatment or storage facility and a ditch or swale located down slope from the facility is 50 feet.

3. The minimum separation distance between a dry animal manure and other animal by-products treatment or storage facility and Waters of the State including ephemeral and intermittent streams located down slope from the facility is 100 feet.

4. A new dry animal manure and other animal by-products treatment or storage facility or an expansion of an established dry animal manure and other animal by-products treatment or storage facility shall not be located in the 100-year floodplain.

5. The separation distance required between a dry animal manure and other animal by-products treatment or storage facility operated at an animal growing facility and the lot line of real property and a residence owned by another person shall be equivalent to the setback required for the animal growing areas or houses.

6. The minimum separation distance required between a dry animal manure and other animal by-products treatment or storage facility operated by a manure broker and the lot line of real property owned by another person is 200 feet and 1,000 feet to the nearest residence.

D. Water (a pond) that is completely surrounded by land owned by the permit applicant and has no connection to surface water is excluded from the setback requirements outlined in this part.

E. All lagoon and manure storage pond setbacks contained in this part shall be measured from the outside toe of the dike.

F. The separation distances for property lines given in Section 200.80.A, B, and C above can be waived or reduced by written consent of the adjoining property owner. Written consent is not needed when the Department reduces the distances under the requirements of Part 300.

# 200.90. General Requirements for Animal Manure Lagoons, Treatment Systems, and Animal Manure Storage Ponds.

A. The lagoon, treatment system, or manure storage pond shall be designed by a professional engineer or an NRCS engineer and the construction shall be certified by the design engineer or professional engineer licensed in S.C. It is a violation of these regulations and the South Carolina Pollution Control Act for the owner or operator of the facility to make modifications or physical changes to the lagoon, treatment system, or manure storage pond without the prior approval of the Department and supervision of NRCS or a professional engineer. Plans and specifications for lagoon, treatment system, or manure storage pond modifications shall be designed and certified by NRCS or a professional engineer and submitted to the Department for approval prior to the modification.

B. Animal manure lagoons and manure storage ponds shall be designed, at a minimum, to NRCS-CPS. The lagoon or manure storage pond shall be designed to provide a minimum storage for manure, wastewater, normal precipitation less evaporation, normal runoff, residual solids accumulation, capacity for the fifty (50) year-twenty-four (24) hour storm event (precipitation and associated runoff) and at least 2 feet of freeboard.

C. All lagoons and storage ponds shall be provided with a liner, designed with an initial specific discharge rate of less than 0.0156 feet/day, in order to protect groundwater quality. When lagoons or manure storage ponds are lined only using soils with low permeability rates (e.g., clay), the Department shall require appropriate documentation to demonstrate that the computed soil permeability rates of the liner are sufficiently low or certification from the preparer of the Animal Facility Management Plan that the NRCS design standards for lining lagoons and/or manure storage ponds with soils have been met. When geomembrane liners are utilized, they shall be designed, at a minimum, to meet NRCS-CPS.

D. If seepage results in either an adverse impact to groundwater or a significant adverse trend in groundwater quality occurs as determined by the Department, the lagoon or manure storage pond shall be repaired at the owner's or operator's expense. Assessment and/or additional monitoring (more wells, additional constituents, and/or increased sampling frequency) may be required by the Department to further assess the extent of the seepage. The repairs and/or assessment shall be completed in accordance with an implementation schedule approved by the Department. The Department may require groundwater corrective action.

E. Manure shall not be placed directly in or allowed to come into contact with groundwater and/or surface water. The minimum separation distance between the lowest point of the lagoon or manure storage pond and the seasonal high water table beneath the lagoon or manure storage pond is 2 feet. If a geomembrane liner is installed,

the minimum separation distance is 1 foot from the seasonal high water table. Designs that include controlled drainage for water table adjustment shall be evaluated by the Department on a case-by-case basis, and may include additional monitoring and groundwater control requirements. If a design is proposed for water table adjustment, the design shall not impact wetlands.

F. Monitoring wells may be required by the Department on a case-by-case basis upon Department review of the submittal package.

G. A groundwater monitoring plan shall be submitted with the permit application to the Department. All applicable State certification requirements regarding well installation, laboratory analyses, and report preparation shall be met. Each groundwater monitoring well installed shall be permitted and shall be sampled at least once annually by qualified personnel at the expense of the permittee. The results shall be submitted to the Department in accordance with the specified permit requirements. Groundwater Sampling results shall be maintained by the producer for eight (8) years. The Department may conduct routine and random visits to the animal facility to sample the monitoring wells.

H. Prior to operation of the lagoon or manure storage pond, all monitoring wells shall be sampled in accordance with the parameters identified in the permit such that a background concentration level can be established.

I. Before the construction of a lagoon and/or a manure storage pond, the owner or operator shall remove all under-drains that exist from previous agricultural operations that are under the lagoon or manure storage pond and/or within 25 feet of the outside toe of the proposed lagoon or manure storage pond dike. This requirement does not include under-drains that are approved as a part of designs that include controlled drainage for water table adjustment.

J. Proper water levels in lagoons and manure storage ponds, as per plans and specifications, shall be maintained at all times by the permittee. The Department may require specific lagoon or manure storage pond volume requirements in permits. An approved marker shall be installed to measure water levels.

K. If a lagoon, treatment system, or manure storage pond, all of these, breaches or fails, the owner or operator of the animal facility shall immediately notify the Department, the appropriate local government officials, and the owners or operators of any potable surface water treatment plant located downstream from the animal facility that could reasonably be expected to be adversely impacted.

L. Lagoons, treatment systems, and manure storage ponds shall be completely enclosed with an acceptable fence, unless a fence waiver is obtained from the Department.

M. Lagoons and manure storage ponds shall have at least four (4) warning signs posted in the four (4) cardinal directions around the perimeter of the structure. These signs must read, "Warning - Deep and Polluted Water".

N. Vegetation on the dikes and around the lagoon, treatment system, or manure storage pond should be kept below a maximum height of 18 inches. Trees or deeply rooted plants shall be prevented from growing on the dikes or within 25 feet of the outside toe of the dikes of the lagoon, treatment system, or manure storage pond. Existing trees on the dikes shall be evaluated by NRCS staff or a dam engineer licensed in South Carolina to determine if they should be removed or remain.

O. Livestock or other animals that could cause erosion or damage to the dikes of the lagoon, treatment system, or manure storage pond shall not be allowed to enter the lagoon, treatment system, or manure storage pond, or graze on the dike or within 25 feet of the outside toe of the dike.

P. The Department shall require existing facilities, regardless of size, with a history of manure handling, treatment, and disposal problems related to a lagoon, to phase out the existing lagoon and incorporate new technology.

## 200.100. Manure Utilization Area Requirements.

A. Application Rates. The Department shall approve an Animal Facility Management Plan that establishes an application rate for each manure utilization area based on the agronomic application rate of the specific crop(s) being grown, and the manure and other animal by-products' impact on the environment. The application rate shall be based on the limiting constituent (a nutrient or other constituent as given in item 200.100.B). In developing annual constituent loading rates and cumulative constituent loading rates, the Department shall consider:

1. Soil type;

2. Type of vegetation growing in land-applied area;

3. Proximity to 100-year floodplain;

4. Location in watershed;

5. Nutrient sensitivity of receiving land and waters;

6. Soil nutrient testing in conjunction with soil productivity information;

7. Nutrient, copper, zinc, and constituent content of the manure and other swine by-products being applied;

8. Proximity to a State Approved Source Water Protection Area;

9. Proximity to other point and nonpoint sources;

10. Slope of land (anything over ten percent (10%) must use runoff best management practices, runoff controls, or conservation features as per NRCS);

11. Distance to water table or groundwater aquifer;

12. Timing of manure application to coincide with vegetative cover growth cycle;

13. Timing of harvest of vegetative cover;

14. Hydraulic loading limitations;

15. Soil assimilative capacity;

16. Type of vegetative cover and its nutrient uptake ability;

17. Method of land application; and

18. Aquifer vulnerability.

B. Constituent Limits for Land Application of Liquid and Dry Animal manure and other animal by-products and Operational Practices for Land Application.

1. Animal manure and other animal by-products containing only the standard constituents at normal concentrations as given by commonly accepted reference sources, such as Clemson University, American Society of Agricultural Engineers, Midwest Planning Service Document, or NRCS, can be land applied at or below agronomic rates without any specific constituent limits in a permit. When the animal manure analysis indicates there are levels of arsenic, copper, zinc, or other constituents of concern, the Department shall establish constituent limits in permits for each constituent of concern to ensure the water quality standards of R.61-68 are maintained. For these cases the producer shall comply with the following criteria:

a. Constituent Limits. If animal manure and other animal by-products subject to a constituent limit is applied to land, either:

i. The cumulative loading rate for each constituent shall not exceed the cumulative constituent loading rate for the constituent in Table 1 of Section 200.100; or

ii. The concentration of each constituent in the animal manure and other animal by-products shall not exceed the concentration for the constituent in Table 2 of Section 200.100.

b. Constituent concentrations and loading rates - animal manure and other animal by-products.

i. Cumulative constituent loading rates.

TABLE 1 OF SECTION 200.100 - CUMULATIVE CONSTITUENT LOADING RATES				
Cumulative Constituent Loading Rate				
Constituent	(kilograms per hectare)	(pounds per acre)		
Arsenic	41	37		
Copper	1500	1339		
Zinc	2800	2499		

ii. Constituent concentrations.

TABLE 2 OF SECTION 200.100 - CONSTITUENT CONCENTRATIONS				
Monthly Average Concentrations				
Constituent	Dry weight basis (milligrams per kilogram)			
Arsenic	41			
Copper	1500			
Zinc	2800			

iii. Annual constituent loading rates.

TABLE 3 OF SECTION 200.100 - ANNUAL CONSTITUENT LOADING RATES				
Annual Constituent Loading Rate				
	(kilograms per hectare	(pounds per acre per		
Constituent	per 365-day period)	365-day period)		
Arsenic	2.0	1.8		
Copper	75	67		
Zinc	140	125		

c. Additional constituent limits may be required, from the application information or subsequent monitoring in a permit thereafter, but such needs shall be assessed on an individual project basis.

d. Animal manure and other animal by-products shall not be applied subject to the cumulative constituent loading rates in Table 1 of Section 200.100.B.1 to land if any of the rates in Table 1 of Section 200.100.B.1 have been reached.

e. Animal manure and other animal by-products or animal lagoon sludge shall not be applied to land during a 365-day period after the annual application rate in Table 3 of Section 200.100.B.1 has been reached.

f. If animal manure and the animal by-products subject to the cumulative constituent loading rates in Table 1 of Section 200.100.B.1 have not been applied to the site, then cumulative rates apply.

g. If animal manure and other animal by-products subject to the cumulative constituent loading rates in Table 1 of Section 200.100.B.1 have been applied to the site and the cumulative amount of each constituent applied to the site in the animal manure and other animal by-products is known, the cumulative amount of each constituent applied to the site shall be used to determine the additional amount of each constituent that can be applied to the site in accordance with Section 200.100.B.1.a.i (cumulative loading rate shall not exceed the cumulative constituent loading rate).

h. Manure application shall not exceed the agronomic rate of application for plant available nitrogen (PAN) for the intended crop(s) on an annual basis. For those years that fertilizer is land applied, manures in combination with the fertilizer shall not exceed the agronomic rate of nutrient utilization of the intended crop(s).

2. Any producer who confines animals shall ensure that the applicable requirements in this part are met when the animal manure and other animal by-products are applied to the land.

3. Animal manure and other animal by-products shall not be applied to land that is saturated from recent precipitation, flooded, frozen, or snow-covered. Animal manure and other animal by-products shall not be applied during inclement weather or when a significant rain event is forecasted to occur within forty-eight (48) hours, unless approved by the Department in an emergency situation.

4. Animal manure and other animal by-products shall not be placed directly in groundwater.

5. All land application equipment, when used once or more per year, shall be calibrated at least annually by the person land applying. A permit may require more frequent calibrations to ensure proper application rates. The two (2) most recent calibration records should be retained by the producer and made available for Department review upon request. If the land application equipment has not been used in over a year, the equipment shall be calibrated prior to use.

6. Animal manure and other animal by-products shall not be applied to the land except in accordance with the requirements in this part.

7. A producer who supplies animal manure and other animal by-products to another person for land application shall provide the person who will land apply the manure and other animal by-products with the concentration of plant available nitrogen, phosphorus, potassium, and the concentration of all other constituents listed in the permit. The producer shall also supply the person who will land apply the manure with a copy of the crop management plan included in their Animal Facility Management Plan.

8. Animal manure and other animal by-products shall not be applied to or discharged onto a land surface when the vertical separation between the ground surface and the seasonal high water table is less than 1.5 feet at the time of application unless approved by the Department. For special cases, no land application can occur when the vertical separation from the ground surface to the water table is less than 1.5 feet at the time of application unless a situation is deemed an emergency with Departmental concurrence.

9. Soil sampling (usually 6 to 8 inch depth) shall be conducted for each field prior to manure application to determine the appropriate application rate. Each field should be sampled at least once per year. If manure application frequency will be less than once per year, then at least one (1) soil sample shall be taken prior to returning to that field for land application. All new manure utilization areas shall be evaluated using the NRCS-CPS to determine the suitability for application and the limiting nutrient (nitrogen or phosphorus). However, fields that are high in phosphorus may also be required to incorporate additional runoff control or soil conservation features as directed by the Department. Additional soil sampling may be required by the Department on a case-by-case basis to ensure there is no potential for groundwater contamination.

10. Soil sampling to a depth of 18 inches may be required by the Department to be performed within forty-five (45) calendar days after each application of animal manure, but no more than two (2) times per year if the application frequency is more than twice per year. This sampling shall be performed for at least three (3) years after the initial application on at least one (1) representative manure utilization area for each crop grown to verify the estimated calculated manure application rates for the utilization areas. The date of manure application and the date of sampling shall be carefully recorded. The sampling shall be conducted at depths of 0 to 6 inches, 6 to 12 inches, and 12 to 18 inches with nitrates and phosphorus being analyzed.

11. The results of the pre-application and post-application sampling shall be used by the crop farmer to adjust as necessary, the amount of animal manure to be applied to a manure utilization area to meet the agronomic application rate for the crop(s) to be grown. These results shall be submitted to the Department at the time of application for permit renewal.

12. Additional soil sampling to greater depths may be required by the Department on a case-by-case basis to ensure there is no potential for groundwater contamination.

13. The permittee shall obtain the following information needed to comply with the requirements in this part:

a. Manure transfer contracts shall be developed for the producer to use with any person who is accepting manure in quantities greater than 12 tons per recipient per year. The contract should contain, at a minimum, the following information:

i. Name, address, county, and telephone number of the person who is purchasing or accepting animal manure and other animal by-products;

ii. Manure nutrient composition (pounds per ton of plant available nitrogen, phosphorus, and potassium to be filled in or provided by the producer. This information shall be obtained from three (3) manure analysis results and the producer shall provide this information on the manure transfer contract;

iii. Land application field information;

iv. Physical description (acreage, crop soil type);

v. Soil test results (phosphorus, zinc, and copper in pounds/acre); and

vi. Recommended application rates (nitrogen, phosphorus, and potassium in pounds/acre as reported on a soil test).

b. Attach a copy of a soils map, topographic map, county tax map, plat, FSA map, or a site plan sketch that includes the following information:

i. Manure application areas with setbacks outlined:

ii. Known water supply wells within 100 feet of property lines;

iii. Adjacent surface waters, including ditches, streams, creeks, and ponds; and

iv. Identification of roads and highways to indicate location.

c. Description of application equipment and name of person to land apply manure;

d. Signed agreement that informs the landowner that he or she is responsible and liable for land applying the animal manure and other animal by-products in accordance with this regulation; and

e. A copy of the land application requirements shall be provided to the recipient of the manure.

14. All persons who routinely accept manure from a producer, in quantities greater than 12 tons per recipient per year, shall be listed in the approved Animal Facility Management Plan. The Animal Facility Management Plan shall include the appropriate manure utilization area information for the sites routinely used by other persons. The producer shall inform the applier of their responsibility to properly manage the land application of manure to prevent discharge of pollutants to Waters of the State (including ephemeral and intermittent streams). A manure transfer contract must be signed. The person accepting the manure may be required by the Department to have an Animal Facility Management Plan and a permit for their manure utilization areas.

15. All persons who accept manure from a producer, in quantities less than 12 tons per recipient per year, are responsible for land applying the manure in accordance with this requirement and must have a signed agreement with the producer explaining their responsibility to comply with the regulation. The Department may require the person(s) land applying the manure to correct any problems that result from the application of manure.

16. Animal manure shall not be applied to cropland more than thirty (30) calendar days before planting or during dormant periods for perennial species, unless otherwise approved by the Department in an emergency situation.

17. If the Department receives complaints on a land application site, the Department may restrict land application of animal manure on this site completely or during certain time periods.

18. The Department may require manure to be disked in immediately.

19. Manure (solid or liquid) shall only be applied when weather and soil conditions are favorable and when prevailing winds are blowing away from nearby dwellings. Animal manure should not be applied to land when the soil is saturated, flooded, during rain events, or when a significant rain event is forecasted to occur within forty-eight (48) hours, unless otherwise approved by the Department in an emergency situation.

20. Manure shall not be spread in the floodplain if there is danger of a major runoff event, unless the manure is incorporated during application or immediately after application.

21. If the manure is stockpiled outside, the manure shall be stored on a concrete pad or other approved pad (such as plastic or clay lined) and covered with an acceptable cover to prevent odors, vector attraction, and runoff on a daily basis (unless otherwise specified in the permit). The cover should be properly vented with screen wire to let the gases escape. The edges of the cover should be properly anchored.

22. If a producer who contracts to transfer the animal manure and other animal by-products produced at their facility changes brokers/land appliers, he or she must submit notification and a new broker/land applier contract for approval to the Department.

23. The body of vehicles transporting manure shall be wholly enclosed and, while in transit, be kept covered with a canvas cover provided with eyelets and rope tie-downs, or any other approved method which shall prevent blowing or spillage of loose material or liquids. Should any spillage occur during the transportation of the manure, the owner/operator shall take immediate steps to clean up the manure.

C. Setbacks for manure utilization areas.

1. The minimum separation distance required between a manure utilization area and a residence is 300 feet. If there are no residences within 300 feet of the manure utilization area, manure may be applied up to the property line. The 300-foot setback is waived with the consent of the owner of the residence. If the application method is injection or immediate incorporation, manure may be applied up to the property line. The setbacks are imposed at the time of application. The Department may impose these setbacks on previously approved sites to address problems on a case-by-case basis.

2. The minimum separation distance required between a manure utilization area and Waters of the State (including ephemeral and intermittent streams) located down slope from the area is 100 feet when spray application is the application method or when the manure is spread on the ground surface, 75 feet when incorporation is the application method, and 50 feet when injection is the application method. When incorporation is accomplished within twenty-four (24) hours of the initial application, the distance can be reduced to 50 feet.

3. The minimum separation distance required between a manure utilization area and ditches and swales, located down slope from the area, that discharge to Waters of the State including ephemeral and intermittent streams is 50 feet.

4. The minimum separation distance required between a manure utilization area and a potable drinking water well is 200 feet.

5. The Department may establish, in permits, additional application buffer setbacks for property boundaries, roadways, residential developments, dwellings, water wells, drainage ways, and surface water (including ephemeral and intermittent streams) as deemed necessary to protect public health and the environment. Factors taken into consideration in the establishment of additional setbacks would be animal manure application method, adjacent land usage, public access, aerosols, runoff prevention, adjacent groundwater usage, aquifer vulnerability, and potential for vectors and odors.

6. Water (pond) that is completely surrounded by land owned by the applicant and has no connection to surface water is excluded from the setback requirements outlined in this part.

D. The Department may establish additional permitting restrictions based upon soil and groundwater conditions to ensure protection of the groundwater and surface Waters of the State (including ephemeral and intermittent streams). Criteria may include, but is not limited to, soil permeability, clay content, depth to bedrock, rock outcroppings, aquifer vulnerability, proximity to a State Approved Source Water Protection Area, and depth to the seasonal high groundwater table.

E. The Department may establish permit conditions to require that animal manure and other animal by-products application rates remain consistent with the lime and fertilizer requirements for the cover, feed, food, and fiber crops based on Southeastern land grant universities' published lime and fertilizer recommendations, such as the Lime and Fertilizer Recommendations, Clemson Extension Services.

F. The Department may establish minimum requirements in permits for soil and/or groundwater monitoring, for manure utilization areas. Factors taken into consideration in the establishment of soil and groundwater monitoring shall include groundwater depth, operation flexibility, application frequency, type of animal manure

and other animal by-products, size of manure utilization area, aquifer vulnerability, proximity to a State Approved Source Water Protection Area, and loading rate.

1. The Department may establish pre-application and post-application site monitoring requirements in permits for limiting nutrients or limiting constituents as determined by the Department.

2. The Department may establish permit conditions, which require the permittee to reduce, modify, or eliminate the animal manure and other animal by-products applications based on the results of this monitoring data.

3. The Department may modify, revoke and reissue, or revoke a permit based on the monitoring data.

G. The Department may require manure to be treated for odor control (i.e., composting or lime stabilizing for dry operations) prior to land application if the manure is not incorporated into the soil at the time of land application or if odors exist or are suspected to exist at an undesirable level. Manure, which has a very undesirable level of odor before treatment, such as turkey manure, shall not normally be permitted to be land applied on land near residences without appropriate treatment for odor control.

## 200.110. Spray Application System Requirements.

A. Spray application of liquid animal manure using irrigation equipment. This includes all methods of surface spray application, including, but not limited to, fixed gun application, traveling or mobile gun application, or center pivot application.

B. Manure utilization area slopes shall not exceed ten percent (10%) unless approved by the Department. The Department may require that slopes be less than ten percent (10%) based on site conditions.

C. Animal manure distribution systems shall be designed so that the distribution pattern optimizes uniform application.

D. Hydraulic Application Rates.

1. Application rates shall normally be based on the agronomic rate for the crop to be grown at the manure utilization area. As determined by soil conditions, the hydraulic application rate may be reduced below the agronomic rate to ensure no surface ponding, runoff, or excessive nutrient migration to the groundwater occurs.

2. The hydraulic application rate may be limited based on constituent loading including any constituent required for monitoring under this regulation.

E. Animal manure and other animal by-products shall not be applied when the vertical separation between the ground surface and the seasonal high water table is less than 1.5 feet at the time of application, unless approved by the Department on a case-by-case basis. For special cases, no land application can occur when the vertical separation from the ground surface to the water table is less than 1.5 feet at the time of application unless a situation is deemed an emergency with Departmental concurrence.

F. Conservation measures, such as terracing, strip cropping, etc., may be required in specific areas determined by the Department as necessary to prevent potential surface runoff from entering or leaving the manure utilization areas. The Department may consider alternate methods of runoff controls that may be proposed by the applicant, such as berms.

G. For an animal facility, a system for monitoring the quality of groundwater may also be required for the proposed manure utilization areas. The location of all the monitoring wells shall be approved by the Department. The number of wells, constituents to be monitored, and the frequency of monitoring shall be determined on a

case-by-case basis based upon the site conditions such as type of soils, depth of water table, aquifer vulnerability, proximity to State Approved Source Water Protection Area, etc.

H. If an adverse trend in groundwater quality is identified, further assessment and/or corrective action may be required. This may include an alteration to the permitted application rate or a cessation of manure application on the impacted area.

I. Spray application systems should be designed and operated in such a manner to prevent drift of liquid manure onto adjacent property.

## 200.120. Frequency of Monitoring for Animal Manure.

A. The producer and/or integrator shall be responsible for having representative samples, based on Clemson Extension Service recommendations, of the animal manure collected and analyzed at least once per year and/or when the feed composition significantly changes. The constituents to be monitored shall be given in the permit. The analyses should be used to determine the amount of animal manure to be land applied. In order to ensure that the permitted application rate (normally the agronomic rate) is met, the application amount shall be determined using a rolling average of the previous analyses. The Department shall establish minimum requirements for the proper method of sampling and analyzing of animal manure. Facilities with permits that do not specify which constituents to monitor shall monitor for Ammonium-Nitrogen, Total Kjeldahl Nitrogen (TKN), Organic Nitrogen (Organic Nitrogen = TKN - Ammonium Nitrogen),  $P_2O_5$ , and  $K_2O$ .

B. The Department may require nitrogen, potassium, phosphorus, the constituents listed in Table 1 and Table 2 of Section 200.100, and any other constituent contained in a permit to be monitored prior to each application.

C. Permittees do not have to analyze for any constituent that they can demonstrate to the satisfaction of the Department is not present in their animal manure.

D. All monitoring shall be done in accordance with collection procedures in Standard Methods for Analysis of Water and Wastewater or other Department guidelines. Analysis shall be conducted by Clemson University Extension Service, or a laboratory certified by the Department. This laboratory shall have and maintain certification for the constituents to be analyzed.

## 200.130. Dead Animal Disposal Requirements.

A. Dead animal disposal shall be done as specified in the approved Animal Facility Management Plan. The Dead Animal Disposal Plan should include the following:

1. Primary Method for the handling and disposal of normal mortality at the facility.

2. Alternate Method for the handling and disposal of excessive mortality at the facility. The normal method of disposal may not be sufficient to handle an excessive mortality situation. Each producer shall have a Department-approved emergency or alternate method to dispose of excessive mortality. Excessive mortality burial sites shall be preapproved by the Department prior to utilization.

B. Burial.

1. Burial pits may be utilized for emergency conditions, as determined by the Department, when the primary method of disposal is not sufficient to handle excessive mortality.

2. Burial pits shall not be located in the 100-year floodplain.

3. Soil type shall be evaluated for leaching potential.

4. Burial pits shall not be located or utilized on sites that are in areas that may adversely impact surface or groundwater quality or further impaired water bodies.

5. The bottom of the burial pit may not be within 2 feet of the seasonal high groundwater table.

6. No burial site shall be allowed to flood with surface water.

7. Animals placed in a burial site shall be covered daily with sufficient cover (6 inches per day minimum) to prohibit exhumation by feral animals.

8. When full, the burial site should be properly capped (minimum 2 feet) and grassed to prohibit erosion.

9. Proposed burial pit sites shall be approved by the Department. The Department may conduct a geologic review of the proposed site prior to approval.

10. The Department may require any new or existing producer to utilize another method of dead animal disposal if burial is not managed according to the Dead Animal Disposal Plan or repeated violations of these burial requirements occur or adverse impact to surface or groundwater is determined to exist.

11. The Department may require groundwater monitoring for dead animal burial pits on a case-by-case basis. The Department shall consider all of the facts including, but not limited to, the following: depth to the seasonal high water table; aquifer vulnerability; proximity to a State Approved Source Water Protection Area; groundwater use in the area; distance to adjacent surface waters; number of dead animals buried; and frequency of burial in the area.

C. Incinerators.

1. For animal facilities proposing an incinerator for dead animal disposal, either a permit for the air emissions shall be obtained from the Department's Bureau of Air Quality before the incinerator can be built or the following criteria shall be met in order to qualify for an exemption from an air permit:

a. The emission of particulate matter shall be less than 1 pound per hour at the maximum rated capacity;

b. The incinerator shall be a package incinerator that meets the requirements from the Department's Bureau of Air Quality; and

c. The incinerator shall not exceed an opacity limit of ten percent (10%).

2. Incinerators used for dead animal disposal shall be properly operated and maintained. Operation shall be as specified in the owner's manual provided with the incinerator. The owner's manual shall be kept on site and made available to Department personnel upon request.

3. The use of the incinerator to dispose of waste oil, hazardous, or any other waste chemical is prohibited. The use of the incinerator shall be limited to dead animal disposal only unless otherwise approved by the Department's Bureau of Air Quality.

D. Composters. Composters used for dead animal disposal shall be designed by a professional engineer or an NRCS representative and operated in accordance with the approved Animal Facility Management Plan. Packaged composters shall be approved on a case-by-case basis.

E. Disposal of dead animals in a municipal solid waste landfill shall be in accordance with R.61-107.19.

F. Disposal of animal carcasses or body parts into manure lagoons, treatment systems, storage ponds, Waters of the State, ephemeral and intermittent streams, ditches, and swales is prohibited.

G. Disposal of animal carcasses or body parts by rendering shall be approved by the Department and include a signed contract with the rendering company.

H. Other methods of dead animal disposal that are not addressed in this regulation may be proposed in the Dead Animal Disposal Plan.

## 200.140. Other Requirements.

A. There shall be no discharge of pollutants from the operation into surface Waters of the State (including ephemeral and intermittent streams). There shall be no discharge of pollutants into groundwater, which could cause groundwater quality not to comply with the groundwater standards established in R.61-68.

B. On a case-by-case basis, the Department may impose additional or more stringent requirements for the management, handling, treatment, storage, or utilization of animal manure and other animal by-products.

C. The following cases shall be evaluated for additional or more stringent requirements:

1. Source water protection. Facilities and manure utilization areas located within a state-approved source water protection area.

2. 303(d) Impaired Water Bodies List. Facilities and manure utilization areas located upstream of an impaired waterbody.

3. Proximity to Outstanding Resource Waters, trout waters, shellfish waters, or potential to adversely affect a federally listed endangered or threatened species, its habitat, or a proposed or designated critical habitat.

4. Aquifer Vulnerability Area, an area where groundwater recharge may affect an aquifer.

D. If an adverse impact to the Waters of the State, including ephemeral and intermittent streams or groundwater, from animal manure and other animal by-products handling, storage, treatment, or utilization practices are documented, through monitoring levels exceeding the standards set forth in R.61-68, or a significant adverse trend occurs, the Department may require the producer responsible for the animal manure and other animal by-products to conduct an investigation to determine the extent of impact. The Department may require the producer to remediate the water to within acceptable levels as set forth in R.61-68.

E. No manure may be released from the premises of an animal facility to Waters of the State, including ephemeral and intermittent streams.

F. Animal medical waste cannot be disposed into animal lagoons, treatment systems, or manure storage ponds, or land applied with animal manure and other animal by-products.

G. In the event of a discharge from an animal facility or an animal lagoon, treatment system, or manure storage pond, the permittee is required to notify the Department immediately, within twenty-four (24) hours of the discharge.

H. When the Department determines that a nuisance exists at an animal facility, the permittee shall take action to correct the nuisance to the degree and within the time frame designated by the Department.

I. Permittees shall maintain all-weather access roads to their facilities at all times.

## 200.150. Odor Control Requirements.

A. The Animal Facility Management Plan shall contain an odor abatement plan for the animal facility, lagoon, treatment system, manure storage pond, and manure utilization areas, which shall consist of the following:

1. Operation and maintenance practices which are used to eliminate or minimize undesirable odor levels in the form of a Best Management Plan for Odor Control;

2. Use of treatment processes for the reduction of undesirable odor levels;

- 3. Other methods as may be appropriate; or
- 4. Any combination of these methods.

B. Producers shall utilize Best Management Practices normally associated with the proper operation and maintenance of an animal facility, lagoon, treatment system, manure storage pond, and any manure utilization area to ensure an undesirable level of odor does not exist.

C. No producer may cause, allow, or permit emission into the ambient air of any substance or combination of substances in quantities that an undesirable level of odor is determined to result unless preventive measures of the type set out below are taken to abate or control the emission to the satisfaction of the Department. When an odor problem comes to the attention of the Department through field surveillance or specific complaints, the Department shall determine if the odor is at an undesirable level.

D. If the Department determines an undesirable level of odor exists, the Department may require these abatement or control practices, including, but not limited to, the following:

- 1. Remove or dispose of odorous materials;
- 2. Methods in handling and storage of odorous materials that minimize emissions;
  - a. Dry manure to a moisture content of fifty percent (50%) or less;
  - b. Solids separation from liquid manure, and composting of solids;
  - c. Disinfection to kill microorganisms present in manure;
  - d. Aeration manure;
  - e. Composting of solid manure and other animal by-products; and/or
  - f. Odor control additives.

3. Prescribed standards in the maintenance of premises to reduce odorous emissions;

a. Filtration (biofilters or other filter used to remove dust and odor) of ventilation air;

b. Keep animals clean and separate from manure;

c. Adjust number of animals confined in the pens or paddocks in accordance with Clemson University Animal Space Guidelines.

d. Frequent manure removal from animal houses;

e. Feeding areas should be kept dry, and minimize waste feed accumulation;

f. Maintaining feedlot surfaces in a dry condition (twenty-five to forty percent (25 to 40%) moisture content), with effective dust control;

g. Proper maintenance of the dead animal disposal system;

h. Covering or reducing the surface area of manure and other animal by-products storage. (Vents shall be provided for the release of pressure created by manure gases if completely sealed covers are used);

i. Planting trees around or downwind of the manure and other animal by-products storage and treatment facilities (Trees shall not be planted within 25 feet of the toe of the dike.);

j. Incorporation of manure and other animal by-products immediately after land application; and/or

k. Selection of appropriate times for land application.

4. Best Available Technology to reduce odorous emissions.

E. Nothing in this section prohibits an individual or group of persons from bringing a complaint against a facility including problems at lagoons, treatment systems, manure storage ponds, and manure utilization areas.

F. If the permittee fails to control or abate the odor problems at an animal facility, lagoon, treatment system, manure storage pond, and any manure utilization area to the satisfaction and within a time frame determined by the Department, the permit may be revoked. If the permittee fails to control or abate the odor problems at land application sites, approval for land application of manure on the manure utilization area in question may be revoked. Additional land may be required to be added to the Animal Facility Management Plan, if necessary, to provide a sufficient amount of land for manure utilization.

#### 200.160. Vector Control Requirements.

A. The Vector Abatement Plan shall, at a minimum, consist of the following:

1. Best management practices used at the animal facility, lagoon, treatment system, manure storage pond, and manure utilization areas to ensure there is no accumulation of organic or inorganic materials to the extent and in such a manner as to create a harborage for rodents or other vectors that may be dangerous to public health.

2. A list of specific actions to be taken by the producer if vectors are identified as a problem at the animal facility, lagoon, treatment system, manure storage pond, or any manure utilization area. These actions should be listed for each vector problem, e.g., actions to be taken for fly problems, actions to be taken for rodent problems, etc.

B. No producer and or land applier may cause, allow, or permit vectors to breed or accumulate in quantities that result in a nuisance level, as determined by the Department.

C. For an existing facility, if the Department determines a vector problem exists, the Department may require these abatement of control practices, including, but not limited to, the following:

1. Remove and properly dispose of vector infested materials;

2. Methods in handling and storage of materials that minimize vector attraction;

a. Remove spilled or spoiled feed from the house as soon as practicably possible not to exceed forty-eight (48) hours, unless otherwise approved by the Department;

b. Remove and properly dispose of dead animals as soon as practicably possible not to exceed twenty-four (24) hours, unless otherwise approved by the Department;

c. Increase the frequency of manure removal from animal houses;

d. Prevent solids buildup in the pit storage or on the floors or walkways;

- e. Remove excess manure packs along walls and curtains;
- f. Compost solid manure and other animal by-products;

g. Appropriately use vector control chemicals, poisons, or insecticides (take caution to prevent insecticide resistance problems);

h. Utilize traps, or electrically charged devices;

i. Utilize biological agents;

j. Utilize Integrated Pest Management;

k. Incorporate manure and other animal by-products immediately (within twenty-four (24) hours) after land application; and/or

1. Contact Clemson Extension Service for appropriate measures to control a vector problem.

3. Prescribed standards in the maintenance of premises to reduce vector attraction;

a. Remove standing water that may be a breeding area for vectors;

- b. Keep animals clean or separated from manure;
- c. Keep facility clean and free from trash or debris;
- d. Properly utilize and service bait stations;
- e. Keep feeding areas dry, and minimize waste feed accumulation;
- f. Keep grass and weeds mowed around the facility and manure storage or treatment areas;
- g. Properly maintain the dead animal disposal system;

h. Cover or reduce the surface area of manure and other animal by-products storage. (Vents shall be provided for release of pressure created by manure gases if completely sealed covers are used);

i. Properly store feed and feed supplements;

- j. Conduct a weekly vector monitoring program;
- k. Be aware of insecticide resistance problems, and rotate use of different insecticides;

1. Prevent and repair leaks in waterers, water troughs, or cups; and/or

m. Ensure proper grading and drainage around the buildings to prevent rain water from entering the buildings or ponding around the buildings.

4. Utilize the best available control technology to reduce vector attraction and breeding.

## 200.170. Record Keeping.

A. A copy of the approved Animal Facility Management Plan, including approved updates, and a copy of the permit(s) issued to the producer shall be retained by the permittee for as long as the animal facility is in operation.

B. All application information submitted to the Department shall be retained by the permittee for eight (8) years. However, if the facility was permitted prior to June 26, 1998, and the permittee has previously discarded these documents since there was no requirement to maintain records at that time, this requirement shall not apply.

C. Records shall be developed for each manure utilization area. These records shall be kept for eight (8) years. The records shall include the following:

1. For each time animal manure and other animal by-products are applied to the site, the amount of animal manure and other animal by-products applied (in gallons per acre or pounds per acre, as appropriate), the date and time of application, and the location of application;

2. All sampling results for animal manure that is land applied;

3. All soil monitoring results;

4. All groundwater monitoring results, if applicable; and

5. Crops grown.

D. Records for the facility to include the following on a monthly basis:

- 1. Animal count and the normal production animal live weight; and
- 2. Mortality count and method of disposal.

E. Records for lagoon, treatment system, or manure storage pond operations to include the following:

1. Monthly water levels of the lagoon, treatment system, and manure storage pond; and

2. Groundwater monitoring results, if applicable.

F. All records retained by the producer shall be kept at either the facility, an appropriate business office, or other location as approved by the Department.

G. All records retained by the producer shall be made available to the Department during normal business hours for review and copying, upon request by the Department.

## 200.180. Reporting.

A. Large and X-large animal facilities are required to submit an annual report, on a form approved by the Department. The Department may establish reporting requirements in permits as it deems appropriate. These reporting requirements may include the following:

1. All manure sampling results for the last year and the latest rolling average concentration for the land limiting constituent;

2. All soil monitoring results, if applicable;

3. All groundwater monitoring results, if applicable;

4. Calculated application rates for all manure utilization areas; and

5. The adjusted application rates, if applicable, based on the most recent animal manure sampling, soil samples, and crop yield(s). The application rate change could also be due to a change in field use, crop grown, or other factors.

B. The Department may require small animal facilities to submit annual reports on a case-by-case basis.

C. The Department may establish permit conditions to require a facility to complete and submit a comprehensive report every five (5) years. The Department shall review this report to confirm that the permitted nutrient application rates have not been exceeded. Based on the results of the review, additional soil and/or groundwater monitoring requirements, permit modification, and/or corrective action may be required.

## 200.190. Training Requirements.

A. An owner/operator of an animal facility or manure utilization area shall attend a training program on the operation of animal manure management under the program created and operated by Clemson University.

B. Owners/Operators of new and existing animal facilities shall be required to obtain certification under the program created and operated by Clemson University.

C. The certification program shall be completed by owners/operators of new facilities within one (1) year of the effective date of the issued permit.

D. The certification program shall be completed by owners/operators of existing facilities within one (1) year of the effective date of this regulation.

E. Certification shall be maintained as long as the facility remains in operation. All facilities must have a CAMM certified operator at all times.

F. Failure to obtain the certification as provided in this Section shall be deemed a violation of this regulation and the permit may be revoked.

G. An owner/operator of a cattle stockyard shall be exempt from attending the training program on the operation of animal manure management under the program created and operated by Clemson University (CAMM).

#### 200.200. Violations.

A. Persons who violate this regulation or any permit issued under this regulation are subject to the penalties in Sections 48-1-320 (Criminal Penalties) and 48-1-330 (Civil Penalties) of the South Carolina Pollution Control Act.

B. Any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required by the Department to be maintained as a condition in a permit, or who alters or falsifies the results obtained by such devices or methods, shall be deemed to have violated a permit condition and shall be subject to the penalties provided for pursuant to Sections 48-1-320 and 48-1-330 of the S.C. Code of Regulations.

### PART 300 INNOVATIVE AND ALTERNATIVE TECHNOLOGIES

#### 300.10. General.

A. The Department supports and encourages the use of appropriate innovative and alternative technologies.

B. When innovative or alternative technology is proposed for an agricultural facility for manure and other animal by-products handling, treatment, storage, processing, or utilization, a meeting should be held with the Department prior to the submittal of the project. The purpose of the meeting is for the applicant and the Department to go over the proposed project and the purpose and expected benefits from the use of the innovative or alternative technology.

#### 300.20. Submittal Requirements.

A. When innovative or alternative technology is proposed for an agricultural facility for manure and other animal by-products handling, storage, treatment, processing, or utilization, the applicant shall provide to the Department the submittal information contained in Sections 100.50 or 200.50, as appropriate, and a detailed project report which explains the innovative or alternative technology and the purpose and expected benefits of the proposal.

#### 300.30. Requirements in Lieu of Requirements Under Part 100 or Part 200 of This Regulation.

A. When the Department determines that appropriate alternative or innovative technology is being proposed, the specific requirements given in Part 100 and 200 of this regulation, which deal with the purpose or expected benefits of the technology, may not have to be met except when required by a specific statute or the Department after review of the project. Requirements in Part 100 that apply to X-large swine facilities shall not be reduced or waived.

B. The Department shall review the project and determine the purpose or benefits of the proposed innovative or alternative technology and determine which requirements under Part 100 or 200 do not have to be met and the appropriate requirements to be used in lieu of the requirements in Part 100 or 200.

C. When an alternative or innovative technology is proposed, the review criteria shall be established on a case-by-case basis by the Department when the project is received.

D. When alternative or innovative technology is utilized at an animal facility, the setbacks given in Part 100 or 200 may be reduced by the Department as appropriate. Requirements in Part 100 that apply to large or X-large swine facilities shall not be reduced or waived.

## 300.40. Innovative and Alternative Treatment Technologies.

A. The following is a list of innovative or alternative technologies for agricultural facilities to consider. This list is not exhaustive. Other processes exist and new technologies are being developed.

- 1. Aerobic treatment systems or combination aerobic/anaerobic systems;
- 2. Artificial (constructed) wetlands use for treatment;

- 3. Use of steel tanks;
- 4. Use of solid separators;
- 5. Methane Gas Recovery Systems;
- 6. Composting manure solids;
- 7. Bioreactors;
- 8. Covered liquid or slurry manure storage;
- 9. Air Scrubbers;
- 10. Ozonation; and
- 11. Alternative Fuels.

B. At a minimum, the preparer of the agricultural Animal Facility Management Plan should consider the technologies given in 300.40.A for use at a proposed agricultural facility when the Animal Facility Management Plan is being developed.

C. When odors exist or are reasonably expected to exist at an undesirable level, the Department may require the use of appropriate innovative or alternative treatment technology to eliminate the odors or the potential for odors.

D. When the Department determines under Section 100.70.G. (Permit Decision Making Process) that there is reasonable potential for cumulative or secondary impacts due to methane gas from facilities, the Department may require the use of methane gas recovery systems or other appropriate technology to eliminate the potential impacts.

## **300.50. Exceptional Quality Compost.**

A. When the Department determines that the composting of solid animal manure and other animal by-products is performed in such a manner that the odor and vector attraction potential is reduced and the controlled microbial degradation of the organic manure and other animal by-products has been accomplished, this material may be considered Exceptional Quality Compost. Exceptional Quality Compost may be sold or distributed without regulation by the Department, if it meets the requirements of this part and the standards established by Penn State University. The Department shall review and approve the composter design and proposal for operation and distribution of the composted product. Composting systems shall be designed by a professional engineer or an engineer with the Natural Resources Conservation Service.

B. Composting can be subject to nuisance problems such as odors, dusts, and vector attraction. Therefore, the composting facility shall incorporate measures to control such conditions. An Odor and Vector Abatement Plan shall be developed for a composting facility.

## C. Compost Product Quality Standards.

1. Product Standards are necessary to protect public and environmental health and to ensure a measure of commercial acceptability.

a. Based on EPA standards for pathogen reduction, the time/temperature conditions required are equivalent to an average of 128 degrees Fahrenheit (°F) (53 degrees Celsius (°C)) for five (5) consecutive days, 131°F (55°C) for 2.6 consecutive days, or 158°F (70°C) for thirty (30) minutes.

b. The composted product shall meet or exceed the minimum standard of mature or very mature compost as set forth in the USDA Test Methods for the Examination of Composting and Compost (TMECC) Section 05.02-G CQCC Maturity Index. A maturity rating shall be given based upon the Maturity Assessment Matrix given in this method.

c. When land applied, the compost shall adhere to requirements for constituent concentrations and loading rates as outlined in Part 100.100, Part 200.100, or Part 400.60.

2. Compost products which meet these standards and also comply with pathogen quality and vector attraction standards are considered to be of Exceptional Quality and can be used without regulatory oversight, other than the compliance of agronomic application rates based on product analysis.

3. If the Department determines that the composting system is not being operated properly or that the composted product is not of an Exceptional Quality, the composted product shall be handled in accordance with the land application requirements of Part 100, 200, or 400 (as applicable) of this regulation.

4. An operable thermometer capable of measuring temperatures within a compost pile shall be kept at the composting facility for monitoring the temperature of each compost pile or batch. A written log of the daily temperature reading should be kept for each batch of compost. Temperatures shall not be allowed to rise above 180°F (82°C), which may cause combustion in the compost pile and start a fire.

5. The composted product shall be analyzed by Clemson University or another Department approved laboratory. The composted product content information along with recommended application rates shall be distributed with the product. The consumer shall be advised that the composted product shall be applied at an agronomic rate.

## **300.60.** Public Notice Requirements.

When the Department permits an alternative or innovative technology, the notice on the issuance of the permit required under Sections 100.60.H. or 200.60.H. shall contain a general description of the innovative or alternative process and a summary of the expected benefits.

#### PART 400 MANURE BROKER/LAND APPLIER OPERATIONS

#### 400.10. Purpose and Applicability.

A. Purpose.

1. To protect the environment and the health and welfare of citizens of the State from pollutants generated by the processing, treatment, and land application of dry animal manure and other animal by-products.

2. To establish standards, which consist of general requirements, constituent limits, management practices, and operational standards, for the use of dry animal manure and other animal by-products generated at animal facilities. Standards are included in this part for dry animal manure and other animal by-products applied to the land.

3. To establish standards for the frequency of monitoring and record keeping requirements for brokers/land appliers who operate dry animal manure and other animal by-products handling businesses.

4. To establish standards for the proper operation and maintenance of dry animal manure and other animal by-products treatment and storage facilities associated with manure brokering/land applying operations.

5. To establish criteria for dry animal manure and other animal by-products storage facilities' and manure utilization areas' locations as they relate to protection of the environment and public health. The location of dry animal manure and other animal by-products storage facilities and manure utilization areas as they relate to zoning in an area is not covered in this regulation. Local county or municipal governments may have zoning requirements and this regulation neither interferes with nor restricts such zoning requirements. Permit applicants should contact local municipal and county authorities to determine any local requirements that may be applicable.

B. Applicability.

1. This part applies to:

a. All new and renewing dry manure brokering/land applying operations;

b. All dry animal manure and other animal by-products treatment or storage facilities operated by brokers/land appliers; and

c. Permanent manure utilization areas added to a manure broker/land applier management plan.

2. This part applies to all dry animal manure and other animal by-products taken, bought, given, handled, or sold by a manure broker.

3. This part applies to all land where dry animal manure and other animal by-products bought, given, taken, handled, or sold by a manure broker/land applier is applied.

4. This part applies to out-of-state and in-state based manure brokers/land appliers who accept manure and other animal by-products from agricultural animal facilities located in the State.

5. This part applies to all manure brokers/land appliers who bring animal manure and other animal by-products from other states into South Carolina.

6. Part 200.80.C. (Dry Animal manure and other animal by-products Treatment and Storage Facility Siting Requirements) of this regulation applies to dry animal manure and other animal by-products treatment or storage facilities proposed by brokers/land appliers.

7. If a manure broker/land applier proposes to handle, process, treat, or store liquid animal manure as a part of the operation, the requirements of this part shall be met, at a minimum. However, the Department may require that the applicant meet additional requirements applicable to liquid manure that are included in Part 100 and Part 200.

#### 400.20. Permits and Compliance Period.

A. Permit Requirement. Animal manure and other animal by-products from an animal facility with dry manure handling can only be handled, stored, treated, processed, or land applied in the State in accordance with a permit issued by the Department. The handling, storage, treatment, and final utilization of animal manure and other animal by-products from a manure broker/land applier operation shall be permitted under the provisions of this part before the broker/land applier can operate in the State.

B. Notification Requirements. The permittee shall notify the Department in writing and receive written Departmental approval, prior to any change in operational procedures in a permitted broker/land applier operation, including, but not limited to, the following:

1. Change in operations or in manure and other animal by-products treatment, storage, handling, or utilization;

2. Change in contracts routinely used in manure and other animal by-products transfers; or

3. Termination of operations.

## 400.30. Relationship to Other Regulations.

The following regulations are referenced throughout this part and may apply to facilities covered under this regulation.

A. Application and annual operating fees are addressed in R.61-30, Environmental Protection Fees.

B. The proper closeouts of wastewater treatment facilities are addressed in R.61-82, Proper Closeout of Wastewater Treatment Facilities. This regulation includes animal manure treatment lagoons and manure storage ponds.

C. Setbacks and construction specifications for potable water wells and monitoring wells shall be in accordance with R.61-71, Well Standards.

D. Permits for air emissions from incinerators are contained in R.61-62, Air Pollution Control Regulations and Standards.

E. Disposal of animal manure in a municipal solid waste landfill unit is addressed in R.61-107.19, Solid Waste Management: Solid Waste Landfills and Structural Fill.

F. Disposal of animal manure with domestic or industrial sludge is addressed in R.61-9, Water Pollution Control Permits, and permitted under R.61-9.

G. Laboratory certification is addressed in R.61-81, State Environmental Laboratory Certification Program.

H. Water Classifications and Standards are addressed in R.61-68.

# 400.40. Permit Application Procedures (Broker/Land Applier Management Plan Submission Requirements).

A. A person who proposes to operate as a broker/land applier shall submit an application for a permit under this part. The following information shall be included in the application package.

1. A complete application form provided by the Department.

2. A Broker/Land Applier Management Plan prepared by qualified Natural Resources Conservation Service personnel, an S.C. registered professional engineer, or other qualified individuals, such as certified soil scientists or S.C. registered professional geologists. The Broker/Land Applier Comprehensive Nutrient Management Plan shall, at a minimum, contain:

a. Brokering/land applying operation name, address, email, telephone number, county, and permit number (if applicable) and CAMM number (or if applicable, date of CAMM class);

b. Applicant's name, address, email, and telephone number (if different from above);

c. Broker's/land applier's name;

d. Dry Animal manure and other animal by-products Storage or Treatment Facility Information (if applicable):

i. Description of animal manure and other animal by-products storage and storage capacity;

ii. Description of animal manure and other animal by-products treatment (if any);

iii. Facility location description and the zoning or land use restrictions in this area (this information should be obtained from the county). The minimum separation distance required between a dry animal manure and other animal by-products treatment or storage facility operated by a manure broker/land applier and the lot line of real property owned by another person is 200 feet and 1,000 feet to the nearest residence. However, the Department shall evaluate each proposed site to consider increasing distances, when the amount of manure stored, treated, or processed at this facility is significant.

e. Animal manure and other animal by-products handling and application information shall be included as follows:

i. A crop management plan which includes the optimum time of year of the animal manure and other animal by-products application and how it relates to crop type, crop planting, and harvesting schedule (if applicable) for manure utilization areas in the State. This information should be used as a guide in the absence of more accurate information. The Plan Preparer may need to include this information for the different regional areas of the State, as necessary, to provide the broker/land applier with crop information for the entire State;

ii. Type of equipment used to transport and/or spread the animal manure and other animal by-products;

iii. Description of services provided by the broker/land applier (clean-out houses, transport manure and other animal by-products, drop-off only, land application, incorporation of manure and other animal by-products into field, stacking or storing manure and other animal by-products, manure and other animal by-products treatment, etc.);

iv. Example of the contract or letter of intent to buy or accept animal manure and other animal by-products between the broker/land applier and the producer who is supplying the animal manure and other animal by-products; and

v. Example of the manure transfer contract to be used for the transfer of animal manure and other animal by-products between the broker and the person(s) who is accepting or purchasing the animal manure and other animal by-products. The Department has developed a Manure transfer contract that can be used or the broker may develop his own contract as long as it contains the minimum information outlined in part 400.60.B.12.

3. The Broker/Land Applier Management Plan shall contain an odor abatement plan for the dry animal manure and other animal by-products storage or treatment facility or manure utilization areas, as appropriate.

4. A Vector Abatement Plan shall be developed for the dry animal manure and other animal by-products storage or treatment facility or land application areas (if applicable).

5. A soil monitoring plan shall be developed for all broker/land applier operations.

6. Plans and specifications for the construction and operation of all manure and other animal by-products treatment or storage structures, such as composters or manure storage sheds that are to be owned and operated by the brokering/land applying operation.

7. Adjoining property owners written agreement for reduction of setbacks for any manure storage and/or treatment facilities (if applicable).

8. Application fee and first year's operating fee as established by R.61-30.

B. The Department may request an applicant to provide any additional information deemed necessary to complete or correct deficiencies in the broker/land applier operation permit application prior to processing the application or issuing, modifying, or denying a permit.

C. Applicants shall submit all required information in a format acceptable to the Department.

D. Incomplete submittal packages shall be returned to the applicant by the Department. An application package for a permit is complete when the Department receives all of the required information.

E. Application packages for permit modifications only need to contain the information applicable to the requested modification.

## 400.50. Permit Decision Making Process.

A. No permit shall be issued before the Department receives a complete application for a permit.

B. After the Department has received a complete application package, a technical review shall be conducted by the Department. The Department may request any additional information or clarification from the applicant or the preparer of the Broker/Land Applier Management Plan to help with the determination on whether a permit should be issued or denied. If a permit application package meets all applicable requirements of this part, a permit may be issued.

C. A site inspection of any proposed sites for dry animal manure and other animal by-products storage or treatment facilities shall be made by the Department before a permit decision is made.

D. For permit issuances, the Department shall publish a notice of issuance of a permit to operate a dry animal manure brokering operation on the Department's website.

E. For permit denials, the Department shall give the permit applicant a written explanation, which outlines the specific reason(s) for the permit denial.

F. When a permit is issued, it shall contain an issue date and an effective date. The effective date shall be at least fifteen (15) calendar days after the issue date to allow for any appeals. If a timely appeal is not received, the permit is effective.

G. Permits issued under this part for broker/land applier operations shall be renewed every five (5) years. However, subsequent to the issuance of a permit, if the broker/land applier operation is not in operation or production for two (2) consecutive years, the permit is no longer valid and a new permit shall be obtained. If the Broker/Land Applier does not apply for permit renewal or does not fulfill the requirements of the permit renewal, the permit is terminated. Should the broker/land applier allow his or her permit to expire and apply for a new permit within the two (2) years, the broker/land applier will be required to update the management plan before the permit is re-issued.

H. An expired broker/land applier operation permit which was issued under this part continues in effect until a new permit is effective only if the permittee submits a complete application, to the satisfaction of the Department, at least one hundred twenty (120) calendar days before the existing permit expires. The Department may grant permission to submit an application later than the deadline for submission stated above, but no later than the permit expiration date. If the facility has been closed for any two (2) consecutive years since the last permit was issued, the provision for the expiring permit remaining in effect does not apply since the permit is no longer valid. Permittees shall notify the Department in writing when they go out of business.

I. At the time of the broker/land applier's renewal application, the Department shall review the yearly Animal Waste Balance Reporting Form, for every year of the current permit. The Department may request additional documentation based on the review of the Animal Waste Balance Reporting Form. The broker/land applier is required to add routine application sites to an updated management plan at the time of renewal. These manure utilization areas that are added to the broker management plan shall meet all the requirements for manure utilization areas included in Part 200 of this regulation.

J. The brokering/land applying operation can only be built (if a manure storage or treatment facility was included) or operated when the permit is effective. The dry animal manure and other animal by-products treatment or storage facility cannot be placed into operation until the Department grants an ATO.

K. For manure brokers/land appliers who do not have any constructed facilities associated with their operations, the Department shall issue a permit with an effective date. Once this permit is effective the broker/land applier may begin operations. No additional written approval from the Department shall be required.

L. For manure brokers/land appliers who are permitted to construct a storage or treatment facility associated with the brokering/land applying operation, approval to begin operations shall be obtained prior to operation. To receive approval to begin operations, the broker/land applier shall have the preparer of the Broker/Land Applier Management Plan submit to the Department written certification that the construction of the dry animal manure and other animal by-products treatment or storage facility has been completed in accordance with the approved Broker/Land Applier Management Plan and the requirements of this regulation.

M. The Department shall conduct a final inspection of any dry animal manure and other animal by-products treatment or storage facilities before granting approval to a broker/land applier to begin operations (if applicable).

N. The Department shall grant written approval for the broker/land applier to begin operations of the dry animal manure and other animal by-products treatment or storage facility after it has received the certification statement in 400.50.M and the results of the final inspection, if conducted, are satisfactory.

#### 400.60. Manure Utilization Area Requirements.

A. Application Rates. The Department shall approve a Broker/Land Applier Management Plan that establishes application rates based upon the limiting constituent (a nutrient or other constituent as given in item 400.60.B). The limiting constituent shall be nitrogen, unless the soil test results exceed the limits for phosphorus. More information on maximum allowable constituent concentrations are outlined in item 400.60.B and item 400.60.C.

B. Constituent Limits for Land Application of Dry Animal manure and other animal by-products and Operational Practices for Land Application.

1. Dry animal manure and other animal by-products. When the animal manure analysis indicates there are high levels of arsenic, copper, zinc, or other constituent of concern, the producer shall comply with the following criteria:

a. Constituent Limits. If animal manure and other animal by-products subject to a constituent limit is applied to land, either:

i. The cumulative loading rate for each constituent shall not exceed the loading rate in Table 1 of Section 400.60; or

ii. The concentration of each constituent in the animal manure and other animal by-products shall not exceed the concentration in Table 2 of Section 400.60.

b. Constituent concentrations and loading rates - animal manure and other animal by-products.

i. Cumulative constituent loading rates.

TABLE 1 OF SECTION 400.60 - CUMULATIVE CONSTITUENT LOADING RATES				
Cumulative Constituent Loading Rate				
Constituent	(kilograms per hectare)	(pounds per acre)		
Arsenic	41	37		
Copper	1500	1339		
Zinc	2800	2499		

ii. Constituent concentrations.

TABLE 2 OF SECTION 400.60 - CONSTITUENT CONCENTRATIONS			
Monthly Average Concentrations			
Constituent	Dry weight basis (milligrams per kilogram)		
Arsenic	41		
Copper	1500		
Zinc	2800		

iii. Annual constituent loading rates.

TABLE 3 OF SECTION 400.60 - ANNUAL CONSTITUENT LOADING RATES				
Annual Constituent Loading Rate				
	(kilograms per hectare	(pounds per acre per		
Constituent	per 365-day period)	365-day period)		
Arsenic	2.0	1.8		
Copper	75	67		
Zinc	140	125		

c. Additional constituent limits may be required, from the application information or subsequent monitoring in a permit thereafter, but such needs shall be assessed on an individual project basis.

d. No person shall apply animal manure and other animal by-products to land if any of the loading rates in Table 1 of Section 400.60.B.1 have been reached.

e. No person shall apply animal manure and other animal by-products to land during a 365-day period after the annual application rate in Table 3 of Section 400.60.B.1 has been reached.

f. If animal manure and other animal by-products have not been applied to the site, the cumulative amount for each constituent listed in Table 2 of Section 400.60.B.1 may be applied to the site in accordance with Section 400.60.B.1.a.i (cumulative loading rate shall not exceed the cumulative constituent loading rate).

g. If animal manure and other animal by-products have been applied to the site and the cumulative amount of each constituent applied to the site in the animal manure and other animal by-products is known, the cumulative amount of each constituent applied to the site shall be used to determine the additional amount of each constituent that can be applied to the site in accordance with Section 400.60.B.1.a.i (cumulative loading rate shall not exceed the cumulative constituent loading rate).

h. Manure application shall not exceed the agronomic rate of application for plant available nitrogen (PAN) for the intended crop(s) on an annual basis. For those years that fertilizer is land applied, manures in combination with the fertilizer shall not exceed the agronomic rate of nutrient utilization of the intended crop(s).

2. Any person who land applies animal manure and other animal by-products shall ensure that the applicable requirements in this part are met when the animal manure and other animal by-products are applied to the land.

3. If the Department receives complaints on a land application site, the Department may restrict land application of animal manure on this site completely or during certain time periods.

C. Requirements for the land application of animal manure and other animal by-products.

1. Manure (solid or liquid) shall only be applied when weather and soil conditions are favorable and when prevailing winds are blowing away from nearby dwellings. Animal manure and other animal by-products should not be applied to land when the soil is saturated, flooded, during rain events, or when a significant rain event is forecasted to occur within forty-eight (48) hours.

2. Animal manure and other animal by-products shall not be placed directly in groundwater.

3. Animal manure and other animal by-products shall not be applied to cropland more than thirty (30) calendar days before planting or during dormant periods for perennial species, unless otherwise approved by the Department in an emergency situation.

4. The land application equipment, when used once or more per year, shall be calibrated at least annually by the applicator. A permit may require more frequent calibrations to ensure proper application rates. The two (2) most recent calibration records should be retained by the broker/land applier and made available for Department review upon request. If the land application equipment has not been used in over a year, the equipment shall be calibrated prior to use.

5. If the broker chooses to offer manure analysis as a service, the manure shall be analyzed at least once per year. If the broker does not perform manure analysis, the animal producer shall provide the broker with a copy of the most recent manure analysis. Dry animal manure information (as appropriate) shall be included as follows:

a. Dry animal manure shall be analyzed for the following:

i. Nutrients (on a dry weight basis).

- (a) Total Kjeldahl Nitrogen (mg/kg).
- (b) Total inorganic nitrogen (mg/kg).
- (c) Total ammonia nitrogen (mg/kg) and Total nitrate, nitrogen (mg/kg).
- (d)  $P_2O_5$  (mg/kg).
- (e)  $K_2O$  (mg/kg).

- (f) Calcium Carbonate equivalency (if animal manure is alkaline stabilized).
- ii. Constituents (on a dry weight basis).
  - (a) Arsenic (mg/kg).
  - (b) Copper (mg/kg).
  - (c) Zinc (mg/kg).

b. Name, address, email, and telephone number of the laboratory conducting the analyses.

c. Analysis shall be conducted by Clemson University Extension Service or a laboratory certified by the Department. This laboratory shall have and maintain certification for the constituents to be analyzed.

6. Permittees do not have to analyze for any constituent that they can demonstrate, to the satisfaction of the Department, is not present in their manure.

7. No person(s) accepting or purchasing manure or other animal by-products from a manure broker shall apply animal manure and other animal by-products to the land except in accordance with the requirements in this part. The broker shall inform the recipient of their responsibility to properly manage the land application of manure to prevent discharge of pollutants to Waters of the State (including ephemeral and intermittent streams) and ditches that lead to Waters of the State.

8. An animal producer who supplies animal manure to a broker/land applier shall provide the broker/land applier with the concentration of plant available nitrogen, phosphorus, potassium, and the concentration of all other constituents listed in the permit. If the broker/land applier is providing an additional service of collecting the manure samples to be analyzed, which shall be agreed upon up-front in the manure transfer contract, the analysis shall identify the name of the farm where the manure originated.

9. Animal manure and other animal by-products shall not be applied to or discharged onto a land surface when the vertical separation between the manure and other animal by-products and the seasonal water table is less than 1.5 feet at the time of application. For special cases, no land application can occur when the vertical separation from the ground surface to the water table is less than 1.5 feet at the time of application unless a situation is deemed an emergency with departmental concurrence.

10. Soil sampling (6-8 inches depth) shall be conducted for each field prior to manure application to determine the appropriate application rate. Each field should be sampled once per year. If manure application frequency will be less than once per year, at least one (1) soil sample should be taken prior to returning to that field for land application. This sample shall not be more than one (1) year old. All new manure utilization areas shall be evaluated using the NRCS-CPS to determine the suitability for application and the limiting nutrient (nitrogen or phosphorus). This information shall be obtained from person(s) accepting dry animal manure and other animal by-products prior to the delivery or land application of animal manure and other animal by-products by the broker/land applier. Soil phosphorus shall be addressed according to NRCS-CPS in the broker management plan. However, fields that are high in phosphorus may also be required to incorporate additional runoff control or soil conservation features as directed by the Department. The Department may require additional limits on soil phosphorus in the permit conditions. Additional soil sampling may be required by the Department on a case-by-case basis to ensure there is no potential for groundwater contamination.

11. The permittee shall obtain information needed to comply with the requirements in this part.

12. A Manure Transfer Contract shall be developed for the broker to use with any person who is accepting manure in quantities greater than 12 tons per recipient per year. The contract should contain, at a minimum, the following information:

a. Name, address, email, county, and telephone number of the person who is purchasing or accepting animal manure and other animal by-products;

b. Name, address, email, CAMM number, county, and telephone number of the broker who is selling or providing animal manure and other animal by-products;

c. Manure nutrient composition (pounds per ton of plant available nitrogen, phosphorus, and potassium) to be filled in or provided by the broker/land applier. This information shall be obtained from the manure analysis results and the broker shall provide this information on the manure transfer contract;

d. Land Application Field Information:

i. Physical Description (acreage, crop, soil type);

ii. Soil Test Results (nitrogen, phosphorus, potassium, zinc, and copper in pounds/acre); and

iii. Recommended Application Rates (nitrogen, phosphorus, and potassium in pounds per acre as reported on a soil test).

e. Attach a copy of a soils map, topographic map, county tax map, plat, FSA map, or a site plan sketch which includes the following information:

i. Manure application area with setbacks outlined;

ii. Known water supply wells within 100 feet of the property line;

iii. Adjacent surface waters, including ditches, streams, creeks, and ponds; and

iv. Identification of roads and highways to indicate location.

f. Description of application equipment and name of person to land apply manure;

g. Signed agreement that informs the land owner/applier that he is responsible and liable for land applying the animal manure and other animal by-products in accordance with this regulation; and

h. A copy of the land application requirements shall be provided to the recipient of the manure.

13. All persons who routinely accept animal manure and other animal by-products, in quantities greater than 12 tons per recipient per year, from a broker shall be listed in the approved Broker Management Plan at the time of permit renewal. The Broker Management Plan shall include the appropriate manure utilization area information for the sites routinely used by other persons. The person accepting the manure may be required by the Department to have a Management Plan and a permit for their manure utilization areas.

14. Dead animals shall be removed from animal manure and other animal by-products prior to land application. The livestock producer is responsible for removing all dead animals from the manure prior to transfer. Manure brokers/land appliers may not accept manure that contains dead animals, unless the broker/land applier plans to separate out the dead animals and handle the dead animals in accordance with a dead animal disposal plan approved by the Department.

15. If the Department receives complaints on a land application site, the Department may restrict land application of animal manure on the site completely or during certain time periods.

16. The Department may require animal manure and other animal by-products, spread on cropland, to be disked in immediately.

17. Manure (solid or liquid) shall only be applied when weather and soil conditions are favorable and when prevailing winds are blowing away from nearby dwellings. Animal manure should not be applied to land when the soil is saturated, flooded, during rain events, or when a significant rain event is forecasted to occur within forty-eight (48) hours.

18. Any animal manure and other animal by-products that contain fly larvae and fly pupae shall be disked into the ground immediately or treated with an approved and effective fly control method. If the manure utilization on a land application area creates a fly problem for the community, the owner and/or applicator shall be responsible for the control of all flies resulting from the application of the manure. Assistance in fly control and fly problem prevention can be obtained through contact with the local Clemson Extension Service Office.

19. Animal manure and other animal by-products shall not be spread in the floodplain if there is danger of a major runoff event, unless the manure is incorporated during application or immediately after application.

20. If the manure is stockpiled outside, the manure shall be stored on a concrete pad and/or other approved pad and covered with an acceptable cover to prevent odors, vectors, and runoff on a daily basis (unless otherwise stated in the permit). The cover should be properly vented with screen wire to let the gases escape. The edges of the cover should be properly anchored.

21. Manure Brokers/Land Appliers and other manure transporters shall use all sanitary precautions in the collection, storage, transportation, and spreading of animal manure and other animal by-products. The body of all vehicles transporting manure shall be wholly enclosed, or shall at all times, while in transit, be kept covered with an appropriate cover provided with eyelets and rope tie-downs, or any other approved method which shall prevent blowing or spillage of loose material or liquids. Should any spillage occur during the transportation of the animal manure and other animal by-products, the owner/operator shall take immediate steps to clean up the animal manure and other animal by-products.

D. Setbacks for manure utilization areas.

1. The minimum separation distance required between a manure utilization area and a residence is 300 feet. If there are no residences within 300 feet of the manure utilization area, manure may be utilized up to the property line. The setback may be waived with the written consent of the owner of the residence. If the application method is injection or immediate incorporation (same day), manure can be utilized up to the property line.

2. The minimum separation distance required between a manure utilization area and Waters of the State (including ephemeral and intermittent streams) is 100 feet when dry manure is spread on the ground surface, 75 feet when incorporation is the application method, and 50 feet when injection is the application method. When incorporation is accomplished within twenty-four (24) hours of the initial application, the distance can be reduced to 50 feet.

3. The minimum separation distance required between a manure utilization area and ditches and swales that discharge to Waters of the State including ephemeral and intermittent streams is 50 feet.

4. The minimum separation distance required between a manure utilization area and a potable drinking water well is 200 feet.

5. The Department may establish additional application buffer setbacks for property boundaries, roadways, residential developments, dwellings, water wells, drainage ways, and surface water (including ephemeral and intermittent streams) as deemed necessary to protect public health and the environment. Factors taken into consideration in the establishment of additional setbacks would be animal manure application method, adjacent land usage, public access, aerosols, runoff prevention, adjacent groundwater usage, and potential for vectors and odors.

E. The Department may establish additional permitting restrictions based upon soil and groundwater conditions to ensure protection of the groundwater and surface Waters of the State (including ephemeral and intermittent streams). Criteria may include, but is not limited to, soil permeability, clay content, depth to bedrock, rock outcroppings, aquifer vulnerability, proximity to a State Approved Source Water Protection Area, and depth to the seasonal high groundwater table.

F. The Department may establish permit conditions to require that animal manure and other animal by-products application rates remain consistent with the lime and fertilizer requirements for the cover, feed, food, and fiber crops based on Southeastern land grant universities' published lime and fertilizer recommendations, such as the Lime and Fertilizer Recommendations, Clemson Extension Services.

G. The Department may establish minimum requirements in permits for soil and/or groundwater monitoring, for manure utilization areas. Factors taken into consideration in the establishment of soil and groundwater monitoring shall include groundwater depth, operation flexibility, application frequency, type of animal manure and other animal by-products, size of manure utilization area, aquifer vulnerability, proximity to a State Approved Source Water Protection Area, and loading rate.

1. The Department may establish pre-application and post-application site monitoring requirements in permits for limiting nutrients or limiting constituents as determined by the Department.

2. The Department may establish permit conditions, which require the permittee to reduce, modify, or eliminate the animal manure and other animal by-products applications based on the results of this monitoring data.

3. The Department may modify, revoke and reissue, or revoke a permit based on the monitoring data.

H. The Department may require manure to be treated for odor control (i.e., composting or lime stabilizing for dry operations) prior to land application if the manure is not incorporated into the soil at the time of land application or if odors exist or are suspected to exist at an undesirable level. Manure, which has a very undesirable level of odor before treatment, such as turkey manure, shall not normally be permitted to be land applied on land near residences without appropriate treatment for odor control.

#### 400.70. Other Requirements.

A. On a case-by-case basis, the Department may impose additional or more stringent requirements for the management, handling, treatment, storage, or utilization of animal manure and other animal by-products.

B. The following cases shall be evaluated for additional or more stringent requirements:

1. Source water protection. Facilities and manure utilization areas located within a State Approved Source Water Protection Area.

2. 303(d) Impaired Waterbodies List. Facilities and manure utilization areas located upstream of an impaired waterbody.

3. Proximity to Outstanding Resource Waters, trout waters, shellfish waters, or would adversely affect a federally listed endangered or threatened species, its habitat, or a proposed or designated critical habitat.

4. Aquifer Vulnerability Area, an area where groundwater recharge may affect an aquifer.

C. If an adverse impact to the Waters of the State, including ephemeral and intermittent streams and groundwater, from animal manure and other animal by-products handling, storage, treatment, or utilization practices are documented, through monitoring levels exceeding the standards set forth in R.61-68 or a significant adverse trend occurs, the Department may require the person responsible for the animal manure and other animal by-products to conduct an investigation to determine the extent of impact. The Department may require the person to remediate the water to within acceptable levels as set forth in R.61-68.

D. Animal manure shall not be released to Waters of the State, including ephemeral and intermittent streams.

E. Animal medical waste shall not be land applied with animal manure and other animal by-products.

F. Animal manure and other animal by-products shall not be removed by a manure broker from a quarantined farm, until that quarantine has been lifted by the State Veterinarian.

G. Animal manure and other animal by-products that are quarantined for noxious weed seed contamination shall not be removed by a manure broker unless approved by Clemson Plant Industry.

H. If the Department determines that a complaint exists, the broker/land applier shall take action to correct the nuisance to the degree and within the time frame designated by the Department.

#### 400.80. Odor Control Requirements.

A. An odor abatement plan shall be included, which may consist of the following:

1. Operation and maintenance practices which are used to eliminate or minimize undesirable odor levels in the form of a Best Management Plan for Odor Control;

2. Use of treatment processes for the reduction of undesirable odor levels;

3. Additional setbacks from property lines beyond the minimum setbacks given in this part;

4. Other methods as may be appropriate; or

5. Any combination of these methods.

B. Person(s) who transport, treat, store, or land apply manure and other animal by-products shall utilize Best Management Practices normally associated with the proper operation and maintenance of an animal manure and other animal by-products treatment or storage facility and any manure utilization area to ensure an undesirable level of odor does not exist.

C. No person(s) who transport, treat, store, or land apply manure and other animal by-products may cause, allow, or permit emission into the ambient air of any substance or combination of substances in quantities that an undesirable level of odor is determined to result unless preventive measures of the type set out below are taken to abate or control the emission to the satisfaction of the Department. When an odor problem comes to the attention of the Department through field surveillance or specific complaints, the Department shall determine if the odor is at an undesirable level.

D. If the Department determines an undesirable level of odor exists, the Department may require these abatement or control practices, including, but not limited to, the following:

1. Remove or dispose of odorous materials;

- 2. Methods in handling and storage of odorous materials that minimize emissions;
  - a. Dry manure to a moisture content of fifty percent (50%) or less;
  - b. Use disinfection to kill microorganisms present in manure;
  - c. Aerate manure;
  - d. Compost solid manure and other animal by-products; and/or

e. Utilize odor control additives.

3. Prescribed standards in the maintenance of premises to reduce odorous emissions;

a. Cover or reduce the surface area of manure and other animal by-products storage. (Vents shall be provided for release of pressure created by manure gases if completely sealed covers are utilized);

b. Plant trees around or downwind of the manure and other animal by-products storage and treatment facilities;

c. Incorporate manure and other animal by-products immediately, within twenty-four (24) hours after land application;

d. Select appropriate times for land application.

4. Best available control technology to reduce odorous emissions.

E. If the permittee fails to control or abate the odor problems at a land application site to the satisfaction and within a time frame determined by the Department, the broker permit may be revoked. If the permittee fails to control or abate the odor problems at land application sites, approval for land application of manure on the manure utilization area in question may be revoked. Additional land may be required to be added to the broker management plan, if necessary to provide a sufficient amount of land for manure utilization.

## 400.90. Vector Control Requirements.

A. A Vector Abatement Plan shall be developed for the dry animal manure and other animal by-products storage or treatment facility or land application areas (if applicable). The Vector Abatement Plan shall, at a minimum, consist of the following:

1. Normal management practices used at the dry animal manure and other animal by-products storage or treatment facility to ensure there is no accumulation of organic or inorganic materials to the extent and in such a manner as to create a harborage for rodents or other vectors that may be dangerous to public health.

2. A list of specific actions to be taken by the broker/land applier if vectors are identified as a problem at the dry animal manure and other animal by-products storage or treatment facility or land application site. These actions should be listed for each vector problem, e.g., actions to be taken for fly problems, actions to be taken for rodent problems, etc.

3. If the broker is not performing land application, but is only transferring the manure to a person who is accepting responsibility for handling the manure in accordance with this regulation, the person accepting the manure shall be responsible for correcting any nuisance problems resulting from the land application of manure.

B. No broker/land applier may cause, allow, or permit vectors to breed or accumulate in quantities that result in a nuisance level, as determined by the Department.

C. For an existing broker/land applier, if the Department determines a vector problem exists, the Department may require these abatement or control practices, including, but not limited to, the following:

1. Remove and properly dispose of vector infested materials;

2. Methods in handling and storage of materials that minimize vector attraction;

a. Compost solid manure;

b. Appropriately use vector control chemicals, poisons, or insecticides (take caution to prevent insecticide resistance problems);

c. Utilize traps, or electrically charged devices;

d. Utilize biological agents;

e. Utilize Integrated Pest Management; and/or

f. Incorporate manure and other animal by-products immediately, within twenty-four (24) hours after land application.

3. Prescribed standards in the maintenance of premises to reduce vector attraction;

a. Remove any standing water that may be a breeding area for vectors;

b. Keep storage and/or treatment facilities clean and free from trash or debris;

c. Properly use and service bait stations;

d. Keep grass and weeds mowed around the manure storage and/or treatment areas;

e. Cover or reduce the surface area of manure and other animal by-products storage. (Vents shall be provided for release of pressure created by manure gases if completely sealed covers are used);

f. Conduct a weekly vector monitoring program;

g. Be aware of insecticide resistance problems, and rotate use of different insecticides; and/or

h. Ensure proper grading and drainage around the buildings to prevent rain water from entering the buildings or ponding around the buildings.

4. Utilize the best available control technology to reduce vector attraction and breeding.

400.100. Record Keeping.

A. A copy of the approved Broker/Land Applier Management Plan, including approved updates, and a copy of the permit(s) issued to the broker/land applier shall be retained by the permittee for as long as the broker is in operation.

B. All application information submitted to the Department shall be retained by the permittee for eight (8) years. C. Animal Manure Records. These records shall be kept for five (5) years. The records shall include the following:

1. Name, address, email, county, and phone number of all producers from whom the broker/land applier purchases or accepts animal manure;

2. Sampling results for the animal manure;

- 3. Amount (in tons) of animal manure obtained from each producer; and
- 4. Date of transfer.

D. All completed Manure Transfer contracts, including soil analysis results, between the broker and the person(s) purchasing or accepting animal manure, shall be kept by the broker for eight (8) years.

E. All records retained by the broker/land applier shall be kept at an appropriate business office, or other location, as approved by the Department.

F. All records retained by the broker/land applier shall be made available to the Department during normal business hours for review and copying, upon request by the Department.

#### 400.110. Reporting.

A. The Department may establish reporting requirements in permits as it deems appropriate. These reporting requirements may include a

Manure Balance Sheet, which lists the producer/farm name and amount (tons) of manure provided and a listing of all person(s) who bought or accepted animal manure and the amount (tons) accepted. Any manure that is currently in storage or treatment structures at the broker/land applier facility shall be accounted for in this report.

B. The Department may require on a case-by-case basis any of the required records, as outlined in section 400.100, to be reported on an annual basis.

#### 400.120. Training Requirements.

A. An owner/operator of a manure brokering/land applying business shall be trained and certified on the operation of animal manure management under the poultry version of the certification program created and operated by Clemson University (CAMM). The certification shall be obtained within one (1) year of the effective date of the issued permit.

B. The certification program shall be completed by owners/operators of existing brokerage/land applier businesses within one (1) year of the effective date of this regulation or of a transfer of ownership approval.

C. Failure to obtain the certification and education as provided in this Section shall be deemed a violation of this regulation and a violation of the permit.

#### 400.130. Violations.

Persons who violate this regulation or any permit issued under this regulation are subject to the penalties in Sections 48-1-320 (Criminal Penalties) and 48-1-330 (Civil Penalties) of the South Carolina Pollution Control Act.

## PART 500 INTEGRATOR REGISTRATION PROGRAM

#### 500.10. General.

A. The Department encourages Integrators to be involved with the permitting and compliance of their growers.

B. The Department encourages Integrators to assist growers in the disposal of dead animals and the proper utilization of animal manure.

C. Integrating companies shall inform each prospective grower that they are required by State law to obtain a permit to construct and an approval to operate from the Department, and a certification of construction from the engineering company or NRCS. The Department recommends that growers verify an exemption status from the Department prior to construction of an agricultural animal facility.

## 500.20. Submittal Requirements.

A. Each integrating company that contracts with animal producers that operate facilities located within the State shall submit to the Department a Request for Registration form, as provided by the Department. The Integrator shall work with the Department to identify growers that are unpermitted. The Department may schedule an annual inspection in order to review grower lists and identify unpermitted farms. The integrator shall provide the Department any additional information needed to contact unpermitted growers contracting with their company.

B. Animal Manure Analysis Information. If the producers that contract with the integrator use the same feed rations and have dry animal manure analyses that come out to be consistently the same, they may qualify to use one (1) analysis for their individual testing requirement. However, if any of these producers utilize a different feed ration, utilize a significant amount of medications as compared to the others, or use any other inconsistent bedding materials, animal manure treatments, or vector treatments, they shall be required to run a separate and individual analysis on their animal manure. The Integrator is responsible for notifying the Department of any significant feed composition changes. This benefit shall not be available to liquid manure handling systems, since other factors specific to each site, such as rainfall, could affect the nutrient analysis of the manure.

C. If an integrating company can certify through general feed composition reports that a certain constituent, such as arsenic, is not present in their feed or medications, the producers that contract with that integrator may be exempt from testing for that constituent. The integrator shall submit a written request, along with general feed composition reports, and a list of growers who are using this feed ration. The Department shall approve this report in writing before the constituent can be removed from the analysis requirements. Each grower who is included in this exemption shall be notified in writing by the Department.

D. Swine Integrators must submit a plan addressing cumulative environmental and public health impacts of their contracted facilities with their first request for integrator certification. The plan must cover the integrator's existing contract growers and the projected three (3) year increase in the number of permitted facilities and swine. The plan must include:

1. The general area served by the integrator;

2. The number of existing swine facilities under contract;

3. The number of swine grown (broken down by facility);

4. The number of projected new facilities (broken down by facility size) with the total number of swine;

5. The integrating company's: procedures, protocols, policies, programs, required manure treatment and utilization technologies, etc. to ensure the cumulative impacts from their contracted facilities do not cause any adverse impact to the environment or public health; and

6. An assessment of the adverse environmental or public impact, if any, from the existing and proposed swine facilities under contract with the integrator.

7. The Swine Integrator must also provide to the Department any other supplemental information that may reasonably be required by the Department to assess cumulative adverse environmental or public health impacts.

8. The environmental and public health impact assessment plan must be approved by the Department before integrator certification can be granted. Once approved, the integrator may update the plan at any time. Also, the Department may require the plan be updated from time to time.

E. All permits for growers under contract with the integrator must be in accordance with the integrator's approved plan.

F. All integrators are required to submit, on an annual basis by December 31<sup>st</sup> of each year, a list of active and inactive growers that have been added and/or released from their contracts.

#### 500.30. Certificate of Integrator Registration.

A. The Department shall issue a certificate of integrator registration to integrators or integrating companies that meet all the requirements of this part.

B. All integrators or integrating companies shall hold a valid certificate of registration to operate in the State.

C. Certificates of integrator registration issued under this part do not have any administrative procedures for public notice under this regulation.

D. The certificate of integrator registration may be modified, revoked, or reissued if the requirements of this part are not met by the integrator or integrating company.

#### 500.40. Reporting.

A. The Department may establish reporting requirements for integrators as it deems appropriate. These reporting requirements may include the following:

1. General feed composition reports. Feed composition reports provided in accordance with this section shall be exempt from disclosure under the Freedom of Information Act; and

2. A list of any special treatments or chemicals added to the manure or manure storage structure that are required by the integrator.

#### 500.50. Other Requirements.

A. An integrator or integrating company shall not knowingly provide animals to an animal facility that does not hold a valid agricultural permit and an approval to operate from the Department. Any existing, unexpired contracts may be fulfilled, but the integrator may not renew the contract until the facility has obtained a valid permit and approval to operate. If an integrator knowingly provides animals to an animal facility that does not hold a valid permit, the Department may require the integrator to remove the animals from the facility and be subject to Part 500.60.

B. The integrator or integrating company shall take reasonable steps to ensure that the animal facilities that are under contract with the company are certified, trained, and educated on compliance with their permit to include the following:

1. Notify growers of their responsibility to update their Animal Facility Management Plan and permit if changes are made in the operation of the farm; and

2. Provide information on technical assistance to its growers on compliance and assist the producers in selecting a corrective action.

#### 500.60. Violations.

Persons who violate this regulation or any permit issued under this regulation are subject to the penalties in Sections 48-1-320 (Criminal Penalties) and 48-1-330 (Civil Penalties) of the South Carolina Pollution Control Act.

## PART 600 SEVERABILITY

Should a section, paragraph, sentence, clause, phrase, or other part of this regulation be declared invalid for any reason, the remainder shall not be affected.

## **Fiscal Impact Statement:**

The amendments have no substantial fiscal or economic impact on the state or its political subdivisions. There are no anticipated additional costs 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: R.61-43, Standards for the Permitting of Agricultural Animal Facilities.

Purpose: The Department amends R.61-43 to incorporate statutory changes made by the General Assembly's passage of Act 139 of 2018 and to correct typographical errors, citation errors, and other errors and omissions. These amendments expand and clarify definitions applicable to agricultural animal facility regulations and standards, streamline permitting options, clarify reporting requirements, identify the Department's consistent noticing method, improve the regulation's organizational structure, and provide corrections for consistency, clarification, reference, punctuation, codification, formatting, and spelling to improve the overall text of R.61-43.

Legal Authority: 1976 Code Sections 44-1-60, 44-1-65, 46-45-80, and 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 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 amendments and any associated information.

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

The Department amends R.61-43 to adopt the changes of Act 139 that amended S.C. Code Sections 44-1-60 and 46-45-80 and added Section 44-1-65. S.C. Code Section 44-1-65 establishes specific requirements for review and appeal of decisions by the Department regarding the permitting, licensing, certification, or other approval of poultry and other animal facilities, except for swine facilities. Section 44-1-60 sets procedures for reviewing permits for poultry and other animal facilities, except swine facilities, relating to appeals from Department decisions giving rise to contested cases. Section 46-45-80 includes provisions regarding setback distances for poultry and other animal facilities, except swine facilities, so as to prohibit requiring additional setback distances if established distances are achieved, allow waiver of the established setback distances in certain circumstances, and other purposes. Since the above-referenced statutory provisions added and removed requirements currently contained in R.61-43, the regulation is amended to reflect these changes.

The Department also amends the regulation to correct typographical errors, citation errors, and other errors and omissions that have come to the Department's attention. These include correcting form references and regulation references, updating definitions, adding and/or omitting language and punctuation, clarification, reorganizing sections for consistency, and other such changes.

The amendments seek to simplify, clarify, and correct elements of the Department's agriculture animal facility permitting regulations while supporting the Department's goal of promoting and protecting the health of the public and the environment in an efficient and effective manner.

## DETERMINATION OF COSTS AND BENEFITS:

The Department does not anticipate an increase in costs to the state, its political subdivisions, or the regulated community resulting from these revisions. Changes to the public notice process will be a cost-saving measure to the applicants and the Department; public notices will be available on the Department website, thereby decreasing the cost of publishing the notices in the local newspapers. The changes are meant to create a more usable and functional regulation that will assist the regulated community and the citizens of South Carolina.

#### UNCERTAINTIES OF ESTIMATES:

There are no uncertainties of estimates relative to the costs to the state or its political subdivisions.

## EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH:

These amendments seek to provide continued state-focused protection of the environment and public health.

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

If these proposed revisions are not implemented, R.61-43 will not include the policy initiatives advanced by Act 139.

## **Statement of Rationale:**

The Department amends R.61-43, Standards for the Permitting of Agricultural Animal Facilities, to incorporate statutory changes made by the General Assembly's passage of Act 139 of 2018 and to correct typographical errors, citation errors, and other errors and omissions. These amendments expand and clarify definitions

applicable to agricultural animal facility regulations and standards, streamline permitting options, clarify reporting requirements, identify the Department's consistent noticing method, improve the regulation's organizational structure, and provide corrections for consistency, clarification, reference, punctuation, codification, formatting, and spelling to improve the overall text of R.61-43.

## Document No. 4995 DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL CHAPTER 30

Statutory Authority: 1976 Code Sections 48-39-10 et seq.

30-1. Statement of Policy.

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

#### Synopsis:

Pursuant to the S.C. Coastal Zone Management Act, S.C. Code Sections 48-39-10 et seq., the Department of Health and Environmental Control ("Department") amends R.30-1 and R.30-12 to provide a definition and add project standards for living shorelines. Coastal property owners and other stakeholders in South Carolina have expressed an increased interest in the use of living shorelines as an alternative to hardened erosion control structures within the estuarine environment. Coastal Division regulations currently do not provide guidance specific for living shoreline installations. The lack of a regulatory definition or specific project standards for living shorelines has resulted in longer permitting review times and uncertainties about project performance. New sections R.30-1.D(31) and R.30-12.Q allow for a more efficient authorization process by defining which projects qualify as a living shoreline and establishing specific standards for living shoreline installations. The new sections also help ensure a project's design will accomplish its intended goals.

The Department developed the new sections using scientific data and monitoring results from existing living shoreline installations in South Carolina and with input from state, local, and federal agencies, the Living Shoreline Working Group, and additional stakeholder engagement.

The Department had a Notice of Drafting published in the April 24, 2020, South Carolina State Register.

#### Instructions:

Amend R.30-1, *Statement of Policy*, and R.30-12, *Specific Project Standards for Tidelands and Coastal Waters*, pursuant to each individual instruction provided with the text below.

## Text:

30-1. Statement of Policy.30-12. Specific Project Standards for Tidelands and Coastal Waters.

(Statutory Authority: S.C. Code Sections 48-39-10 et seq.)

## Add New 30-1.D(31), definition of "Living Shoreline" to read as follows and renumber remaining definitions:

(31) Living Shoreline - A shoreline stabilization approach utilized in intertidal wetland environments that maintains, restores, and/or enhances natural estuarine processes through the strategic placement of native vegetation and/or use of green infrastructure as described in 30-12.Q. Living shorelines promote wetland resiliency and water quality, and enhance the diverse intertidal habitat.

(32) Major Development Activity - any construction activity that is not a Minor Development Activity.

(33) Marinas - a marina is any of the following:

(a) locked harbor facility;

(b) any facility which provides fueling, pump-out, maintenance or repair services (regardless of length);

(c) any facility which has effective docking space of greater than 250 linear feet or provides moorage for more than 10 boats;

(d) any water area with a structure which is used for docking or otherwise mooring vessels and constructed to provide temporary or permanent docking space for more than ten boats, such as a mooring field; or

(e) a dry stack facility.

(34) Master Plan - a document or a map prepared by a developer or a city as a policy guide to decisions about the physical development of the project or community.

(35) Minor Development Activity - the construction, maintenance, repair or alteration of any private pier or erosion control structure, the construction of which does not involve dredging.

(36) Nonwater-dependent - a facility which cannot demonstrate that dependence on, use of, or access to coastal waters is essential to the functioning of its primary activity.

(37) Normal Maintenance and Repair - work performed on any structure within the critical area as part of a routine and ongoing program to maintain the integrity of the structure provided that the structure is still generally intact and functional in its present condition and the work only extends to the original dimensions of the structure. See R.30-5(D).

(38) OCRM - the South Carolina Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management.

(39) Offshore Breakwater - a structure which is designed to protect an area from wave action, is generally built parallel to the shore, may or may not be submerged, and may be built singly or in series. Breakwaters may interfere with natural wave action and wave induced currents.

(40) Party - each person or agency named or admitted as a party or properly seeking and entitled to be admitted as a party, including a license or permit applicant.

(41) Planned Development - a development plan which has received local approval for a specified number of dwelling and other units. The siting and size of structures and amenities are specified or restricted within the approval. This term specifically references multi-family or commercial projects not otherwise referenced by the terms master plan or planned unit development.

(42) Planned Unit Development - a residential, commercial, or industrial development, or all three, designed as a unit and approved in writing by local government.

(43) Pool - a structure designed and used for swimming and wading.

(44) 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.

(45) Public Interest - As used within these Rules and Regulations, public interest refers to the beneficial and adverse impacts and effects of a project upon members of the general public, especially residents of South Carolina who are not the owners and/or developers of the project. To the extent that, in the opinion of the Department, the value of such public benefits is greater than the public costs embodied in adverse environmental, economic and fiscal effects, a proposed project may be credited with net public benefits.

(46) Setback Area - the area located between the setback line and the baseline.

(47) Setback Line - the line landward of the baseline that is established at a distance which is forty times the average annual erosion rate as determined by historical and other scientific means and adopted by the Department in the State Comprehensive Beach Management Plan. However, all setback lines shall be established no less than twenty feet landward of the baseline, even in cases where the shoreline has been stable or has experienced net accretion over the past forty years.

(48) Significant Dune - A dune located completely seaward of the setback line, which because of its size and/or location is necessary to protect the beach/dune system of which it is a part.

(49) Special Geographic Circumstances - physical characteristics and land uses of surrounding uplands and waters may warrant additional consideration toward dock sizes. Special Geographic Circumstances identified by OCRM include: tidal ranges of greater than 6 feet; lots with greater than 500 feet of water frontage; and no potential access via dockage from the opposite side of the creek. At the discretion of Department staff, one or more of these circumstances may be applied to dock applications, which may allow up to an additional fifty percent (50%) to what is allowed in 30-12.A(2)(c).

(50) Standard Erosion Zone - a segment of shoreline which is subject to essentially the same set of coastal processes, has a fairly constant range of profiles and sediment characteristics, and is not directly influenced by tidal inlets or associated inlet shoals.

(51) Tidelands - all areas which are at or below mean high tide and coastal wetlands, mudflats, and similar areas that are contiguous or adjacent to coastal waters and are an integral part of the estuarine systems involved. Coastal wetlands include marshes, mudflats, and shallows and means those areas periodically inundated by saline waters whether or not the saline waters reach the area naturally or through artificial water courses and those areas that are normally characterized by the prevalence of saline water vegetation capable of growth and reproduction. Provided, however, nothing in this definition shall apply to wetland areas that are not an integral part of an estuarine system. Further, until such time as the exact geographic extent of this definition can be scientifically determined, the Department shall have the authority to designate its approximate geographic extent.

(52) Transmittal Form - the official form prepared by the agency with subject matter jurisdiction that is filed with the division notifying it of a request by any person for a contested case hearing.

(53) Water-dependent - a facility which can demonstrate that dependence on, use of, or access to coastal waters is essential to the functioning of its primary activity.

(54) Waterfront property - For purposes of these regulations, waterfront property will generally be defined as upland sites where a straight-line extension of both, generally shore perpendicular, upland property lines reaches

a navigable watercourse within 1000' of the marsh critical line. Waterfront property may also be identified via an approved dock master plan where designated corridors differing from upland property line extensions are delineated.

#### Add New 30-12.Q to read:

Q. Living Shorelines: Living shorelines, as defined in 30-1.D, are encouraged as an alternative to traditional hardened erosion control structures in estuarine environments because they provide an environmental benefit and reduce the environmental impacts associated with hardened structures. Living shoreline methods involve planting of native vegetation and/or the installation of other green infrastructure. Green infrastructure includes softer approaches to protecting estuarine shorelines and consists of materials that promote growth of native biological components and maintain continuity of the natural land-water interface. Environmental conditions of a site will be considered in the evaluation of living shoreline applications including whether the type of living shoreline has demonstrated success. Demonstrated success can include an increase in the presence of native vegetation and/or oysters, and an increase in elevation on the landward side of the living shoreline installation.

The following standards are applicable for all living shoreline installations:

(1) Living shorelines are limited to waterfront parcels or lots as defined in R.30-1.D.

(2) Living shorelines must be constructed within extended property boundaries of the permittee for individual projects. One application may be submitted for a living shoreline installation that involves more than one adjoining waterfront parcel. The Department may consider an alternative alignment on a site-by-site basis if site-specific characteristics warrant such an alignment.

(3) Living shorelines must be shore parallel and aligned to conform to the natural contours of the shoreline to the maximum extent feasible.

(4) Living shorelines must not be installed in creeks less than twenty (20) feet in width as measured from marsh vegetation on each side unless special geographic circumstances exist. In all cases, the Department will consider any navigational concerns when evaluating the siting of living shoreline projects.

(5) All living shoreline applications must demonstrate that the installations are designed to promote growth of native biological components. Only native vegetation may be used if the site is planted. Living shoreline installations must be composed of Department approved materials. Approval of materials by the Department may require the applicant to submit a certified letter from the supplier of the source material.

(6) The size and extent of the living shoreline must be limited to that which is reasonable for the intended purpose. All living shoreline applications must demonstrate that the living shoreline is designed and constructed in a manner that:

(a) does not restrict the reasonable navigation or public use of state lands and waters;

(b) has minimal effect on natural water movement and in no case prohibits water flow;

- (c) does not prevent movement of aquatic organisms between the waterbody and the shore;
- (d) maintains, restores, and/or enhances shoreline ecological processes;
- (e) maintains continuity of the natural land-water interface; and
- (f) prevents the installation from being displaced which can result in marine debris.

(7) Filling or excavation of vegetated tidelands for the construction of a living shoreline is prohibited. Minimal impacts to non-vegetated tidelands may be permitted to achieve a successful installation only if no feasible alternative exists. Projects with proposed non-vegetated tideland impacts must provide sufficient evidence that no feasible alternative exists and must demonstrate avoidance and minimization of impacts. Construction of living shorelines must not disturb established, live shellfish beds. Living shoreline installations must not be constructed in a manner that results in the creation of upland.

(8) Living shorelines must be maintained by the permittee such that the installation is generally intact and functional. The Department may require the permittee to monitor the living shoreline subject to the critical area permit to determine whether the installation is functioning as intended, results in marine debris, or impedes navigation or public use of state lands and waters.

(9) The Department may require remediation or removal of a living shoreline for reasons that include, but are not limited to:

(a) the installation is no longer generally intact and functional;

(b) the installation has resulted in marine debris;

(c) the installation impedes navigation or public use of state lands and waters; or

(d) the installation is not accomplishing the intended purpose of the living shoreline.

(10) If a living shoreline is destroyed by natural events, the installation may be rebuilt to its previously permitted configuration so long as reconstruction is completed within one (1) year of the date of the event unless there are extenuating circumstances justifying more time.

#### **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 these amendments. 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 30-12, Specific Project Standards for Tidelands and Coastal Waters.

Purpose: These amendments are based on interest from coastal property owners and other stakeholders in South Carolina who have expressed an increased interest in the use of living shorelines as an alternative to hardened erosion control structures within the estuarine environment. Coastal Division regulations currently do not provide guidance specific for living shoreline installations. The lack of a regulatory definition or specific project standards for living shorelines has resulted in longer permitting review times and uncertainties about project performance. The amendments allow for a more efficient authorization process by defining which projects qualify as a living shoreline and establishing specific standards for living shoreline installations. The new sections also help ensure a project's design will accomplish its intended goals.

Due to this citizen interest, the Department commenced a Living Shoreline initiative and worked in partnership with the South Carolina Department of Natural Resources and South Carolina's two National Estuarine Research Reserves to evaluate the performance of different living shoreline methods over time and under a range of environmental conditions. The Department developed the amendments using scientific data and monitoring

results from existing living shoreline installations in South Carolina and with input from state, local, and federal agencies, the Living Shoreline Working Group, and additional stakeholder engagement.

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 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 adds new sections R.30-1.D(31) and R.30-12.Q to provide a definition and add project standards for living shorelines. Coastal property owners and other stakeholders in South Carolina have expressed an increased interest in the use of living shorelines as an alternative to hardened erosion control structures within the estuarine environment. Coastal Division regulations currently do not provide guidance specific for living shoreline installations. The lack of a regulatory definition or specific project standards for living shorelines has resulted in longer permitting review times and uncertainties about project performance.

The amendments are reasonable and necessary to manage the long-term health and sustainability of the state's tidelands critical area. The amendments allow for a more efficient authorization process by defining which projects qualify as a living shoreline and establishing specific standards for living shoreline installations. By providing living shorelines as an alternative method of estuarine shoreline stabilization, additional benefits to water quality, tidal wetland resiliency, and oyster stock may also be realized.

## DETERMINATION OF COSTS AND BENEFITS:

The Department does not anticipate additional cost to the state resulting from administration of these amendments. Benefits to the state include improved management of coastal resources by providing standards for alternative natural shoreline stabilization approaches. The amendments allow for a more efficient authorization process for the state and the regulated public. 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 the amendments benefit the environment by providing more clarity to the Department's Coastal Division statutory directives to manage the state's tideland critical areas. Living shorelines benefit the state's tideland ecosystems by maintaining, restoring, or enhancing natural estuarine processes that improve water quality, reduce shoreline erosion, protect property, and enhance aquatic habitats.

# 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 associated with these amendments. Not implementing these amendments will continue to result in longer permitting review times for proposed living shoreline installations and continued uncertainties about living shoreline project performance.

The amendments allow for a more efficient authorization process to encourage the use of living shorelines as an alternative to traditional hardened erosion control structures.

## **Statement of Rationale:**

Here below is the Statement of Rationale pursuant to S.C. Code Section 1-23-110(h):

Coastal property owners and other stakeholders in South Carolina have expressed an increased interest in the use of living shorelines as an alternative to hardened erosion control structures within the estuarine environment. Coastal Division regulations currently do not provide guidance specific for living shoreline installations. The lack of a regulatory definition or specific project standards for living shorelines has resulted in longer permitting review times and uncertainties about project performance.

The amendments allow for a more efficient authorization process by defining which projects qualify as a living shoreline and establishing specific standards for living shoreline installations. This helps ensure a project's design will accomplish its intended goals. The Department developed the amendments using scientific data and monitoring results from existing living shoreline installations in South Carolina and with input from state, local, and federal agencies, the Living Shoreline Working Group, and additional stakeholder engagement.

## Document No. 5004 **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.

#### Synopsis:

The South Carolina Commission on Higher Education proposes the following revisions to Chapter 62 regulation, R.62-1200.1 through 62-1200.75, LIFE Scholarship Program. Revisions to the existing regulation for the LIFE Scholarship & LIFE Scholarship Enhancement Program are being considered to clarify the policies and procedures for administrating the program. In the proposed amendments, the transcript and class ranking policies are clarified. There are also additional changes being proposed to allow the ACT Test to be Superscored, matching the current allowance for the SAT. Additional changes are being proposed to allow a LIFE Scholarship recipient to prorate their award during their final term of college enrollment. Amendments to the language have been made to allow students who are in approved Co-op, Travel Study, Internship, or Military service to retain the scholarship with an average of 30 credit hours. Lastly, other changes to the regulation include updating of definitions and minor language changes to promote consistency

The proposed regulation will require legislative review.

A Notice of Drafting was published in the State Register on August 28, 2020.

#### **Instructions:**

Replace R.62-1200.1 through 62-1200.75 in its entirety.

## 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.	
62-1200.20.	Terms of Eligibility: LIFE Scholarship and LIFE Scholarship Enhancement.
62-1200.25.	Regaining or Earning Eligibility: LIFE Scholarship and LIFE Scholarship
02 1200.201	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.	
	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).

#### 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 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. Eligible LIFE Scholarship recipients may prorate their award amount for the term of graduation (see section 62-1200.10.P.).

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 at the Medical University of South Carolina, the Doctor of Pharmacy Program at the University of South Carolina-Columbia, and the Doctor of Pharmacy Program at 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 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. Eligible LIFE Scholarship recipients may prorate their award amount for the term of graduation (see section 62-1200.10.P.).

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 public, private, charter, virtual, Montessori or Magnet high school located in South Carolina, recognized home school association or 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. 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.

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 62-1200.60 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."

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 at the Medical University of South Carolina, the Doctor of Pharmacy Program at the University of South Carolina-Columbia and the Doctor of Pharmacy Program at 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. A student must be considered a South Carolina resident at the time of high school graduation, and at the time of initial college enrollment, in order to receive a LIFE Scholarship.

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.

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 at the time of high school graduation, whose lawful presence has been verified at the time of enrollment at the institution; and

2. Be classified by the awarding institution as 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 South Carolina 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. The final official high school transcript must be dated in accordance with the Commission established date(s). If a South Carolina resident student is graduating from an out of state high school, it is the responsibility of the out of state student's school counselor to convert the student's final high school GPA and class ranking to an eligible final high school GPA based on the South Carolina Uniform Grading Policy. The converted final high school GPA and class ranking (if applicable) must be provided to the eligible South Carolina Institution before a student can be awarded.

b. Score at least an 1100 on the Scholastic Assessment Test (SAT) or an equivalent ACT score of 24. Test scores will be accepted through the June 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 Evidenced-based Reading score. It is permissible to select scores from different test administrations in order to obtain the qualifying composite score. For purposes of meeting the ACT tes score requirement, the student can use the highest English, Math, Reading and Science scores. It is permissible to select scores from different test administrations in order test administrations in order to score requirement, the student can use the highest English, Math, Reading and Science scores. It is permissible to select scores from different test administrations in order to obtain the qualifying composite score.

c. Rank in the top thirty percent of the graduating class in a high school with an approved, official rank policy, consisting of high school diploma candidates only. The rank must also be based on the UGP only. Students cannot be removed from the class because they did not meet the eligibility criteria, 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. 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, and on a submitted rank report provided by the high school the student graduated from. A ranking report must be attached to the official transcript regardless of the graduating high school. 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. 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, and no grades earned after the date of the graduating high school class for the graduation year.

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 South Carolina

Uniform Grading Policy (SC 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 SC UGP, the state-approved, standardized grading scale shall not be used to meet the eligibility requirements for the LIFE Scholarship. All members of the student's Senior class at the out of state high school must be ranked in accordance with the South Carolina Uniform Grading Policy in these cases. 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 . 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  $\geq 90$ ; 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 50 and 59 (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 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" numerical averages must be converted a 50 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 as determined by the Commission 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 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 eligible institution. 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 . 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 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 only. The student will be eligible for the Scholarship for the term following Spring or Fall term immediately after the completion of remediation if the student was eligible to receive the LIFE Scholarship upon high school graduation. A student is allowed a maximum of two terms of remediation, which must be within the first two terms of attendance at an eligible institution, before his/her terms of eligibility start. If the student requires more than one academic year of remedial/developmental coursework, then he/she will not be eligible for the LIFE 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 courses to be eligible to receive the scholarship eligibility at the completion of remediation unless the student has completed at least twelve credit hours of non-remedial/developmental courses to be completed at least twelve credit hours of non-remedial/developmental courses has completed at least twelve credit hours of non-remedial/developmental courses work 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 at the Medical University of South Carolina, the Doctor of Pharmacy Program at the University of South Carolina-Columbia and the Doctor of Pharmacy Program at 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 South Carolina high school prior to the full implementation of the South Carolina Uniform Grading Policy must have their high school transcript converted to the UGP in order to qualify for the LIFE Scholarship. It is the responsibility of the out-of-state preparatory high school or South Carolina high school to convert the student's GPA to the Uniform Grading Policy.

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;

4.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;

5. 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;

6. 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

7. 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; however, the student cannot be awarded the LIFE Scholarship Enhancement during the next academic year of enrollment in an ineligible degree program. During the student's final term of attendance, not to exceed the eighth term of enrollment based on initial college enrollment, the institution may prorate the LIFE Scholarship and the LIFE 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.

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. 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 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).

G. At the end of the spring term each academic year, the institution must notify all LIFE Scholarship recipients who have not met 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.

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 at the Medical University of South Carolina, the Doctor of Pharmacy Program at the University of South Carolina-Columbia and the Doctor of Pharmacy Program at 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:

		Average Credit Hours Earned at the End of Each Academic Year				
	Maximum					
	Terms of	1st Year = 30 credit	2nd Year = 60 credit	3rd Year = 90	4th Year = 120	Fifth Year
Degree/Program	Eligibility	hours	hours	credit hours	credit hours	= 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. A student may receive a LIFE Scholarship for a maximum of two terms towards a one-year certificate/diploma, four terms for a two-year associate's degree at an eligible two year institution, and eight terms towards a bachelor's degree at an eligible institution. The terms of eligibility that may be used towards a certificate, diploma or associate's degree at a two year institution must be taken within the first two years of college, based on initial college enrollment.

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 South University, the Doctor of Pharmacy Program at Presbyterian College, the Master's of Science in Physician Assistant Studies Program at the Medical University of South Carolina, the Doctor of Pharmacy Program at the University of South Carolina-Columbia and the Doctor of Pharmacy Program at 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.

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:

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 South Carolina, 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 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 or term 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 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 an average of thirty 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 (see Section 62-1200.15 (3)(a-d) for example). 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 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 an average of thirty 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 (see Section 62-1200.15 (3)(a-d) for example). 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 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: (Grade Points X Attempted Credited Hours = QP) = LIFE GPA Total Attempted Credit Hours

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 at the Medical University of South Carolina, the Doctor of Pharmacy Program at the University of South Carolina-Columbia and the Doctor of Pharmacy Program at 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:

- 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) and corresponding rank report (if applicable) 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.

R. At the end of the spring term each academic year, the institution must notify all LIFE Scholarship recipients 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.

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) 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 South University, the Doctor of Pharmacy Program at Presbyterian College, the Master's of Science in Physician Assistant Studies Program at the Medical University of South Carolina, the Doctor of Pharmacy Program at the University of South Carolina-Columbia and the Doctor of Pharmacy Program at 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.

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 South Carolina 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 South Carolina 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 state recognized, unique identifier in order to award, disburse and/or transfer the student's LIFE Scholarship to an eligible institution.

# **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 LIFE Scholarship & LIFE Scholarship Enhancement Program are being considered to clarify the policies and procedures for administrating the program. In the proposed amendments, the transcript and class ranking policies are clarified. There are also additional changes being proposed to allow the ACT Test to be Superscored, matching the current allowance for the SAT. Additional changes are being proposed to allow a LIFE Scholarship recipient to prorate their award during their final term of college enrollment. Amendments to the language have been made to allow students who are in approved Co-op, Travel Study, Internship, or Military service to retain the scholarship with an average of 30 credit hours. Lastly, other changes to the regulation include updating of definitions and minor language changes to promote consistency.

## Document No. 5005 **COMMISSION ON HIGHER EDUCATION** CHAPTER 62 Statutory Authority: 1976 Code Section 59-104-20

### 62-300 - 62-375. Palmetto Fellows Scholarship Program.

### Synopsis:

The South Carolina Commission on Higher Education proposes the following revisions to Chapter 62 regulation, R.62-300 through 62-375, Palmetto Fellows Scholarship Program and Palmetto Fellows Scholarship Enhancement. Revisions to the existing regulation for the Palmetto Fellows Scholarship are being considered to clarify the policies and procedures for administrating the program. In the proposed amendment, the application process is being updated. This will include changing the test administration qualifying dates. In addition, language was modified to reflect the proration of the final term of enrollment for Palmetto Fellows Scholarship recipients. There are also additional changes being proposed to clarify the reapplication process for students utilizing a gap year, language was modified to allow the ACT Test to be Superscored, matching the current allowance for the SAT Test. Lastly, other changes to the regulation include updating of definitions and minor language changes to promote consistency.

The proposed regulation will require legislative review.

A Notice of Drafting was published in the State Register on August 28, 2020.

# **Instructions:**

Replace R. 62-300 through 62-375 in its entirety.

# Text:

Table of Contents:

- 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, 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.

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.

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; 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 (3<sup>rd</sup> year in high school) through April of the student's senior year (4<sup>th</sup> 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 South Carolina 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.

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; 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 take a Gap year or attend an out-of-state, four-year institution. Students taking a Gap year (see section 62-310.SS.) must enroll in an eligible South Carolina institution no later than the fall term one year immediately following high school graduation and make a request to CHE for reapplication for the Palmetto Fellows Scholarship. During the Gap year, the student cannot attend any institution of higher education or earn any college credit hours or they forfeit their Palmetto Fellows Scholarship. If the student was offered the Palmetto Fellows Scholarship as a senior in high school, but declined the award to attend an out-of-state institution at any time during the eight eligible terms immediately following high school graduation, after attending an out-of-state four-year institution, the student must return to South Carolina, enroll in an eligible South Carolina four-year institution, and make a request to CHE for reapplication for the Palmetto.

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.

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. A student must be considered a South Carolina resident at the time of high school graduation, and at the time of initial college enrollment, in order to receive a Palmetto Fellows Scholarship.

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.

SS. "Gap Year" is defined as a period of time immediately following high school graduation, including a semester or academic year (Fall and Spring semesters) taken by the student as a break between high school graduation and the date of initial college enrollment. The Gap year must be taken immediately following high school graduation and does not constitute a break in enrollment.

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 South Carolina graduation requirements. Students who graduate high school mid-year are unable to use rank as an eligibility criterion. The South Carolina 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 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.

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;

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 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 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 test administration date as determined by CHE of the senior year; earn a minimum 3.50 cumulative GPA on the current South Carolina 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 test administration date as determined by CHE 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 South Carolina Uniform Grading Policy and do not convert the graduating class grades to the current South Carolina 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 test administration date as determined by CHE 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 test administration date as determined by CHE 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 South Carolina Uniform Grading Policy and that do not convert the graduating class grades to the current South Carolina 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 English score combined with the highest Math score, Reading score and Science score.

F. Grade point averages must be based on the current South Carolina Uniform Grading Policy, reported with at least two decimal places, and may not be rounded up. The South Carolina 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.

G. Class rank must be based on the South Carolina 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 South Carolina 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 South Carolina 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 South Carolina 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 South Carolina 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 South Carolina 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 South Carolina UGP. When converting scores to the South Carolina UGP, weighting must adhere to the South Carolina UGP (i.e. honors no more than .50 and AP/IB no more than 1.0). In addition, scores/grades must correspond to the South Carolina 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 South Carolina 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  $\geq 90$ ; 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 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 South Carolina 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 South Carolina 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.

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.

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.

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 final 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 South Carolina 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.

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. 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.

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 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 final 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;

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;

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 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 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 earn at least twelve credit hours by the end 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 bachelor's degree or a program of study that is structures so as not to require a bachelor's degree. Palmetto Fellows Scholarship Enhancements may not be funded for more than a total of six terms toward the first bachelor's degree or a program of study that is structures so as not to require a bachelor's degree or for no more than a total of six terms toward the first bachelor's degree or a program of study that is structures so as not to require a bachelor's degree or for no more than a total of six terms toward the first bachelor's degree or a program of study that is structures so as not to require a bachelor's degree or for no more than a total of eight terms toward the first 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 South Carolina resident at any time, the institution must reimburse funds to CHE for the time period the student was no longer a South Carolina 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 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:**

R.62-300 through 62-375 of Chapter 62 is being amended and replaced in its entirety. Revisions to the existing regulation for the Palmetto Fellow Scholarship 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, test administration qualifying date policies are clarified, and language was modified to reflect the proration of the final term of enrollment for Palmetto Fellows Scholarship recipients. Additional changes were made to clarify the reapplication process for students utilizing a gap year. Lastly, to promote consistency, there are additional changes being proposed to allow the ACT Test to be Superscored, matching the current allowance for the SAT test.

### Document No. 5006 COMMISSION ON HIGHER EDUCATION CHAPTER 62 Statutory Authority: 1976 Code Section 59-150-370

62-900.85 - 62-900.140. South Carolina HOPE Scholarship.

### **Synopsis:**

This proposed regulation will clarify the policies and procedures for administering the SC HOPE Scholarship Program at the public and independent colleges and universities in the state. In the proposed amendments, the transcript policies are clarified. Lastly, other changes to the regulation include updating of definitions and minor language changes to promote consistency.

The proposed regulation will require legislative review.

A Notice of Drafting was published in the State Register on August 28, 2020.

### **Instructions:**

Replace R.62-900.85 through 62-900.140 in its entirety.

# Text:

Table of Contents:

62-900.85. Purpose of the SC HOPE Scholarship Program.

62-900.86. Funding.
62-900.90. Program Definitions.
62-900.95. Student Eligibility.
62-900.100. Duration of Award.
62-900.105. Transfer Students.
62-900.110. Students with Disabilities.
62-900.111. Military Mobilization.
62-900.115. Refunds or Repayments.
62-900.120. Appeals Procedures.
62-900.125. Institutional Policies and Procedures for Awarding.
62-900.130. Institutional Disbursements.
62-900.135. Program Administration and Audits.

62-900.140. Suspension or Termination of Institutional Participation.

62-900.85. Purpose of the SC HOPE Scholarship Program.

The South Carolina HOPE Scholarship was established under the South Carolina Education Lottery Act in 2001 and amended by Act 95 during the 2005 legislative session. Act 356 authorizes the Commission on Higher

Education to promulgate regulation for administration of the SC HOPE Scholarship Program. The purpose of the SC HOPE Scholarship Program is to provide funding to first-time entering freshmen who do not qualify for the LIFE or Palmetto Fellows Scholarships.

All eligible institutions that participate in the program must verify the lawful presence of any student who receives a SC HOPE Scholarship 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).

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 South Carolina HOPE Scholarship or "SC HOPE" Scholarship in programs that promote financial aid incentives or packages. Any mention of the South Carolina HOPE Scholarship or "SC HOPE" 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 South Carolina HOPE Scholarship or "SC HOPE" Scholarship as a separate financial aid award, provided to the student by the State of South Carolina.

### 62-900.86. Funding.

A. Funds made available for SC HOPE Scholarships under the South Carolina Education Lottery Act shall be included in the annual appropriation to the Commission on Higher Education. This program is dependent upon the annual proceeds generated by the Lottery. The Commission on Higher Education shall award funds as SC HOPE Scholarships to eligible students.

### 62-900.90. 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 fall, spring, and summer terms or spring, summer, and fall terms (or its equivalent).

B. "Bachelor's degree program" is defined as a program of study leading to a bachelor's degree as defined by the U.S. Department of Education for participation in federally funded financial aid programs.

C. "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.

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

E. "Degree-seeking undergraduate student" is defined as any full-time student enrolled in a bachelor's degree program at an eligible institution.

F. "Eligible institution" shall be defined as a public or independent bachelor's level institution in South Carolina.

G. "Felonies" shall be defined as crimes that are classified under State Statute (Section 16-1-10) and that typically require imprisonment for more than one year.

H. "Freshman year" shall mean the first academic year the student matriculates in an institution after high school graduation or completion of an approved home school program.

I. "Full-time student" shall mean a student who has matriculated into a bachelor's degree program and who enrolls full-time at the home institution, usually fifteen semester 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. In order for the student to be eligible for Scholarship disbursement, the student must be enrolled full-time as stipulated by Title IV Regulations, except that credit hours may not include remedial/developmental and continuing education courses.

J. "High school" is defined as a public, private, charter, virtual, Montessori or Magnet high school located in South Carolina, recognized home school association or 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 (Section 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.

K. "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.

L. "Independent institutions" are defined, for the purposes of the SC HOPE Scholarship Program, 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 chartered before 1962 whose major campus and headquarters are located within South Carolina; or an independent bachelor's level institution who had a major campus and headquarters located within South Carolina and was accredited by the Southern Association of Colleges and Schools as of March 17, 2004." Institutions whose sole purpose is religious or theological training or the granting of professional degrees do not meet the definition of 'independent institution' for purposes of this chapter. Independent two-year institutions are not eligible for participation in this program.

M. "Initial college enrollment" shall mean the first time the student matriculates into a postsecondary, degree-granting institution after high school graduation. The terms of eligibility are based upon initial college enrollment and continuous enrollment. This means that any break in enrollment (excluding summer) will count against the maximum terms of eligibility.

N. "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.

O. "Misdemeanor offenses" shall be defined as crimes that are 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 in title 16 of State Statute. Examples of alcohol and/or drug misdemeanor offenses 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 a person under 21, providing false information as to age (fake ID), etc.

P. "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.

Q. "Public institutions" are 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.

R. "Remedial/developmental coursework" shall mean sub-collegiate level preparatory courses in English, mathematics, and reading or any other course deemed remedial by the institution where the course is taken.

S. "South Carolina resident" shall be defined as an individual who satisfies the requirements of residency in accordance with the State of South Carolina 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. A student must be considered a South Carolina resident at the time of high school graduation, and at the time of initial college enrollment, in order to receive a S.C. HOPE Scholarship.

T. "Transfer student" shall be defined as a student who has changed enrollment from one institution to an eligible institution.

U. "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 SC HOPE Scholarship during his/her initial year (or equivalent) of college enrollment but may earn the LIFE Scholarship in subsequent years. 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.

V. "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).

62-900.95. Student Eligibility.

A. To be eligible for a SC HOPE Scholarship, the student 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 at the time of high school graduation, whose lawful presence in the US has been verified at the time of enrollment at the institution;

2. Be classified by the awarding institution as 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, 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. A student must be a legal permanent resident of the United States before being considered to be a South Carolina resident;

3. Earn a cumulative 3.0 grade point average (GPA) based on the South Carolina Uniform Grading Policy (UGP) upon high school graduation. No other grading policy will be allowed to qualify for the SC HOPE 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. A student who earns a 3.00 GPA or above is eligible. Institutions shall use the final cumulative GPA as reported by the high school on the official high school transcript. 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, and no grades earned after the date of the graduating high school class for the graduation year. If a South Carolina resident student is graduating from an out of state high school, it is the responsibility of the out of state student's school counselor to convert the students final high school GPA and class ranking to an eligible final high school GPA based on the S.C. Uniform Grading Policy. The converted final high school GPA and class ranking (if applicable) must be provided to the eligible S.C. Institution before a student can be awarded. A student who graduates high school with a General Educational Development (GED) Diploma is not eligible to receive the SC HOPE Scholarship;

4. Be admitted, enrolled full-time, and classified as a degree-seeking undergraduate student in an eligible institution in South Carolina;

5. Certify that he/she has never been adjudicated delinquent, convicted, or pled guilty or *nolo contendere* to any felonies and/or 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 each academic year to the institution testifying to the fact. However, a high school or college student who has been adjudicated delinquent, convicted, or pled guilty or *nolo contendere* of a second alcohol or other 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 is still eligible for the Scholarship for the remainder of the academic year. However, the student will not be eligible to receive the LIFE Scholarship the following fall, spring, and summer terms (or their equivalent), even if all other eligibility requirements have been met. If a student completes a pretrial intervention program and has his/her record expunged, the conviction will not affect Scholarship eligibility;

6. For a home school graduate to be eligible for the SC HOPE Scholarship, the student must be a member of an approved South Carolina homeschool program as defined in the State Statute (Sections 59-65-40, 45, and 47) that provides a GPA on an official transcript upon high school graduation based on the Uniform Grading Policy. No other grading policy will be allowed to qualify for the SC HOPE Scholarship. Grade point averages must be reported to two decimal places (minimum) and may not be rounded; and

7. In order to meet the GPA requirement, a student who attended an out-of-state preparatory high school or graduated from a SC high school prior to the full implementation of the Uniform Grading Policy must have their grades converted to the SC UGP. This conversion is the responsibility of the out of state preparatory high school or SC high school. These students must meet all other eligibility criteria, including SC residency requirements.

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.

C. 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 SC HOPE Scholarship pending the approval of the Commission on Higher Education (CHE). The institutional representative must complete and submit an Early Graduation Application Form and all appropriate documentation as deemed necessary by CHE for each student by the established deadline. The student must request and submit a letter from the high school principal verifying that he/she has met all graduation requirements along with an official high school transcript.

D. 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 will not count against the terms of eligibility.

E. Early graduates who enroll mid-year and are classified as degree-seeking will officially begin their initial college enrollment.

F. SC HOPE Scholarship funds may not be applied to the costs of continuing education or remedial/developmental courses. Twelve credit hours of the course load must be nonremedial/developmental and non-continuing education courses in order to receive SC HOPE Scholarship funds.

G. Students receiving a SC HOPE Scholarship are not eligible for a LIFE Scholarship, Palmetto Fellows Scholarship or Lottery Tuition Assistance.

H. Students who meet all eligibility requirements for the SC HOPE Scholarship are eligible to receive Scholarship funds for the freshman year of attendance only.

I. All documents required for determining SC HOPE 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 determine initial college enrollment.

J. All eligible independent and public institutions that participate in the program must verify the lawful presence of any student who receives a SC HOPE Scholarship 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).

#### 62-900.100. Duration of Award.

A. Students are eligible to receive the SC HOPE Scholarship for no more than two terms (or its equivalent) during the freshman year of attendance only.

B. The maximum number of terms of eligibility is based on the student's initial college enrollment with the exception of credit hours earned during the summer session immediately prior to the student's initial college enrollment.

C. If a student enrolls mid-year (spring term) and receives the SC HOPE Scholarship during that term, then qualifies to receive the LIFE Scholarship at the end of the summer term, the student will not be eligible to receive the SC HOPE Scholarship for the next term. If the student does not meet the requirements to qualify for the LIFE Scholarship, then the student may receive the SC HOPE Scholarship the next term of eligibility.

#### 62-900.105. Transfer Students.

A. A student who transfers from an ineligible institution to an eligible institution mid-year during the freshman year of attendance is eligible to receive the SC HOPE Scholarship for the second term of their freshman year only. The student must have met the eligibility requirements as stated in the "Student Eligibility" Section at the beginning of their freshman year.

B. A student who transfers from a two-year or technical institution to an eligible four-year institution who enrolled in remedial courses during the freshman year may be eligible to receive the SC HOPE Scholarship. The terms of eligibility to receive Scholarship funds must not include the period of time the student was enrolled in remedial courses at a two-year or technical institution, unless the student completed at least twelve credit hours of non-remedial course work each term of enrollment during the freshman year. The student will be eligible to receive the Scholarship for the maximum number of terms of eligibility following completion of remediation if the student was eligible to receive the 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 Scholarship after completion of remediation. If the student was not eligible for the Scholarship upon high school graduation, the student will not be eligible for the Scholarship after completion of remediation.

62-900.110. Students with Disabilities.

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 the "Student Eligibility" Section except for the full-time enrollment requirement, if approved by the Disability Services Provider. Students must comply with all institutional policies and procedures in accordance with ADA and Section 504 of the Rehabilitation Act of 1973.

B. The institutional Disability Services Provider must provide written documentation to the Office of Financial Aid prior to the freshman year verifying that the student is approved to be enrolled in less than full-time status.

C. Students who qualify under ADA and Section 504 of the Rehabilitation Act of 1973 may receive the maximum number of available terms of eligibility as stated in the "Duration of Award" Section.

D. In order to be eligible for the SC HOPE Scholarship, 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" Section.

62-900.111. Military Mobilization.

A. Service members who are enrolled in college and are affected by military mobilizations will not be penalized for the term(s) 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 based on initial college enrollment. 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. 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 an entire academic year may receive the Scholarship for the next academic year, if they met the "Student Eligibility" requirements at the time of high school graduation. Service members who did not use the SC HOPE Scholarship funds/terms of eligibility during this period due to military mobilization shall be allowed to receive Scholarship funds during the succeeding summer term and/or at the end of the maximum terms of eligibility based on initial college enrollment.

C. Service members who are enrolled in college and are mobilized for one academic term and did not use SC HOPE Scholarship funds/terms of eligibility during this period shall be allowed to receive one term of Scholarship funds during the succeeding summer or one term at the end of the maximum terms of eligibility based on initial college enrollment.

D. In order to receive the SC HOPE Scholarship 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.

E. The home institution will be responsible for receiving verification of military mobilization status and terms of eligibility based on the service member's initial college enrollment.

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 will not count against their terms of eligibility.

62-900.115. Refunds or Repayments.

A. In the event a student who has been awarded a SC HOPE Scholarship withdraws, is suspended from the institution, or drops below full-time enrollment status during any term of the academic year, institutions must reimburse the SC HOPE Scholarship Program for the amount of the Scholarship for the term(s) 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 Scholarship may be retained pursuant to the refund policies of the institution.

62-900.120. Appeals Procedures.

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

B. Students who did not receive the maximum number of terms of eligibility for the Scholarship at the end of the first 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 at the end of the first academic year based on an extenuating circumstance.

D. A completed appeal 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 application by the required deadline(s) will result in forfeiture of the scholarship.

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

F. The Appeals Committee's decision is final.

62-900.125. Institutional Policies and Procedures for Awarding.

A. SC HOPE Scholarship awards are to be used only for payment toward the cost-of-attendance as established by Title IV regulations. The award amount shall not exceed two thousand eight hundred dollars (includes \$300 book allowance) during the freshman year only. Half shall be awarded during the fall term and half during the spring term (or its equivalent). The SC HOPE 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 institutions shall provide an award notification to eligible students that will include the book allowance and also contain the terms and conditions of the Scholarship. Institutions will notify students of all adjustments in Scholarship funds that may result from an over award, change in eligibility, change in the student's residency, change in financial status or other matters.

C. 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) Student's residency status

(4) Refund and repayment (if appropriate)

(5) Enrollment and curriculum requirements

(6) Affidavit documenting that the student has never been convicted of any felonies and/or any second alcohol/drug related misdemeanor offenses within the past academic year as stated under the "Student Eligibility" Section

(7) High school transcript(s) verifying high school graduation or home school completion date and cumulative grade point average

(8) Verification from institutional disability service provider of student's disability and approval of reduced course-load requirement (if appropriate)

- (9) Military mobilization orders (if appropriate)
- (10) Verification from the institution that lawful presence in the US has been verified.

D. Any student who has attempted to obtain or obtained a SC HOPE Scholarship award through means of 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 SC HOPE Scholarship.

E. Visually impaired, hearing impaired or multi-handicapped students who qualify for the SC HOPE Scholarship may use the State Scholarship funds for the freshman year only 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 as to whether an out-of-state institution specializes in the postsecondary education of visually impaired, hearing impaired or multi-handicapped students.

F. It is the institution's responsibility to ensure that only eligible students receive the Scholarship.

G. At the end of the spring term each academic year, the institution must notify all SC HOPE Scholarship recipients who have not met 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.

62-900.130. Institutional Disbursements.

A. The eligible institution will identify award amounts, which cannot exceed two thousand eight hundred dollars (includes \$300 book allowance) for students enrolled at four-year public and independent institutions for the freshman year of attendance only. Half shall be disbursed during the fall term and half during the spring term (or their equivalents). Scholarships cannot be disbursed during the summer or any interim sessions. The SC HOPE 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. 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 enrolled in at least twelve hours of non-remedial coursework and is a degree-seeking student. The institution must submit a request for funds and/or a return of funds by the established deadline each term. In addition, a listing of all eligible recipients by identification number with award amounts for the term 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.

C. The Commission will disburse awards to the eligible institutions to be placed in each eligible student's account.

D. Students must be enrolled full-time at an eligible institution at the time of Scholarship disbursement. Students who are retroactively awarded must have been enrolled in a minimum of twelve credit hours of non-remedial coursework at the home institution at the time the Scholarship would have been disbursed for that term.

62-900.135. 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 participating institutions. The Commission on Higher Education shall be responsible for the allocation of funds, promulgation of guidelines and regulations governing the SC HOPE 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 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 participating institution shall identify to the Commission on Higher Education a SC HOPE 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 all inquiries pertaining to residency classification for the purposes of awarding the SC HOPE Scholarship.

E. All eligible independent and public institutions that participate in the program must verify the residency status and lawful presence of any student who receives a SC HOPE Scholarship 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).

62-900.140. 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 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 SC HOPE Scholarship Program for any funds lost or improperly awarded.

B. Upon receipt of evidence that an institution has failed to comply with program rules, regulations, or guidelines, 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 public or independent college or university, 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, pertinent rules, and regulations.

D. The institution is responsible for determining SC Residency and lawful presence off all SC HOPE Scholarship recipients. If it is determined that the institution has failed to verify the lawful presence and SC

residency of a SC HOPE Scholarship recipient, the institution shall immediately reimburse the Commission with any and all funds disbursed in error.

E. Independent and public institutions of higher learning in this, or any other state in the U.S., are prohibited from using the South Carolina HOPE Scholarship or "SC HOPE" Scholarship in programs that promote financial aid incentives or packages. Any mention of the South Carolina HOPE Scholarship or "SC HOPE" 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 South Carolina HOPE Scholarship or "SC HOPE" 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 SC HOPE Scholarship to an eligible institution.

### **Fiscal Impact Statement:**

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

### **Statement of Rationale:**

The proposed regulatory changes will clarify the policies and procedures for administering the SC HOPE Scholarship Program at the public and independent colleges and universities in the state. In the proposed amendments, the transcript policies are clarified. Additional amendments are made to ensure that institutions notify students who have not met the continued eligibility requirements to move from the SC HOPE Scholarship to the LIFE Scholarship in the second year. Lastly, other changes to the regulation include updating of definitions and minor language changes to promote consistency.

## 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.

# **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.62-251, 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 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.

# **Instructions:**

Amend and replace R.62-250 through 62-262 of Chapter 62 in its entirety.

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
- 62-252. Program Benefits and Maximum Assistance
- 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 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 a less than one-year certificate including stackable progression certificates and certifications, a one-year certificate, 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) a less than one-year certificate or certifications approved by the SC Technical College System;

(2) courses completed as the education component of a registered apprenticeship;

(3) an eligible educational program that leads to a 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;

(4) the first associate's degree or a second associate's degree earned at a minimum five years after receiving the first associate's degree;

(5) a two-year program that is acceptable for full credit towards the first bachelor's degree; or

(6) 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 receive college assistance benefits upon completion of their first bachelor's degree in a preceding level (less than one-year certificate or certifications, one-year certificate and two-year program or associate's degree) in accordance with Section 62-251 H.

D. Students who have been awarded a 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.

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). If an individual graduates from Basic Combat Training (BCT)/Basic Military Training

(BMT) and cannot attend Advanced Individual Training (AIT)/Initial Active Duty Training (IADT) for at least four months, an exception to policy (ETP) for this eligibility requirement may be submitted to the Deputy Chief of Staff - Personnel (SC Army National Guard) and the Force Support Squadron Commander (SC Air National Guard).

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.

(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 expand the opportunity for service members to receive an education benefit.

### Document No. 5008 DEPARTMENT OF LABOR, LICENSING AND REGULATION CHAPTER 10 Statutory Authority: 1976 Code Sections 40-1-50 and 40-1-70

10-1. Division of Professional and Occupational Licensing.

#### **Synopsis:**

The South Carolina Department of Labor, Licensing and Regulation proposes to amend Chapter 10 of the South Carolina Code of Regulations to add a fee schedule for bulk licensure verification.

The Notice of Drafting was published in the State Register on August 28, 2020.

#### **Instructions:**

Replace regulation as shown below. All other items and sections remain unchanged.

## Text:

10-1. Division of Professional and Occupational	al Licensing.
Licensee Lookup	No charge
License Verification	\$5
License List	\$10
Basic Bulk Licensure Verification	\$0.10 per license
Advanced Bulk Licensure Verification	\$0.40 per license

# **Fiscal Impact Statement:**

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

### **Statement of Rationale:**

The regulation would set forth a list of Agency services currently provided and their cost, and would establish a list of additional services the Agency wishes to provide to government and businesses and the fees associated with providing those services.

### Document No. 5009 DEPARTMENT OF LABOR, LICENSING AND REGULATION CHAPTER 10

Statutory Authority: 1976 Code Sections 40-1-50, 40-1-70, 40-60-10(I)(3), and 40-60-360

10-36. Real Estate Appraisers Board.

### Synopsis:

The South Carolina Department of Labor, Licensing and Regulation proposes to amend Chapter 10-36 containing the fees for the Real Estate Appraisers Board.

A Notice of Drafting was published in the State Register on August 28, 2020.

### **Instructions:**

Replace regulation as shown below. All other items and sections remain unchanged.

# Text:

10-36. Real Estate Appraisers Board. The Board shall charge the following fees:

(1)		49.55
(1)	Apprentice appraiser permit:	\$255
(2)	Apprentice appraiser permit renewal:	\$255
(3)	Mass appraiser renewal:	\$255
(4)	Appraiser license/certification:	\$250
(5)	Appraiser license/certification renewal:	\$250
(6)	Appraisal Management Company registration fee:	\$1000
$ \begin{array}{c} (2) \\ (3) \\ (4) \\ (5) \\ (6) \\ (7) \end{array} $	Appraisal Management Company renewal:	\$1000
	Late penalty for renewal of	
(8)	license/certification/inactive status:	
	(a) July 1 through July 31:	\$60
	(b) August 1 through August 31:	\$80
	(c) After August 31 and before next renewal period:	\$120
(9)	Late penalty for renewal of registration status:	
	July 1 through June 30 (per month):	\$80
(10)	Permit/license/certification replacement fee (per	¢.c
(10)	application):	\$ <b>5</b>
(11)	Personal or company name change (per application):	5
(11)		

(12)	Inactive status:	\$160
(13)	Reinstatement from inactive licensed or certified appraiser:	\$90
(14)	Attestation of license/certification (per request):	\$5
(15)	Course approval (under 15 hours) (per application):	\$80
(16)	Course approval (15 hours or more) (per application):	\$160
(17)	Course approval renewal:	\$80
(18)	Penalty for late course renewal:	\$40
(19)	Instructor approval (per application):	\$160
(20)	Instructor approval renewal:	\$120
(21)	Penalty for late instructor renewal:	\$40
(22)	(per request):	\$10
(23)	Change in appraiser classification (per application):	\$60
(24)	Appraiser equivalent continuing education approval (per application):	\$40
(25)	Bad check charge (per occurrence):	\$30 (or amount specified by law; see Section 34-11-70)
(26)	Temporary practice permit (per application):	\$120

(27) In addition to fees listed above, an annual Federal Registry Transmittal fee of \$40 established by Public Law 101-73, Title XI, Real Estate Appraisal Reform Amendments will be charged for all licenses and certification and shall be collected on a biennial basis (\$80).

(28) An annual Appraisal Management Federal Registry Transmittal fee from registered appraisal management companies and federally regulated appraisal management companies in the amount determined by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council shall be collected biennially.

### **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 fees across the board to comport with S.C. Code 40-1-50 which requires the Department to ensure that the Board charges fees sufficient but not excessive to cover the costs of administering the program. The regulations will also add a renewal fee for appraisal management companies, which were required to be regulated by statute in 2017 and, pursuant to S.C. Code 40-60-360, are required to pay a fee for renewal.

### Document No. 5025 DEPARTMENT OF LABOR, LICENSING AND REGULATION CHAPTER 10 Statutory Authority: 1976 Code Sections 40-1-50, 40-1-70, 40-6-50, and 40-6-60

# 10-5. Auctioneers' Commission.

### Synopsis:

The South Carolina Department of Labor, Licensing and Regulation proposes to amend R.10-5 related to fees assessed by the Auctioneers' Commission.

A Notice of Drafting was published in the State Register on October 23, 2020.

# **Instructions:**

Replace regulation as shown below. All other items and sections remain unchanged.

# Text:

10-5. Auctioneers' Commission.

The Board shall charge the following fees:

# A. Auctioneers

1.	New License:	\$435 (total)
	a. Two-year License:	\$300
	b. Recovery Fund:	\$100
	c. Examination Fee:	To be set by the provider
	d. Credit Report:	\$10
	e. Pro-rated amount:	\$235
2.	Applicants for Licensure by Reciprocity:	\$410 (total)
	a. Two-year License:	\$300
	b. Recovery Fund:	\$100
	c. Credit Report:	\$10
	d. Pro-rated amount:	\$210
3.	Biennial Renewal:	\$300
	a. Late fee - on or before July 31	\$25
	b. Late fee - after July 31 and on or before September 30	\$100

# B. Auction Firm

1.	Ne	w License:	\$410 (total)
	a.	Two-Year License:	\$300
	b.	Recovery Fund:	\$100
	c.	Exam Fee:	To be set by the provider
	d.	Credit Report:	\$10
	e.	Pro-rated amount:	\$210
2.	Bie	ennial Renewal:	\$300
	a.	Late fee - on or before July 31	\$25
	b.	Late fee - after July 31 and on or before September 30	\$100

# C. Apprentice Auctioneer:

1	. N	ew License:	\$235 (total)	
	a.	One-year license:	\$150	
	b.	Recovery Fund fee:	\$50	
	c.	Exam Fee:	To be set by the provider	
	d.	Credit Report:	\$10	
2.	. Re	enewal:	\$200 (may be renewed one time)	
	a.	License Fee:	\$150	

b. Late fee - on or before July 31	\$25
c. Late fee - after July 31 and on or before September 30	\$100
d. Recovery Fund Fee:	\$50

D. Miscellaneous Fees:

1.	Licensee List Request:	\$10
2.	Duplicate license (wallet card):	\$10
3.	License verification:	\$5
4.	New license card for change of name or address:	\$10

### **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 Department has contracted with a third party testing company to offer the auctioneers' exams for the Auctioneers' Commission, a practice consistent among the boards administered by the Department. When the Department hosted the exam, it established a \$25 fee to cover its costs. The Department is now proposing to amend the fee schedule for the Commission to allow the third party testing provider to set its fee. Additionally, exam fees for auctioneer firms were previously omitted from the schedule of fees, so the Department proposes to add firms to the fee schedule in Chapter 10. Finally, the Department proposes to correct a capitalization error in the fee schedule that is non-substantive.

### Document No. 5024 **DEPARTMENT OF LABOR, LICENSING AND REGULATION** CHAPTER 10 Statutory Authority: 1976 Code Sections 40-1-50 and 40-1-70

10-4. Athletic Commission.

# **Synopsis:**

The South Carolina Department of Labor, Licensing and Regulation proposes to amend the fee schedule for the State Athletic Commission.

The Notice of Drafting was published in the State Register on October 23, 2020.

### **Instructions:**

Replace regulations as shown below. All other items and sections remain unchanged.

# Text:

10-4. Athletic Commission.

The Commission shall charge the following fees:

1.	Boxing		
	a.	Promoter Boxing	\$150

b.	Judge Boxing/OTSB	\$75
c.	Referee Boxing/OTSB	\$75
d.	Manager Boxing	\$100
g.	Seconds Boxing	\$50
h.	Timekeeper Boxer/OTSB	\$50
i.	Announcer Boxing/OTSB	\$75
j.	Matchmaker Boxing	\$130
k.	Promoter Representative	\$150

Note: If a person holding a second's license applies for a manager's license the amount paid for the second's license will be credited toward the fee for the manager's license.

	f the Street Boxing (OTSB)	<b></b>
a.	Promoter OTSB	\$150
b.	Off the Street Boxer	\$50
3. Ki	skboxing	
a.	Promoter	\$150
b.	Judge	\$75
c.	Referee	\$75
d.	Manager	\$100
e.	Kick Boxer	\$50
f.	Trainer	\$50
g.	Second	\$50
h.	Timekeeper	\$50
i.	Announcer	\$75
j.	Matchmaker	\$130
k.	Promoter Representative	\$150
4. W1	restling	
a.	Promoter	\$150
b.	Referee Pro Wrestling	\$50
с.	Announcer	\$50
d.	Pro Wrestler	\$50
e.	Promoter Representative	\$150
5. MI		
a.	Promoter	\$150
b.	Manager	\$100
c.	Matchmaker	\$130
d.	Trainer	\$50
e.	Judge	\$75
f.	Referee	\$75
g.	Seconds	\$50
h.	Promoter Representative	\$150
i.	Timekeeper	\$50
j.	Announcer	\$75
k.	Amateur Fighter	\$50

	1.	Pro Fighter	\$50
6.	Pern	nits	
	a.	MMA Permit	\$300
	b.	Wrestling Permit	\$65
	c.	Boxing Permit	\$150
	d.	OTSB Permit	\$150
	e.	Kickboxing Permit	\$150

### **Fiscal Impact Statement:**

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

## **Statement of Rationale:**

The proposed regulation is offered to: (a) comply with the statutory requirement that the agency director assess and adjust fees of the professional and occupational licensing boards to ensure that fees are sufficient but not excessive to cover the expenses, including the total of the direct and indirect costs to the State, for the operations of each respective board; and to (b) account for the fact that prior fee increases would result in fewer athletics events being offered in the state as well as an inability to hire individuals to fill positions necessary to host athletics events.

### Document No. 5010 DEPARTMENT OF LABOR, LICENSING AND REGULATION AUCTIONEERS' COMMISSION CHAPTER 14 Statutory Authority: 1976 Code Section 40-6-60

14-1. Examinations

- 14-2. Reporting of Continuing Education.
- 14-3. Change of Address.
- 14-4. Display of License.
- 14-5. Advertising.
- 14-6. Allowing Unlicensed Bid Callers.
- 14-11. Written Agreements Relating to Auctions.
- 14-12. Late Fees.
- 14-13. Conditions for Apprentice. Exceptions.
- 14-15. Supervision of Apprentice Auctioneer.

### Synopsis:

The South Carolina Auctioneers' Commission proposes to amend: R.14-1 related to examinations; R.14-2 related to reporting of continuing education; R.14-3 to delete the change of address fee; R.14-4 and R.14-5 to combine and rename them, and to clarify requirements for displaying license and advertising; R.14-6 to rename the section and strike the word auctioneer from the section following the parenthetical referencing unlicensed bid callers; R.14-11 to rename to add escrow accounts; R.14-12 to rename the section and delete fees; and R.14-13 and R.14-15 to combine, rename and clarify requirements for apprentice auctioneers and supervisors.

A Notice of Drafting was published in the State Register on August 28, 2020.

### **Instructions:**

Replace regulation as shown below. All other items and sections remain unchanged.

#### Text:

14-1. Examinations.

A. Examinations for licensure as required by statute for apprentice auctioneers, auctioneers and auction firms shall be administered as approved by the Commission.

B. A completed initial application for licensure must be received with a non-refundable application fee and approved for examination prior to the scheduling of the examination.

C. Applicants are responsible for the non-refundable examination fee as set by the examination provider. D. The examination shall test the applicant's knowledge of:

1. Fundamentals of auctioneering, auctioneer contracts, bid calling, advertisement, ethical practices and mathematics relating to the auction business;

2. The South Carolina Auctioneers' Commission's statutes and regulations; and

3. The South Carolina Uniform Commercial Code as it relates to auction and bulk sales.

E. Any applicant who fails to pass the examination may be re-examined, but no applicant shall be allowed to take the examination within six months after having failed it a second time. Such applicants must submit an application form and pay the required fee.

14-2. Reporting of Continuing Education.

A. Eight hours of continuing education credit must be reported on each biennial renewal application on a form provided by the Commission. All credits must be earned during the previous licensing period and at Commission-approved classes. Individuals who have completed auctioneer's school within two years of the renewal application will be deemed to have four hours of continuing education hours.

B. Licensees may apply to the Commission for continuing education credit for activities of service to the industry including, but not limited to, writing articles for professional publications, teaching courses on professional subjects and serving as a hearing officer for professional matters. The burden of demonstrating that the activity is the equivalent of classroom education is placed upon the licensee.

#### 14-3. Change of Address.

Licensees shall notify the Commission in writing of each change of address or change of business trade name within ten days of such change.

#### 14-4. Display of License and Advertising.

A. All licensees shall prominently display their licenses at their business address and the pocket card shall be carried by the licensee when conducting auction business.

B. All advertisements for an auction shall contain the name and license number of the auctioneer or firm conducting the auction and shall indicate that it is the advertisement of an auctioneer or auction firm.

C. An auctioneer employed by a licensed real estate broker-in-charge must include the name and auctioneer license number in all advertisements.

D. An apprentice auctioneer shall not advertise without the approval for the auctioneer-supervisor. Such advertisements must include not only the name and license number of the apprentice auctioneer but also the name and license number of the auctioneer-supervisor.

### 14-5. Repealed.

14-6. Licensees Prohibited from Using Unlicensed Bid Callers.

Licensees are prohibited from allowing an unlicensed bid caller to cry bids at an auction.

14-11. Written Agreements and Escrow Accounts Relating to Auctions.

A. The Commission shall have the authority to demand a copy of any written agreement or records of an auction which the licensee is required to maintain by 40-6-290, Code of Laws of South Carolina, 1976, (as amended). If the documents relate to an auction being conducted or to be conducted within ten days of demand, the licensee must produce such documents before the auction can proceed. If the documents relate to any other auction, the licensee must produce such documents within ten days of the demand. Failure to produce such documents in accordance with this regulation shall be grounds for disciplinary action, suspension or revocation of the license.

B. The Commission shall have the authority to demand copies of escrow account records as required to be maintained by 40-6-300. The licensee must produce such records within 10 days of the demand. Failure to produce such escrow records in accordance with this regulation shall be grounds for disciplinary action, suspension or revocation of the license.

#### 14-12. Renewal Applications and Lapsed Licenses.

A. All applications for renewal of licenses shall be filed with the Commission on or before June 30 of the renewal period. A late fee shall be paid thereafter for a license renewal application received on or before July 31 of the renewal period.

B. A late fee shall be paid after July 31 of the renewal period and on or before September 30 of the renewal period.

C. After September 30 of the renewal period, any license of an auctioneer, apprentice auctioneer, or auction firm that has not been renewed shall be lapsed. Any licensee in lapse status must make application for a new auctioneer, apprentice auctioneer or auction firm license and must be in accordance with S.C. Code Sections 40-6-220, 40-6-230, or 40-6-235, as applicable.

#### 14-13. Repealed.

14-15. Apprentice Auctioneer's Supervision, Requirements, Exception and Termination.

A. An apprentice license is valid only while the licensee has a licensed auctioneer who serves as the licensee's duly appointed supervisor. No apprentice auctioneer may enter into an agreement to conduct an auction without the express approval of the supervisor.

B. No licensed auctioneer shall serve as the supervisor of an apprentice auctioneer pursuant to 40-6-220, Code of Laws of South Carolina, 1976 (as amended), unless that person shall have held a valid South Carolina auctioneering license for three consecutive years preceding the date on which that licensed auctioneer is appointed as supervisor of the apprentice.

C. The supervising auctioneer assumes responsibility for the compliance of the apprentice with all laws and regulations governing the practice of auctioneering. The auctioneer-supervisor shall review the records of the apprentice auctioneer before each monthly report to the Commission.

D. No applicant, pursuant to S.C. Code Section 40-6-230, shall be deemed to have satisfactorily completed an apprenticeship until the applicant has participated in eighty hours of supervised training including forty hours of auctioneering, ten hours of auction ringing, twenty hours of clerking, and ten hours of cashiering. Such training must be completed in not less than one year nor more than two years. This section does not apply to apprentice auctioneers under supervising tobacco auctioneers.

E. Upon termination of such association, the auctioneer-supervisor shall immediately endorse the back of the apprentice's license, showing the date of termination, and return the same to the Commission for cancellation or transfer.

## **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: amend R.14-1 regarding examinations as they are now offered by third party testing companies and no longer by the Commission; amend 14-2 to reference biennial renewal as opposed to

annual renewal; amend 14-3 and 14-12 to delete fees that are now consolidated in Chapter 10 of the Code of Regulations; combine 14-4 with 14-5 and 14-13 with 14-15, as they contain related content and should be considered in conjunction with one another; and amend the title to 14-4, 14-6, 14-11, 14-12, and 14-15, to correctly reflect their content.

# Document No. 4985 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)

39-5. Registration of Licenses or Certificates39-6. Annual Election of the Board.39-9. Use of Lasers in a Dental Setting. (New)

#### **Synopsis:**

The South Carolina Board of Dentistry proposes to amend: R.39-5(F)(1) regarding obtaining continuing education online; R.39-5(F)(3) regarding continuing education requirements related to CPR; and R.39-6 regarding elections. The Board further proposes to add a regulation regarding the use of lasers in a dental setting.

A Notice of Drafting was published in the State Register on July 24, 2020.

### **Instructions:**

Replace regulations as shown below. All other items and sections remain unchanged.

#### Text:

39-5. Registration of Licenses or Certificates.

A. Every licensed dentist or dental hygienist and every registered technician shall keep the Board informed of their current mailing address.

B. The Board will notify any dentist, dental hygienist or technician of the expiration of his/her license or certificate.

C. Any person whose license or certificate has expired and who wishes to have the same reinstated must notify the Board of this in writing. Such notification must set forth the reasons for seeking to have the same reinstated and the reasons why the same has expired. Thereafter the Board may require a reexamination of the person whose license or certificate has expired or may require the person to appear before the Board and explain why the license or certificate has expired.

D. In Section 40-15-170 of the Code of Laws of South Carolina, 1976, there is a requirement that affects your license: "The license of a dentist or dental hygienist who does not either reside or practice in South Carolina for a period of six successive years shall be deemed inactive. Provided, that the time spent in active service by any person in the armed forces or public health service of the United States or with the Veterans' Administration shall not be construed as absence from or failure to practice in the State. Relicensing after an absence of over six years can be made at the discretion of the Board upon proof of high professional fitness and moral character."

E. Relicensing can be made at the discretion of the Board upon proof of high professional fitness and moral character.

F. Each licensed dentist, licensed dental hygienist and registered dental technician shall complete as a requirement for relicensure the following accredited continuing education on a two-year continuous cycle basis. The licensee/registrant shall certify on the relicensure/registration form that he/she has taken and can verify the required number of hours specified below. Verification shall be in the form of a record of courses taken, continuing hours earned, the date, sponsor and subject matter of the courses. This material shall be maintained

for a period of three years from the date of verification to the Board upon licensure/reregistration and, upon request of the State Board or its representative, the licensee/registrant shall provide documentation in the form of certificates or attendance or letters from course sponsors as proof of attendance.

(1) All dentists shall complete a minimum of fourteen (14) continuing education hours per year or twenty-eight (28) continuing education hours over two (2) years; dental hygienists shall complete a minimum of seven (7) continuing education hours per year or fourteen (14) over two (2) years; dental technicians shall complete a minimum of four (4) continuing education hours per year or eight (8) continuing education hours over two (2) years, in order to be eligible for relicensure or reregistration. Upon licensure by examination of this State, dentists, dental hygienists and dental technicians shall be exempt from continuing education requirements for the first relicensure period. Fifty percent (50%) of the required continuing education hours must be obtained via live, in-person attendance. Interactive webinars are considered live or in-person continuing education hours. The remaining fifty percent (50%) of the required continuing education hours can be earned via online computer seminars.

(a) All licensed dentists and dental hygienists must have at least two (2) hours of their required continuing education be dedicated to sterilization and infection control.

(b) It is the responsibility of all dentists to ensure that their auxiliary staff who may be exposed to blood and other body fluids require and provide two (2) hours biennially of continuing education on sterilization and infection control and maintain records of such training.

(2) The continuing education hours must be courses related to the procedures approved for each licensee/registrant such as

(a) medical and scientific subjects;

(b) clinical and technical subjects;

(c) risk management and infection control;

(d) dental radiology;

(e) CPR, diet and nutrition.

(3) All dentists and dental hygienists must have completed an approved CPR course within two (2) years of licensure or renewal. Thereafter, all dentists and dental hygienists must be recertified in CPR once every two (2) years. Yearly recertification is not required, but can be used as continuing education hours any time.

(4) Programs that meet the general requirement of Section 2 may be developed and/or endorsed by organizations and agencies such as:

(a) the American Dental Association, Academy of General Dentistry, American Dental Hygienists' Association, American Dental Association, National Association of Dental Laboratories, or their local societies and associations;

(b) national, state, local, district dental specialty organizations recognized by the American Dental Association;

(c) dental colleges or schools accredited by the American Dental Association;

(d) other organizations, schools, and agencies approved by the State Board of Dentistry.

(5) Each dentist, dental hygienist and dental technician licensed/registered by the Board who is not exempt from this regulation, at the time of filing his application for renewal of his license/registration, shall certify on the reregistration form that he/she has taken and can verify the required number of hours. A record of the courses taken, continuing education hours earned, date, sponsor, and subject matter shall be retained for a minimum of three (3) years from the date of attendance. Upon request, the applicant shall provide documentation in the form of certificates of attendance or letters from course sponsors, to the Board as proof of attendance.

(6) Failure to comply with this mandatory continuing education requirement may result in disciplinary action by the Board against the applicant.

(7) In individual cases involving extraordinary hardship or extenuating circumstances, disability or illness, all or any part of the requirements may be waived, modified or extended by the Board. Any applicant shall be eligible for waiver or extension who, upon written application to the Board and for good cause shown, demonstrates that they are unable to participate in a sufficient number of regular continuing educational programs for licensure/registration.

(8) The Board shall have the authority to decide if a course meets its accreditation criterion, if a question arises.

#### 39-6. Annual Election of the Board.

Dentists qualified to vote in accordance with the Board's records will be noticed in March of the upcoming Congressionally-assigned board seat elections. Nominations of candidates shall be made to the Board by written petition signed by not less than fifteen dentists qualified to vote in the election. Any person who is nominated by valid petition may withdraw his name by written notice to the Board. If only one candidate is nominated, he shall be declared elected. If more than one candidate is nominated, ballots shall be prepared with the names of the nominees in alphabetical order. The candidate receiving the majority of the ballots received by the Board, in the allotted time, will be declared elected. Voters will be allowed approximately ten days to cast their ballot.

Dental hygienists qualified to vote in accordance with the Board's records will be noticed in March of the appropriate year (once every six years) of the Board seat election. Nominations of candidates shall be made to the Board by written petition signed by not less than fifteen dental hygienists qualified to vote in the election. Nominations must be received by the Board within thirty days from the date of the notice announcing the election. Any person who is nominated by valid petition may withdraw their name by written notice to the Board. If only one candidate is nominated, she shall be declared elected. If more than one candidate is nominated, ballots shall be prepared with the names of the nominees in alphabetical order. The candidate receiving the majority of the ballots received by the Board in the allotted time will be declared elected. Voters will be allowed approximately ten days to cast their ballots.

Annual elections for officers of the Board shall be conducted by the Board at the first meeting held in each calendar year.

39-9. Use of Lasers in a Dental Setting.

A. The requirements contained herein do not apply to the use of non-adjustable laser units used for the purposes of diagnosis and curing.

B. Only a dentist may employ a laser capable of the removal of hard and/or soft tissue in the treatment of a dental patient.

C. A dental hygienist may only use a laser under the direct supervision of a dentist, and the hygienist's use of the laser must be limited to pocket disinfection at settings that preclude hard and soft tissue removal, except for incidental gingival curettage.

D. Use of a laser:

(1) Prior to utilizing a laser, a licensee must first successfully complete training that covers, at a minimum, laser physics, safety, and appropriate use of the laser. A licensee must also complete an interactive training that addresses operation of the specific laser(s) utilized in the practice. The initial training must include a minimum of 12 hours of instruction and must be obtained through a course provided or recognized by any of the following organizations (or a successor organization):

(a) The Commission on Dental Accreditation (CODA);

(b) The American Dental Association (ADA) Continuing Education Recognition Program (CERP);

(c) The Academy of General Dentistry (AGD) Program Approval for Continuing Education (PACE); or

(d) The American Medical Association (AMA).

A dental licensee who has more than three (3) years of experience using lasers is exempt from the training requirements set forth in Reg. 39-9 provided that the three (3) years of experience is obtained prior to January 1, 2021.

(2) A licensee utilizing a laser, other than what is described in Section A, must maintain evidence of training as required herein and submit such evidence to the Board upon request.

(3) All lasers must be used in accordance with accepted safety guidelines

E. When utilizing a laser pursuant to this Section, the licensee must document the following information, at a minimum, in the patient's record:

(1) the type of laser utilized, to include the wavelength of the laser;

(2) the settings used, such as pulse or continuous wave, and the power setting;

(3) local anesthesia used, if any; and

(4) the procedure attempted/performed, including details as to whether hard or soft tissue was removed.

### **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 amend: R.39-5(F)(1) regarding obtaining continuing education online; R.39-5(F)(3) regarding continuing education requirements related to CPR; and R.39-6 regarding elections. The Board also proposes to establish standards for the use of lasers in a dental setting.

#### Document No. 5012 DEPARTMENT OF LABOR, LICENSING AND REGULATION BOARD OF REGISTRATION FOR FORESTERS CHAPTER 53

Statutory Authority: 1976 Code Sections 48-27-140 and 48-27-190

53-2. Officers.

- 53-3. Meetings.
- 53-6. Committees.
- 53-7. Application for Registration.
- 53-8. Requirements for Registration.
- 53-9. Expiration and Renewal.
- 53-11. Reciprocity.

53-14. Exceptions.

53-20. Continuing Education Requirements.

#### **Synopsis:**

The South Carolina Board of Registration for Foresters proposes to repeal R.53-6. The Board further proposes to amend the following regulations: R.53-2 to delete references to spring and fall meetings, delete the position of secretary, and delete certain duties of the chairman and vice-chairman; R.53-3 regarding regular meetings and notice of meetings; R.53-7 to add that application fees may be paid electronically; R.53-8 to delete a date, add that applicants must pass the examination, add reference to the state examination, and further rewrite requirements; R.53-9 to re-write the section title; R.53-11 to correct scriveners' errors, change the reference from person to applicant, and clarifying requirements for reciprocity; and R.53-20 to change the reference from annual to biennial continuing education requirements, adjust continuing education hours and credits, clarify requirements, correct scriveners' errors, add accommodations for disability, illness and extenuating circumstances, and add an age and/or experience wavier for continuing education.

A Notice of Drafting was published in the State Register on August 28, 2020.

### **Instructions:**

Replace regulation as shown below. All other items and sections remain unchanged.

### Text:

### 53-2. Officers.

The Board will elect officers each year. The following officers will be elected:

- (A) Chairman—whose duties shall be to:
  - (1) Preside at meetings of the Board.
  - (2) Appoint all committees.

(3) Sign all certificates and other official documents.

(4) Call special meetings as required.

(5) Perform all duties pertaining to the office of the Chairman.

(B) Vice Chairman—whose duties shall be to perform the duties of the Chairman during his absence.

### 53-3. Meetings.

Regular meetings of the Board will be held in Columbia at least twice each year.

Special meetings of the Board will be called by the Chairman by giving notice as required by S.C. Code Section 30-4-80.

### 53-6. Repealed.

53-7. Application for Registration.

Requests for registration will be made to the Department of Labor, Licensing and Regulation, State Board of Registration for Foresters. Application forms will be supplied upon request.

Applicants shall supply all information requested on the forms or otherwise required. In each case, the applicant must provide proof, satisfactory to the Board, that he meets requirements for registration. Failure to follow the instructions will necessitate rejection of the application or its return for completion.

Applications will be accompanied by check, money order, or electronic payment in an amount as set by the Board. The application fee is non-refundable.

### 53-8. Requirements for Registration.

The following shall be considered as minimum evidence satisfactory to the Board that the applicant is qualified for registration as a registered forester:

(A) Examination. All applicants shall take and pass the examination for registration. The examination for registration is a two-part examination:

Part One is the Certified Forester (CF) Examination, and Part Two is the South Carolina Specific Examination.

(B) Education and Experience:

(1) Applicants who have graduated from a curriculum in forestry of four years or more in a department, school, or college approved by the board must have a specific record of an additional two years or more experience in forestry of a character satisfactory to the board and indicating that the applicant is competent to practice forestry; or

(2) Applicants who have not graduated from a curriculum in forestry as provided in (1) above, must have a specific record of six years or more of practice in forestry of a character satisfactory to the board and indicating that the applicant is competent to practice forestry.

### 53-9. Renewal of License, Lapsed License, and Reinstatement.

Licenses shall expire on June 30th, every two years on the odd numbered year, and shall become invalid on that date unless renewed. At least one month prior to expiration date of any license, the Department will notify each registrant of the date of expiration of his license and the fee required for its renewal for two years. Renewal payment must be made during the month of June every two years, or within the ensuing 3 months, by payment of an additional fee set by the Board for each month or fraction thereof beyond the month of June. The Board will make an exception to the foregoing renewal provisions in the case of a person who is in the Armed Services of the United States.

# 53-11. Reciprocity.

Any applicant licensed to practice forestry by any other state or country whose requirements are determined by the Board to be commensurate with the requirements of this state and upon satisfactory review of the applicant's record in the state or country of licensure may be registered to practice forestry in this state upon payment of a fee set by the Board and passing the Part 2 South Carolina Specific Examination.

### 53-14. Exceptions.

Exceptions to the prohibited acts stated in Section 48-27-120 of the 1976 Code shall be:

(A) Marking timber as a member of a crew, under the supervision of a registered forester, without responsibility for determination of objectives, volumes, values or other purposes for which the timber is being marked.

(B) Scaling of severed forest products.

(C) Management of woodyards, and the duties incident thereto.

(D) Cutting, hauling, loading, storing and processing forest products.

(E) Forest workers or forest fire fighters, including tractor plow operators, fire or crew bosses, dispatchers, lookouts, scouts, crew foremen, forest pest control workers, and the similar workers as determined by the Board.

(F) Silvicultural practices such as reforestation and timber stand improvements unless the individual has responsibility for any technical determinations and not just physical labor involved in applying the practices.

(G) The buying and selling of timber or woodlands unless engaged in the practice of forestry in connection with the transaction.

(H) Compassmen and tallymen in timber cruising parties supervised by a registered forester.

(I) Regular employees of persons owning lands on which forestry practices are being conducted by the landowner.

53-20. Continuing Education Requirements.

(A) Continuing Forestry Education: Each registered forester is required to meet the Continuing Education Requirements of the Board of Registration prior to registration renewal each biennium.

(B) Biennial Requirements: A total of 20 Continuing Forestry Education credits is required biennially, of which a minimum of 10 must be in Category 1.

(C) CFE Credit Categories:

Category 1 – Core Education

Each Category 1 activity must satisfy all of the following conditions:

It is an organized program of learning conducted in a setting physically suitable to continuing forestry education objectives;

Speakers must be qualified to address their topics and be considered experts in their presentation subject by virtue of special education, training, and/or experience.

The subject matter must directly relate to the approved content area for the appropriate credential. Individual presentations within a workshop or conference may qualify while others do not.

The program content must be of a technical level and nature such that it supplements and builds upon the knowledge necessary to ensure professional competency. Training sessions targeted specifically for landowners do not meet this criterion.

The program content cannot be: specific to protocols of an individual organization, company or agency; about organization-specific procedures and operations, or; employee training in organization-specific practices/policies.

Category 2 – Related Education

Each Category 2 activity must satisfy all of the following conditions:

It is an organized program of learning conducted in a setting physically suitable to continuing forestry education objectives.

Speakers must be qualified to address their topics and be considered experts in their presentation subject by virtue of special education, training, and/pr experience.

The program content must be of a technical level and nature such that it supplements and builds upon the knowledge necessary to ensure professional competency and performance.

The program content cannot be: specific to protocols of an individual organization, company, or agency; about organization-specific procedures and operations; or employee training in organization-specific practices/policies.

Category 3 – Professional Development and Volunteer Activities

Each Category 3 activity must satisfy all of the following conditions:

Professional activities undertaken outside of normal job responsibilities.

The subject matter qualifies under category 1, such as presentations in a classroom, field, or lab setting; writing and publishing of forestry or forestry-related subject matter; or, service to the profession through volunteer work.

(D) Reports and Records: Each registrant shall report on a form provided by the Board, the activities undertaken to meet the requirements for Continuing Forestry Education.

The registrant shall maintain a file of documentation for activities for a period of 5 years after the date of the program. Such documentation shall be provided to the Board of Registration upon request.

(E) Approval of Activities:

(1) Any activity approved for CFE credit by the Society of American Foresters Continuing Forestry Education Program.

(2) An activity documentation may be submitted to the Board of Registration for Foresters for approval. The Board may rely on a committee of registered foresters chosen by the Board for determination or may rely on credit granted by other organizations. In any case the decision by the Board will be final.

(F) Non Compliance: An individual who does not meet the CFE requirements shall be placed on a probationary status for 6 months. Failure to complete the requirements during that period will result in cancellation of registration and prohibition from practicing forestry in South Carolina.

(G) Reinstatement to Active Registration: An individual wishing to have registration restored must complete the following requirements for continuing Forestry Registration in addition to other requirements required by the Board.

(1) Registration lapse of 1-3 years: Complete the CFE requirements for a minimum of one year prior to application for registration.

(2) Registration lapse of 4-10 years: Complete the current CFE requirements for a minimum of two years credits during the 18 months preceding the application for reinstatement.

(3) Registration lapse of 11 or more years: Completion of the examination required for initial licensing.

(H) Waivers: Any individual may request in writing a waiver of the requirements by the Board. If, in the judgment of the Board, the waiver is justified, it may be granted on a yearly basis.

(I) New Registrants: An individual registered during a year will be required to meet CFE requirements for renewal following the first renewal after initial registration.

(J) Carry-over Credits: A maximum of 10 credits in categories 1-3 may be carried over for one renewal cycle, except that award of a CFE certificate by the Society of American Foresters may qualify for the individual's CFE requirement for four following years.

(K) Exemptions:

(1) Individuals registered to practice forestry in another state and who meet Continuing Forestry Education requirements for that state equal to or greater than those in South Carolina.

(2) Periods of time the individual is serving on active duty in the Armed Forces of the United States for periods longer than 180 consecutive days.

(3) Licensees experiencing physical disability, illness, other extenuating circumstances as reviewed and approved by the board may be exempt. A waiver form that includes supporting documentation must be furnished to the board thirty (30) days in advance of the renewal period.

(4) Individuals who are at least sixty (60) years old and have thirty (30) or more years of licensed experience may request a waiver of the continuing education requirement by submitting a waiver form to the Board.

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

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

### **Statement of Rationale:**

These regulations will conform to current law and procedures. The Board proposes to repeal R.53-6. The Board further proposes to amend the following regulations: R.53-2 to delete references to spring and fall meetings, delete the position of secretary, and delete certain duties of the chairman and vice-chairman; R.53-3 regarding regular meetings and notice of meetings; R.53-7 to add that application fees may be paid electronically; R.53-8 to delete a date, add that applicants must pass the examination, add reference to the state

examination, and further rewrite requirements; R.53-9 to re-write the section title; R.53-11 to correct scriveners' errors, change the reference from person to applicant, and clarify requirements for reciprocity; and R.53-20 to change the reference from annual to biennial continuing education requirements, adjust continuing education hours and credits; clarify requirements, correct scriveners' errors, add accommodations for disability, illness and extenuating circumstances, and add an age and/or experience wavier for continuing education.

### Document No. 4987 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

93-80. Administrator-in-Training Program Requirements.

### **Synopsis:**

The South Carolina Board of Long Term Health Care Administrators proposes to amend R.93-80 to allow Administrator-in-Training (AIT) preceptors to supervise up to two AIT candidates concurrently.

A Notice of Drafting was published in the State Register on February 28, 2020.

#### **Instructions:**

Replace regulations as shown below. All other items and sections remain unchanged.

#### Text:

93-80. Administrator-in-Training Program Requirements.

A. A person shall be permitted to participate in the AIT program who submits sound evidence satisfactory to the board that the candidate meets the following criteria:

(1) Nursing home administrator AIT candidates must have earned a Baccalaureate degree or higher from an accredited college or university or must be enrolled in a course of study that will award such a degree on completion.

(a) For nursing home administrator AIT candidates with a Baccalaureate degree or higher in health care administration or a related health care degree, the duration of an AIT internship shall be six months.

(b) For nursing home administrator AIT candidates with a Baccalaureate degree other than a health care administration degree, the duration of an AIT internship shall be nine months.

(2) Community residential care facility administrator AIT candidates must have earned at least an Associate's degree from an accredited college or university or must be enrolled in a course of study that will award such a degree upon completion.

(a) For community residential care facility administrator AIT candidates with a Baccalaureate degree or higher, the duration of the AIT internship shall be three months.

(b) For community residential care facility administrator AIT candidates with a health related Associate's degree, the duration of the AIT internship shall be six months.

(c) For community residential care facility administrator AIT candidates with a nonhealth-related Associate's degree or who are licensed practical nurses, the duration of the AIT internship shall be nine months.

B. An AIT candidate must register with the Board by completing a Board-approved form and submitting the registration fee of \$25.00. After approval the Board shall issue an AIT training permit to the applicant valid for up to one year. If the preceptor or AIT terminates the program, the Board will invalidate the permit immediately.

C. The candidate may indicate a preceptor of his choice from a list of Board-approved preceptors. It shall be the responsibility of the candidate to contact the preceptor to determine if the preceptor will accept the AIT. Once a preceptor accepts an AIT, this must be reported to the Board. The preceptor shall not train an employer or supervisor.

D. The preceptor shall meet the following criteria:

(1) Currently licensed in this state;

(2) Have no disciplinary sanctions against the license;

(3)(a) The Nursing Home Administrator preceptor shall be licensed for three years preceding the date of application as a preceptor, be a licensed nursing home administrator and be employed by the facility licensed pursuant to the regulations promulgated by the Department of Health and Environmental Control.

(b) The Community Residential Care Facility Administrator preceptor shall be licensed for two years preceding the date of application as a preceptor, be a licensed community residential care administrator and be employed by a facility, with at least 24 beds, licensed pursuant to the regulations promulgated by the Department of Health and Environmental Control.

E. The preceptor must register on an approved form with the Board. The Board may, for good cause, refuse to approve or renew a preceptor.

F. A preceptor shall supervise up to two AIT candidates concurrently.

G. The preceptor will evaluate the background and experience of the AIT to determine specific areas of concentration. The preceptor and AIT will then design a course of study and present it to the Board for approval. The curriculum shall follow the guidelines set forth in a standards manual approved by the Board. A recoupment fee for the manual not to exceed \$50.00 will be imposed on the preceptor.

H. The preceptor shall maintain a current checklist in the facility tracking progress of the AIT. This checklist may be requested and reviewed at any time by the Board. On completion of the program, the checklist shall be submitted with the final report and evaluation.

I. At the end of the AIT program, the preceptor will submit a final report and evaluation of the AIT on Board approved forms stating whether the AIT has satisfactorily completed all requirements. The final report and evaluation will become part of the AIT's permanent record with the Board.

J. Any change in preceptor requires notice to and approval by the Board. An internship which has been discontinued by a period of military service shall be allowed to be completed within a year after the service. The Board must receive notice in the event of discontinuance of training for any other reason and the AIT must comply with section (B) upon recommencement of the program.

K. The preceptor shall notify the AIT of his performance as the program progresses. If the performance is not acceptable, the preceptor will inform the AIT, and the AIT will be given the opportunity to correct the deficiencies.

L. Following the completion of the AIT program:

(1) the nursing home administrator AIT may apply for licensure as a nursing home administrator as delineated in Regulation 93-70 but is not required to complete any of the qualifying work experience set forth in Regulation 93-70(A)(1).

(2) the community residential care facility administrator AIT may apply for licensure as a community residential care facility administrator as delineated in Regulation 93-70 but is not required to complete any of the qualifying work experience set forth in Regulation 93-70(A)(2).

### **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.93-80 to allow Administrator-in-Training (AIT) preceptors to supervise up to two AIT candidates concurrently. This will both ensure adequate supervision and additional opportunities for qualified individuals to receive the training necessary to enter the profession.

### Document No. 4986 DEPARTMENT OF LABOR, LICENSING AND REGULATION BOARD OF MEDICAL EXAMINERS CHAPTER 81

Statutory Authority: 1976 Code Sections 40-1-70, 40-47-10, and 40-47-110

81-91. Election Procedures for the State Board of Medical Examiners and the Medical Disciplinary Commission.

# Synopsis:

The South Carolina Board of Medical Examiners proposes to amend R.81-91 regarding election procedures for the Board of Medical Examiners and the Medical Disciplinary Commission.

A Notice of Drafting was published in the State Register on February 28, 2020.

### **Instructions:**

Replace regulation as shown below. All other items and sections remain unchanged.

Text:

### ARTICLE 9.5 ELECTION PROCEDURES

81-91. Election Procedures for the State Board of Medical Examiners and the Medical Disciplinary Commission.

Notice of the election of Board Members shall be provided to each physician possessing a permanent license and eligible to vote, according to records of the Board. Physicians wishing to offer their candidacy for the Board must submit a written petition signed by not less than fifteen (15) physicians possessing a permanent license and eligible to vote in the particular election contest which the petitioner seeks to enter; provided however, this provision does not apply to the election for the doctor of osteopathy at-large. All signatures must be on petitions

provided by the Board; physicians eligible to vote in the election may sign the petition of more than one candidate. Petitions must be received by the Board within thirty-five days of the date of the notice announcing the election. Any person submitting the required number of petition signatures may subsequently withdraw his name upon written notice to the Board. If only one candidate receives the required number of petition signatures, he shall be declared the winner in that particular contest, and certified as nominee to the Governor. If more than one candidate submits the required number of petition signatures, ballots shall be prepared with the names of the candidates in alphabetical order.

Ballots shall be provided to every physician possessing a permanent license and qualified to vote in that particular election. The candidate receiving a majority of the votes received by the Board in the allotted time period shall be certified as nominee to the Governor. If no candidate receives a majority of the votes cast, a run-off election involving the two candidates receiving the most votes will be held. Voters shall be allowed fifteen days to submit their ballots to the Board.

For purposes of this Section, the notice of election and all other notices required herein may be sent to the physician's email address on file with the Board. Physicians eligible to vote in the election may submit their ballots electronically. Those who wish to submit a paper ballot may request one from the Board.

### **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 Medical Examiners proposes to amend R.81-91 regarding election procedures for the Board of Medical Examiners and the Medical Disciplinary Commission. Specifically, the proposed regulation changes would permit, but not require, electronic voting, which would save both time and money for the State. The proposed regulation would further replace fifty (50) with fifteen (15) regarding the number of written petitions that must be submitted by physicians wishing to offer their candidacy for the Board. The proposed regulation changes would also strike the language regarding the election of members to the Medical Disciplinary Commission (MDC) members as it is inconsistent with S.C. Code Section 40-47-11 which provides the physician members of the Board appoint Commission members; there is no reference to an election.

### Document No. 5013 DEPARTMENT OF LABOR, LICENSING AND REGULATION OFFICE OF OCCUPATIONAL SAFETY AND HEALTH CHAPTER 71 Statutory Authority: 1976 Code Section 41-15-220

- 71-301. Partial exemption for employers with 10 or fewer employees.
- 71-310. Recording criteria for cases involving occupational hearing loss.
- 71-332. Annual summary.
- 71-335. Employee involvement.
- 71-337. State recordkeeping regulations.
- 71-341. Electronic submission of Employer Identification Number (EIN) and injury and illness records to OSHA.
- 71-346. Definitions.

### **Synopsis:**

The South Carolina Department of Labor, Licensing and Regulation – Division of Occupational Safety and Health (SC OSHA) proposes to amend sections of Chapter 71, Article 1, Subarticle 3, Occupational Injury and Illness Recording and Reporting Regulation.

Specifically, the Department proposes to amend Section 71-310 to clarify that employers must comply with the provisions of 71-305 when making a determination as to whether a worker's hearing loss is work-related. The Department also intends to add a period after the word designee in R.71-341(a)(3) and to add R.71-341(a)(4) regarding the electronic submission of the Employer Identification Number (EIN) used by the establishment which was inadvertently omitted from a prior update to this section.

The Department further intends to correct scriveners' errors and cross-references in the following sections: R.71-301(a)(1) relating to the requirements of 71-339; R.71-332(b)(2)(iii) relating to the reference for R.71-329(b)(4); R.71-335(b)(2)(iii) to change "for" to "of" relating to current or stored OSHA 300 logs; R.71-337 to correct a capitalization error and remove a hyphen in the word, "Cross Reference"; R.71-341(b)(5) to add an apostrophe and an "s" to the word "website"; R.71-341(c) to reformat and divide into two subparagraphs; R.71-341(c)(1) Table to correct formatting from five columns and five rows to four columns and four rows; and R.71-346(1)(iii) relating to the replacement of the SIC Code with the NAICS code.

A Notice of Drafting was published in the State Register on August 28, 2020.

### **Instructions:**

Replace regulation as shown below. All other items and sections remain unchanged.

# Text:

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 work-related incident that results in a fatality, the inpatient hospitalization of one or more employees, an employee amputation, or an employee loss of an eye.

(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)

71-310. 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 retest does not confirm the recordable STS, you are not required to record the hearing loss case on the OSHA 300 Log. If the retest 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)

71-332. Annual summary.

(a) Basic requirement. At the end of each calendar year, you must:

(1) Review the OSHA 300 Log to verify that the entries are complete and accurate, and correct any deficiencies identified;

(2) Create an annual summary of injuries and illnesses recorded on the OSHA 300 Log;

(3) Certify the summary; and

(4) Post the annual summary.

(b) Implementation.

(1) How extensively do I have to review the OSHA 300 Log entries at the end of the year? You must review the entries as extensively as necessary to make sure that they are complete and correct.

(2) How do I complete the annual summary? You must:

(i) Total the columns on the OSHA 300 Log (if you had no recordable cases, enter zeros for each column total); and

(ii) Enter the calendar year covered, the company's name, establishment name, establishment address, annual average number of employees covered by the OSHA 300 Log, and the total hours worked by all employees covered by the OSHA 300 Log.

(iii) If you are using an equivalent form other than the OSHA 300-A summary form, as permitted under 71-329(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)

71-335. 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 of 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)

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)

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 part 1904 records upon notification. Upon notification, you must electronically submit the requested information from your part 1904 records to OSHA or OSHA's designee.

(4) Electronic submission of the Employer Identification Number (EIN). For each establishment that is subject to these reporting requirements, you must provide the EIN used by the establishment.

(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 from their injury and illness records. 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's 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.

(1) 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):

Submission year	Establishments submitting under paragraph (a)(1) of this section must submit the required information from this form/these forms:	paragraph (a)(2) of this section	Submission
2017	300A		December 15, 2017
2018	300A, 300, 301	300A	July 1, 2018

(2) 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)

#### 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 North American Industry Classification System (2007) codes 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: amend Section 71-310 to clarify that employers must comply with the provisions of 71-305 when making a determination as to whether a worker's hearing loss is work-related; add a period after the word "designee" in R.71-341(a)(3) and add R.71-341(a)(4) regarding the electronic submission of the Employer Identification Number (EIN) used by the establishment which was inadvertently omitted from a prior update to this section; and will correct scriveners' errors and cross-references in R.71-301(a)(1) relating to the requirements of 71-339, R.71-332(b)(2)(iii) relating to the reference for R.71-329(b)(4), R.71-335(b)(2)(iii) to change "for" to "of" relating to current or stored OSHA 300 logs, R.71-337 to correct a capitalization error and remove a hyphen in the word, "Cross Reference", R.71-341(b)(5) to add an apostrophe and an "s" to the word "website", R.71-341(c) to reformat and divide into two subparagraphs, R.71-341(c)(1) Table to correct formatting from five columns and five rows to four columns and four rows, and R.71-346(1)(iii) relating to the replacement of the SIC Code with the NAICS code.

# Document No. 5002 DEPARTMENT OF MOTOR VEHICLES CHAPTER 90

### Statutory Authority: 1976 Code Section 56-23-100

90-100. Definitions.

- 90-101. Requirements and Application for Truck Driver Training School.
- 90-102. Management, Foreign Applicant, and Application Requirements; Naming Restrictions.
- 90-103. Truck Driver Training School License Renewal Application.
- 90-104. Application Information Changes.
- 90-105. Truck Driver Training School Branch Offices.
- 90-106. Truck Driver Training School License Required.
- 90-107. Truck Driver Training School Location, Physical Facilities and Courses of Instruction.
- 90-108. Facilities, Inspections, Course of Instruction, and Student Requirements.
- 90-109. Motor Vehicles Used in Instruction.
- 90-110. Truck Driver Training Motor Vehicles Identification and Restrictions on Use.
- 90-111. Truck Driver Training School Motor Vehicle Registration, Insurance, and Inspection.
- 90-112. Insurance and Inspection Requirements.
- 90-113. Cancellation and Refund Policy.
- 90-114. Special Requirements.
- 90-115. Requirements for Application for Truck Driver Training School Instructor.
- 90-116. Original Application for Truck Driver Training Instructor's License.
- 90-117. BTW Truck Driver Training Instructor's License Renewal Application.
- 90-118. Surrender of Truck Driver Training Instructor's License.
- 90-119. Truck Driver Training School Enrollment Contract Requirements.
- 90-120. Contracts.
- 90-121. Advertising.
- 90-122. Suspension, Revocation, refusal to Issue or Renew Truck Driver Training School License.
- 90-123. Suspension, Revocation, Refusal to Issue or Renew a Truck Driver Training School Instructor's License.
- 90-160. Definitions.
- 90-161. General Application Requirements.
- 90-162. Driver Training School License Applicants Requirements.
- 90-163. Driving School Requirements.
- 90-164. Driver Training School License Application.
- 90-165. Driver Training School Motor Vehicle Liability Insurance Minimums.
- 90-166. Liability Insurance Coverage Requirements; Notice of Cancellation.
- 90-167. Driver Training School Instructor Qualifications.
- 90-168. Driving Instructors License Application Requirements.
- 90-169. Driver Training Instructor Licensing.
- 90-170. Registration, Inspection, and Required Equipment for Motor Vehicles Operated by Driver Training School.
- 90-171. Driver Training School Motor Vehicle Safety and Identification Requirements.
- 90-172. Driver Training School Facilities.
- 90-173. Driver Training School Physical Facilities, Hours of Operations, etc.
- 90-174. Driver Training School Course of Instruction.
- 90-175. Driver Training School Student Instruction Record.
- 90-176. Instruction Records and Files.
- 90-177. Receipts for Fees Paid for Instruction.
- 90-178. Driver Training School Contracts.
- 90-179. Driver Training School Contracts, Permanent Records.
- 90-180. Items Required for Display in Driver Training School Facility.
- 90-181. Inspection of School Facilities.
- 90-182. Driver Training School Complaints.

90-183. Driver Training School Advertising.

90-184. Suspension, Revocation, Refusal to Renew Driver Training School License.

90-185. Suspension, Revocation, Refusal to Issue or Renew a Driver Training Instructor's License.

90-186. Judicial Review Procedures.

#### Synopsis:

The South Carolina Department of Motor Vehicles is amending Regulation 90, Article 2 on Truck Driver Training Schools and Article 3 on Driver Training Schools regarding how these entities conduct business in the State of South Carolina and are regulated by the Department of Motor Vehicles. The intent of these amendments is to combine Articles 2 and 3 into a single article addressing driving schools as a whole regardless of what type of driver's license for which the school trains.

The Notice of Drafting was published in the State Register on August 28, 2020.

### Instructions:

The following Chapter 90, Articles 2 and 3, Regulations 90-100 thru 90-186, to be replaced by Article 2, Regulations 90-100 thru 90-121.

#### Text:

# ARTICLE 2 DRIVER TRAINING SCHOOLS

### 90-100. Definitions.

A. "Behind the Wheel" (BTW) means instruction where the student is actually operating the vehicle on public roads.

B. "Catalog" means a booklet which must be given to each student prior to classes beginning and must be presented at the time the student signs the enrollment contract. Each catalog should be dated upon publication and revision. The catalog should contain at a minimum, a history of the truck driver training school, list of owners, officers, or directors, including addresses, licensing authority, complaint procedures, class start and stop times, attendance and disciplinary rules, course outlines, cost of training, books, supplies, fees, and all other charges the student would be expected to bear, minimum entrance requirements, graduation requirements, refund policy, placement policy, procedures for providing CDL test services.

C. "Category" means theory instruction, field instruction, BTW instruction, and observation while on the road.

D. "Classroom" means student is in classroom environment learning principles, laws, regulations, and/or rules of the road for driving a motor vehicle.

E. "Class B" means any single vehicle with a Gross Vehicle Weight Rating (GVWR) of 11,794 kilograms or more (26,001 pounds or more), or any such vehicle towing a vehicle not in excess of 4,536 kilograms (10,000 pounds) GVWR.

F. "Class A" means any combination of vehicles with a gross combination weight rating (GCWR) of 26,001 pounds or more, provided the gross vehicle weight rating (GVWR) of the vehicle being towed is more than 10,000 pounds.

G. "Commercial motor vehicle" means a vehicle with a gross vehicle weight rating of 10,001 pounds or more, used in commerce.

H. "Department" means the South Carolina Department of Motor Vehicles.

I. "Enrollment contract" means any agreement or instrument, however named, which creates or evidences an obligation binding a student to purchase or otherwise incur a legal obligation in exchange for receiving an educational course from a driver training school.

J. "Field training" means off road training in and around the type commercial motor vehicle used in truck driver training.

K. "Graduate" means any student who fully completes the required hours of lessons or classes required by the Department and discharges any and all other requirements or obligations established by the school as prerequisites for completing the full course of study.

L. "Instructor" means an individual certified by the Department to give classroom and or BTW instruction to students enrolled in the school.

M. "Hour" means an instructional period of fifty minutes.

N. "Observation" means when a student observes another student actually operate a motor vehicle on the public roads.

O. "Successfully Complete" means a grade of at least seventy percent.

P. "Permanent Structure" means a building set on a foundation or is otherwise strapped to the ground and is in compliance with all zoning ordinances and codes and has been issued a "Certificate of Occupancy."

Q. "Range" means a student is on the skills range practicing backing and maneuvering exercises with a commercial motor vehicle.

R. "Record" means a complete history of the enrollment of a student, including entrance qualifications. To include high school diploma or GED (if required by the school) or other test to indicate that the student benefit from the training purchased; motor vehicle report, criminal history records (if required) drug screen; grades, daily training record, attendance records, counseling remarks, permit issue date, CDL test history. "Records" also means appropriate documentation on instructor qualifications, statistical data required by the Department, and all other documents sufficient to justify the legitimate operation of the school.

S. "Student" means any person who has signed a Contract and enrolled with a truck driver training school and who has not cancelled that Contract before the instruction begins.

T. "Theory instruction" means knowledge instruction on the operation of a CMV and related matters provided by an instructor through lectures, demonstrations, audio-visual presentations, computer-based instruction, driving simulation devices, online training, or similar means.

U. "Truck Driver Training School" means any enterprise conducted by an individual, association, partnership, or corporation for the education and training of persons, either in the classroom or behind-the-wheel, to operate or drive a truck-tractor combination unit, Class B/Straight Truck or Passenger Bus Training and charging a fee or tuition or otherwise binding a student to a legal obligation in exchange for those services.

90-101. Driver Training School License Applicants Requirements.

A. The Department shall not issue a driving school license to any applicant unless:

(1) The applicant maintains an office in this State as described by these rules and regulations;

(2) The applicant is authorized to do business in this State, and all licensed driver training schools must make all school and training records and facilities available upon request by the Department during normal business hours;

(3) The applicant has at least one individual who is employed by the school and who is licensed by the Department as a driving instructor;

(4) Each applicant associated with a driver training school (owner, partner, or officer) at least twenty-one years of age; and

(5) Each applicant holds a valid South Carolina driver's license as defined in Section 56-1-20, 56-1-2030 (commercial), or a license of a foreign jurisdiction that is equivalent to the license for which the instructor is providing driver training.

B. No person may give driver instruction unless licensed by the Department as a driving instructor.

90-102. Driving School Requirements.

Every application for a driving school license and every driving school license renewal application must be accompanied by:

A. A sample copy of the record of agreement or contract to be used between student(s) and school;

B. An outline of the services to be performed by the licensee;

C. Samples of forms or receipts used by the school;

D. A schedule of fees for instruction;

E. A complete list of manuals of instruction, course outlines, and other teaching materials used by the school;

F. A complete list of all owners and managers. Complete nationwide criminal background check all managers. Any changes in ownership of a twenty-five percent or more requires a new application to be filed with the Department within fifteen days. Any changes in managers must be reported to the Department within fifteen days with the required application and complete nationwide criminal background check;

G. Copies of all applicable business licenses; and

H. Any applicable fees.

90-103. Driver Training School License Application.

A. If the application for a driving school license is made by an individual, it must be signed by the individual. If the application is made by a partnership, the application must be signed by a general partner. If the application is made by a corporation or LLC, the application must be signed by an authorized corporate officer.

B. Driving school licenses are not transferable.

C. No application for a driver training school will be accepted if the applicant has adopted any name similar to the name of an already licensed driver training school or if the applicant has adopted any name similar to any state or national organization. Use of the words "South Carolina" or South Carolina State" in any driver training school's name is prohibited.

D. The application must be subscribed under oath and shall be accompanied by an application fee of fifty (\$50.00) dollars. Prior to operation, each licensed driver training school, excluding duly accredited public colleges and public high schools, also must obtain a corporate surety bond in the amount of ten thousand (\$10,000.00) dollars. The bond must be conditioned to provide indemnification for tuition loss to: 1) any Student determined by a court of competent jurisdiction to have suffered a loss of tuition as a result of material violation of law or this regulation; 2) a school ceases operation prior to a Student Successfully Completing; or 3) the loss of a school license as a result of final Department action.

E. Applications for Driver Training School license renewals must be submitted to the Department by no later than June 1st of each year. Any renewal application received later than fifteen days after license's expiration will be treated as a new application and the driver training school shall not continue operation unless and until relicensed by the Department. All Driver Training School licenses expire on June 30th of each year and no school is permitted to operate with an expired license, unless the Driver Training School submitted their application for renewal in a time manner and has been given specific written permission from the Department to continue to operate while the Department processes the renewal application.

F. Upon receipt of a license, the licensee must display the license in the school's principal place of business. The Department must be notified within fifteen days whenever there is a change in instructors, management, or insurance coverage. When any driving school ceases to operate, or if upon investigation it appears that the school has ceased to do business, the owner of the school must surrender the driving school license to the Department within fifteen days. To be re-licensed, after the surrender of a school's license, the school owner must apply and meet the same requirements as a new school

90-104. Driver Training School Motor Vehicle Liability Insurance.

A. No driving school may be licensed by the Department unless it maintains personal injury and property damage liability insurance on all motor vehicles owned or operated in driving instruction on public roads or personal injury liability insurance on all motor vehicles owned or operated in driving instruction on non-public roads, while used in driving instruction on public roads, insuring the liability of the driving school, its certified driving instructors, and any person taking driving instructions, or any passengers within the vehicle.

B. Any insurance policy issued under subsection A must be in the name of the driver training school, its owner or a certified driving instructor with the school.

C. If licensed for classroom only, liability insurance is not required.

D. A certificate of insurance, signed by the insurer or insurance carrier, as required, evidencing that a policy has been issued for the vehicles used in driving instruction listed on the policy containing as a minimum description of the vehicles, the make, model, year, and serial number or the vehicle identification number of vehicle or must specifically state that it is a "fleet" policy. The Department must be listed in the policy as an additional insured. The certificate must be submitted with each application filed for an original or renewal driving school license.

E. If any policy of liability insurance is canceled by the insurance company, the insurance company and the driving school must immediately notify the Department in writing of the cancellation. The notification of cancellation of insurance shall be addressed to Compliance Reporting, South Carolina Department of Motor Vehicles, Post Office Box 1498, Blythewood, South Carolina, 29016-1498. The driver training school must cease to use any motor vehicle to conduct driver training or instruction if that vehicle is covered by the policy that has been cancelled.

90-105. Driver Training School Instructor Qualifications.

A. Every person, in order to qualify as an instructor for a driving school, must, at the time of application, meet the following requirements:

(1) At least twenty-one years of age;

(2) Each holds a valid South Carolina driver's license as defined in Section 56-1-20, 56-1-2030 (commercial), or a license of a foreign jurisdiction that is equivalent to the license for which the instructor is providing driver training on public roads. Any instructor may provide driver training without a current driver's license on non-public roads, so long as the instructor is otherwise qualified to provide the instruction.

(3) Have a complete nationwide criminal background check submitted to the Department and have no convictions within the last ten years for: a felony, fraudulent activity, or contributing to the delinquency of a minor,. The Department may deny an instructor permit to: 1) anyone convicted within the past ten years of criminal domestic violence; 2) anyone listed on the Sex Offender Registry, or 3) anyone having been declared a habitual offender.;

(4) Have no revocations, cancellations or suspensions of driving privileges in the three (3) years immediately preceding the date of application;

(5) Have no convictions for traffic offenses involving moving violations totaling six (6) points in the year immediately preceding the date of application;

B. Every person, in order to qualify as an instructor for a driving school training non-commercial driver's licenses, must, at the time of application:

(1) Have at least five years of driving experience;

(2) Successfully complete a Department approved driver training instructor course which includes as a minimum thirty-four hours of formal classroom instruction in driver education and a minimum of six hours of actual behind the wheel training in driving instruction;

(3) Successfully complete a Department approved written test which includes as a minimum testing of the ability of the applicant to give driver instruction to others and/or both written and demonstrative methods.

C. Every person, in order to qualify as a BTW instructor for a driving school training commercial driver's licenses, must, at the time of application, have at least three years of behind-the-wheel truck driving experience or have completed a certified truck driver training school;

D. All driver training school instructors may have no more than six points on their driving record while maintaining instructor certification. While using a defensive driving credit will help on the driving record, the Department will use the current total points computation, not adjusted points.

90-106. Driving Instructors Permit Application Requirements.

A. Every driving instructor must possess a permit issued by the Department which indicates the full name of the instructor and the full name of the driving training school employing the instructor.

B. A driving instructor's permit will be valid only when the instructor is employed by licensed driving school(s), and only at the driving school indicated on the license.

90-107. Driver Training Instructor Permit.

Every driving instructor must carry the permit upon his or her person at all times when engaged in conducting driving instruction in a motor vehicle. Upon request, the permitted driving instructor must display the permit to any student taking instruction and to any law enforcement officer or employee or agent of the Department.

90-108. Motor Vehicles Operated by Driver Training Schools.

A. Every motor vehicle operated by a driver training school must be properly owned, leased, or rented in the name of the driver training school or parent company.

B. A driver training school cannot use a motor vehicle for BTW training on public roads until it has passed inspection as described in S.C. Regs. 90-109 and 90-117.

90-109. Driver Training School Motor Vehicle Safety and Identification Requirements.

A. Every motor vehicle used by a driver training school training for non-commercial driver's licenses in the course of driving instruction must be equipped with:

(1) Dual controls on the foot brake and the clutch, if any, enabling the driving instructor to control the vehicle in case of an emergency;

(2) Two inside rear view mirrors, one for the student and one for the instructor's use (the vanity mirror located on the passenger side sun visor of most vehicles will not qualify as an additional rear view mirror for the instructor);

(3) An outside rear view mirror on both sides of the vehicle;

(4) All standard safety and operating equipment including tires, brakes, horn, and window glazing shall be in proper working order; seat belts for the operator of the vehicle, driving instructor, and all passengers;

(5) Cushions for the proper seating of the driver of the vehicles.

(6) If a driver training school undertakes to train persons who require special equipment to safely operate a motor vehicle, then vehicles used in the instruction of these persons must be equipped with the appropriate special operating equipment.

B. The vehicle used when training for non-commercial driver's licenses must be identified as a driving school vehicle

(1) With the name of the school and the words "Driver Training" readily identifiable from each side and;

(2) The rear of the vehicle shall have the words "Driver Training" on each side

(3) With lettering or printing at least two inches tall and one-half inches wide

C. Every motor vehicle used by a driver training school training for commercial driver's licenses in the course of driving instruction must be:

(1) Owned, leased, or rented by the driver training school or the parent company;

(2) Equipped with seat belts for the operator and all passengers;

(3) Equipped with a sideview mirror on both sides of the vehicle, a heater, defroster, and speedometer in working condition;

(4) Equipped with all other operational and safety equipment required by Title 56 of the South Carolina Code of Laws and applicable federal regulations and statutes;

(5) If equipped with a seat in the sleeper, the seat must have a back and seat belts that are properly secured;

(6) Equipped with USDOT numbers on all trucks if the vehicle operates in interstate operations or commerce;

(7) Truck Driver Training School vehicles must bear conspicuously displayed signs with the words "Driver

Training" in letters or printing not less than two inches tall with a one-half inch wide brush stroke. The signs must be displayed on both sides of the vehicle and the rear most portion of the vehicle. For vehicles which must operate at night, the words "Driver Training" must be reflective.

(8) No school vehicle may be used to transport property or persons for compensation, other than properly enrolled students. Schools are allowed to add weight, as in a dummy load in the trailer for training purposes.

90-110. Driver Training School Facilities.

Each licensed driving school facility and any branch office must have an office which contains adequate facilities to conduct the business of giving instructions on driving motor vehicles and in the preparation of students for written and driving examinations given by the Department for an operator's license.

90-111. Driver Training School Physical Facilities, Hours of Operation, etc.

A. The office of any driving school must be identified by a sign reasonably visible to the general public and complying with any existing local government ordinances.

B. The following shall be displayed in a prominent place in the driver training school's principal place of business:

(1) The license issued by the Department to the school;

(2) The names and driving instructor's license number(s) of all instructors employed by the school and;

(3) The regular office hours.

C. The office of a driving school must be a Permanent Structure and may not consist of a room or block of rooms in a hotel or rooming house.

D. Each driving school must notify the Department of the location of its office(s) and the regular office hours. This information must be provided to the Department within five days prior to opening any office for business.

E. When a licensed branch office is closed or its location is changed, the driver training school must return the branch office license to the Department within fifteen days of the closing or moving of the branch office.

90-112. Driver Training School Course of Instruction.

The driver training school courses of instruction must be submitted for approval to the Department in the form of an outline and must include:

A. A description of all materials used for instruction;

B. A copy of the curriculum;

C. A list of the instructors names and;

D. A theory instruction schedule.

90-113. Driver Training School Student Instruction Record.

A. All licensed driver training schools must maintain and make available for inspection by the Department a record of instruction for each student (hard copy or electronic) for three years after the instruction is complete. The record of instruction must contain:

(1) The name of the driver training school;

(2) The names of the students;

(3) The students' dates of birth;

(4) The number of the driver's license or permit held by the students;

(5) The type and dates of the instruction given; and the signature of the instructor.

B. Records to be maintained for non-commercial driver training schools must include:

(1) A student instruction record showing the date of all lesson(s) for theory/classroom or behind-the-wheel instruction;

(2) The student's signature on the instruction record acknowledging the lesson was received;

(3) The dated receipt or receipt number for each lesson given.

90-114. Instruction Records and Files.

A. Each driver training school must furnish the student with a copy of its instruction record when the student completes the lessons contracted for or otherwise ceases taking instruction from the school. The copy must be signed by the instructor and by the student acknowledging that the record is correct.

B. All student instruction records must be kept on file in the school's office for a period of three years after the student has ceased taking instruction at the school or completed the lessons contracted for.

90-115. Receipts for Fees Paid for Non-Commercial Instruction.

A. A departmentally approved receipt must be issued to a student each time a fee is collected for either theory or behind-the-wheel driver instruction or other services offered by the licensed driver training school, a driving school instructor, or agent or employee.

B. Approved receipts must be completed and contain:

(1) The date the fee is collected;

(2) The name of the student;

(3) The total amount collected; and

(4) The type of service given.

# 90-116. Driver Training School Contracts.

A. All written contracts or records of agreement by or between any driving school and any individual, partnership, corporation, firm, or association for the sale, purchase, barter, or exchange of any driving instruction or any theory/classroom instruction, or the preparation of any application for an examination given by the

Department for an operator's license or permit must differentiate between theory/class and behind-the-wheel training and contain the following:

(1) A statement indicating the agreed upon contract price and terms of payment, including any additional fees that may be charged;

(2) The type of vehicle to be used in non-commercial training (either a standard vehicle equipped with a standard or manual transmission with extra wheel brake and clutch pedal or a vehicle with an automatic transmission with an extra brake pedal);

(3) The student's name; and

(4) The name and address of the driver training school.

B. No driver training school may sell, transfer, trade, or otherwise dispose of any contract, portion of a contract, agreement of obligation, by or between any driving school and student unless the driving school has obtained the written consent of the student. Any contract or record of agreement for a student less than eighteen years of age must be signed by a parent, guardian, or responsible adult in the presence of the instructor offering the instruction. Any record or contract between the driving school and any student which is lost, mutilated, or destroyed shall be reported to the Department immediately in writing.

### 90-117. Inspection of School Facilities.

Each driver training school must permit authorized agents of the Department to make periodic inspections of all school records, facilities, and vehicles used in driver training. During these inspections the owner(s), manager(s), or other person(s) in charge of the office must cooperate with the authorized representatives of the Department and, upon demand, must produce all student records described herein, instructional material, and any other items necessary to complete the inspection.

### 90-118. Cancellation and Refund Policy.

This section applies to all licensed driver training schools, excluding duly accredited public colleges.

A. A Student who is training for a commercial driver's license is entitled to a refund within thirty days under the following circumstances:

(1) If a Student provides written notice of cancelling the Enrollment Contract within three days of signing an Enrollment Contract, a full refund of all money paid to the School is due, minus any fees incurred by the School. In the event the cancellation notice is mailed, the postmark date on the envelope is evidence of the date of cancellation;

(2) If a Student provides written notice of cancelling the Enrollment Contract more than three (3) days after signing an Enrollment Contract, but prior to the start of classes, a full refund of all money paid to the School is due, minus one hundred dollars (\$100) and any fees incurred by the School;

(3) If a Students has not visited the School facility prior to signing an Enrollment Contract, and provides written notice of cancelling the Enrollment Contract before the end of the first day of attendance at the School facility, a full refund of all money paid to the School is due, minus one hundred dollars (\$100) and any fees incurred by the School;

(4) If the enrollment of a Student is procured as a result of a material misrepresentation in the written material utilized by a School, a full refund of all money paid to the School is due

(5) If a student provides written notice to the School within three days of attendance that they do not meet a material admissions requirement published in the School catalog, a full refund of all money paid to the School is due, minus any fees incurred by the School. No refund is due if the enrollment is based on false or misrepresented information provided by the Student;

(6) If a Student withdraws or is terminated from a School program after starting classes, the Student is entitled to a pro-rata refund based upon the number of days or hours of training completed, minus one hundred dollars (\$100) and any fees incurred by the School. Any Student completing more than fifty percent of the course days, hours or curriculum is not entitled to any refund.

### 90-119. Driver Training School Advertising.

A. No driver training school may publish, advertise, or intimate that a student is guaranteed or assured success in receiving a South Carolina driver's license.

B. No driver training school advertisement or publication may use any unique or distinguishing name, number, or phrase of another driver training school in a misleading manner. All driver training school publications and advertisements must prominently contain the name of the driver training school placing the advertisement or publication.

90-120. Suspension, Revocation, Refusal to Renew Driver Training School License.

The Department may suspend, revoke, or refuse to issue or renew a license of a driver training school for any of the following causes:

A. Conviction of any owner holding 25% ownership or more, manager, or instructor of any crime listed in S.C. Reg. 90-105(A)(3).

B. The school makes a material false statement, or signs a false affidavit or conceals a material fact in connection with the application for a driver training school license or the application for a driver training instructor's license;

C. The school fails to comply or has violated any statutes providing for the licensing and regulation of driver training schools, or where the school has failed to comply or violated these regulations for the operation of driver training schools;

D. The school or any agent of the driver training school engages in fraudulent practices in securing for anyone a license to drive a motor vehicle. ("Fraudulent practices", as used herein, means any conduct or representation on the part of a school or any agent or instructor of a school which would give the impression that a license to operate a motor vehicle may be obtained by any other means than those prescribed pursuant to Chapters 1 and 5 of Title 56 of the South Carolina Code);

E. The school's owner(s) is(are) addicted to the use of alcohol, narcotics, or becomes incompetent to operate a motor vehicle, as defined in Title 56 of the South Carolina Code;

F. The school violates the South Carolina Unfair Trades Practices Act, in Chapter 5 of Title 59 of the South Carolina Code; or

G. There is no qualified instructor employed by the school.

90-121. Minimum Training Hours for Commercial Drivers Licenses.

A. Truck Driver Training Course of Instruction for Class "A" Instruction

(1) Requirements: One commercial motor vehicle must be provided for each three students during the highway training, provided four students per commercial motor vehicle are permitted if the vehicle has been inspected and approved for such use by the Department. No more than nine students per instructor will be allowed for field training.

The theory and behind-the-wheel instruction must consist of: laws relating to either interstate and/or intrastate commercial motor vehicle operations; pre-trip inspection of commercial motor vehicles and both safety and operational equipment; coupling and uncoupling of combination units, if the commercial motor vehicle to be driven includes such units; placing the commercial motor vehicle in operation; use of the commercial motor vehicle's controls and emergency equipment; operation of the inner-city and interstate highway traffic and passing; turning, backing, and parking the commercial motor vehicle; braking and slowing the vehicle by means other than application of the brakes; and how to comply with driver's hours of service.

(2) Training Record: A training record, in a format approved by the Department, must be completed and initialed by the student and instructor each day. The training record should be maintained in the possession of the driver training school and become part of the student record. The total coursework of 148 hours must be verified by the school and signed by the student.

(3) Minimum Curriculum: To successfully complete truck driver training, licensed persons eighteen or older must complete a course consisting of a minimum of 148 hours consisting of theory instruction, range instruction, and behind-the-wheel instruction and observation on public roads, of which a minimum of sixteen of those hours must be behind-the-wheel on public roads. Three hours of the sixteen hours of behind-the-wheel highway training must be completed by each student between dusk and dawn.

B. Truck Driver Training Course of Instruction for Class "B" or Straight Truck/Passenger Bus Instruction

(1) Requirements: Any licensed commercial truck driver training school may apply to the Department to conduct Class "B" Straight Truck or Commercial Straight Truck/Passenger Bus vehicle training.

(2) Training Record: A training record, in a format approved by the Department, must be completed and signed by the student and instructor each day. The training record should be maintained in the possession of the driver training school and become part of the student record. The total coursework of seventy hours must be verified by the school and signed by the student.

(3) Minimum Curriculum: To successfully complete truck driver training, licensed persons eighteen or older must complete a course consisting of a minimum of seventy hours of theory instruction, range instruction, and behind-the-wheel instruction and observation on public roads, of which a minimum of ten hours of those must be behind-the-wheel on public roads.

(4) Students who complete the Class "B" training who wish to upgrade to a Class "A" may do so with the original school, provided it is within six months of the completion date of the original training. Students who upgrade, will be given credit for any theory training already performed that is equivalent to the Class "A" training.

### **Fiscal Impact Statement:**

The SCDMV anticipates no state-incurred fiscal impact due to the amendment of these regulations.

### **Statement of Rationale:**

These regulations are updated to remove antiquated requirements for truck driver training schools and regular driver's license training schools. Furthermore, as of the publication date of this document, the Federal Motor Carrier Safety Administration (FMCSA) under the United States Department of Transportation (USDOT) will be requiring certain standards for training entry-level commercial drivers on February 7, 2022. Because the FMCSA is publishing, what it calls, the Entry-Level Driver Training Regulations (49 CFR §380.600), there is no need for certain duplicative information in state regulations.

### Document No. 5020 **DEPARTMENT OF NATURAL RESOURCES** CHAPTER 123 Statutory Authority: 1976 Code Sections 50-3-100, 50-19-1920, and 50-19-1960

123-125. Alexander Sprunt, Jr., Wildlife Refuge and Sanctuary.

# Synopsis:

Regulation 123-125 is no longer necessary as the property addressed in the regulation is now known as Deveaux Bank and is managed pursuant to Regulation 123-204. Therefore, SCDNR proposes to repeal Regulation 123-125 in its entirety. This change was approved by the Natural Resources Board on August 20, 2020. Therefore, SCDNR proposes to repeal it in its entirety. These changes were approved by the Natural Resources Board on August 20, 2020. 2020.

The Notice of Drafting was published in the State Register on October 23, 2020.

# Instructions:

Repeal Regulation 123-125. (Alexander Sprunt, Jr., Wildlife Refuge and Sanctuary) as printed below.

# Text:

123-125. Repealed.

# **Fiscal Impact Statement:**

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

### **Statement of Rationale:**

Regulation 123-125 is no longer necessary as the property addressed in the regulation is now known as Deveaux Bank and is managed pursuant to Regulation 123-204. The regulation should be repealed.

### Document No. 5021 DEPARTMENT OF NATURAL RESOURCES CHAPTER 123 Statutory Authority: 1976 Code Sections 50-21-610 and 50-21-710

- 123-1. Federal Boat Safety Act of 1971; Inland Navigation Rule Act; International Navigation Rules Act of 1977 Adopted.
- 123-2. Accident Reports.
- 123-3. Lights.
- 123-5. Renewal of Certificates of Numbers.
- 123.7. Vessel Registration.

### Synopsis:

Regulations 123-1, 123-2, 123-3, 123-5, and 123-7 are no longer necessary due to the language and effect of these regulations being codified in the S.C. Code of Laws. Therefore, SCDNR proposes to repeal Regulations 123-1, 123-2, 123-3, 123-5, and 123-7, in their entirety. These changes were approved by the Natural Resources Board on August 20, 2020.

The Notice of Drafting was published in the State Register on October 23, 2020.

# Instructions:

Repeal Regulations 123-1. (Federal Boat Safety Act of 1971; Inland Navigation Rule Act; International Navigation Rules Act of 1977 Adopted), 123-2. (Accident Reports), 123-3. (Lights), 123-5. (Renewal of Certificates of Numbers), and 123.7. (Vessel Registration), as printed below.

# Text:

- 123-1. Repealed.
- 123-2. Repealed.
- 123-3. Repealed.
- 123-5. Repealed.

123-7. Repealed.

# **Fiscal Impact Statement:**

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

### **Statement of Rationale:**

Regulations 123-1, 123-2, 123-3, 123-5, and 123-7 are no longer necessary due to the language and effect of the regulations being codified in Sections 50-5-515 and 50-5-765 of the 1976 Code of Laws, as amended. The regulations should be repealed.

# Document No. 5018 DEPARTMENT OF NATURAL RESOURCES CHAPTER 123

Statutory Authority: 1976 Code Sections 50-3-100, 50-19-1920, and 50-19-1960

123-104. Taking Gizzard Shad and Herring in Certain Waters.

123-107. Live Trout in Eating Establishments.

123-118. Lake Warren Management Area (Hampton County).

123-123. Fishing in Lake Jocassee and Lake Richard B. Russell.

123-126. Fishing in Portions of Howard Creek, Corbin Creek and Devil's Fork Creek.

123-130. Lake Murray-Daily Creel and Size Limit of Striped Bass (Rockfish).

#### Synopsis:

Regulations 123-104, 123-107, 123-118, 123-123, 123-126 and 123-130 are no longer necessary due to the language and effect of these regulations being codified in the S.C. Code of Laws, or the regulation no longer being applicable. Therefore, SCDNR proposes to repeal Regulations 123-104, 123-107, 123-118, 123-123, 123-126 and 123-130 in their entirety. These changes were approved by the Natural Resources Board on August 20, 2020.

The Notice of Drafting was published in the State Register on October 23, 2020.

### **Instructions:**

Repeal Regulations 123-104, 123-107, 123-118, 123-123, 123-126, and 123-130 as printed below.

### Text:

123-104. Repealed.

123-107. Repealed.

123-118. Repealed.

123-123. Repealed.

123-126. Repealed.

123-130. Repealed.

### **Fiscal Impact Statement:**

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

## **Statement of Rationale:**

Regulations 123-104, 123-107, 123-118, 123-123, 123-126 and 123-130 are no longer necessary due to the language and effect of the regulations being codified in Title 50 of the 1976 Code of Laws, as amended, or the regulations no longer being applicable. The regulations should be repealed.

#### Document No. 5016 **DEPARTMENT OF NATURAL RESOURCES** CHAPTER 123 Statutory Authority: 1976 Code Sections 50-5-110, 50-17-1020, and 50-17-1590

- 123-20. Fishing With a Channel Net.
- 123-21. Operation of Crab Pots.
- 123-23. Tags on Submerged Traps.
- 123-24. Master of a Vessel Licensed by the Division of Commercial Fisheries.
- 123-25. Numbering of All Vessels Used for Harvesting Shellfish Commercially in South Carolina.
- 123.28. License for Selling Shad.
- 123-30. Penalties.
- 123-31. Dumping of Trash Fish.
- 123-32. Affixing Tax Tags to Shad.
- 123-35. Turtle Excluder Devices Required in Channel Nets.

### Synopsis:

Regulations 123-20, 123-21, 123-23, 123-24, 123-25, 123-28, 123-30, 123-31, 123-32, and 123-35 are no longer necessary due to the language and effect of these regulations being codified in the S.C. Code of Laws. Therefore, SCDNR proposes to repeal Regulations 123-20, 123-21, 123-23, 123-24, 123-25, 123-28, 123-30, 123-31, 123-32, and 123-35, in their entirety. These changes were approved by the Natural Resources Board on August 20, 2020.

The Notice of Drafting was published in the State Register on October 23, 2020.

### **Instructions:**

Repeal Regulations 123-20. (Fishing With a Channel Net), 123-21. (Operation of Crab Pots), 123-23. (Tags on Submerged Traps), 123-24. (Master of a Vessel Licensed by the Division of Commercial Fisheries), 123-25. (Numbering of All Vessels Used for Harvesting Shellfish Commercially in South Carolina), 123-28. (License for Selling Shad), 123-30. (Penalties), 123-31. (Dumping of Trash Fish), 123-32. (Affixing Tax Tags to Shad), 123-35. (Turtle Excluder Devices Required in Channel Nets), as printed below.

Text:

- 123-20. Repealed.
- 123-21. Repealed.
- 123-23. Repealed.
- 123-24. Repealed.
- 123-25. Repealed.

- 123-28. Repealed.
- 123-30. Repealed.
- 123-31. Repealed.
- 123-32. Repealed.
- 123-35. Repealed.

# **Fiscal Impact Statement:**

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

# **Statement of Rationale:**

Regulations 123-20, 123-21, 123-23, 123-24, 123-25, 123-28, 123-30, 123-31, 123-32, and 123-35 are no longer necessary due to the language and effect of the regulations being codified in Title 50 of the 1976 Code of Laws, as amended. The regulations should be repealed.

## Document No. 5027 DEPARTMENT OF NATURAL RESOURCES CHAPTER 123 Statutory Authority: 1976 Code Sections 50-15-55 and 50-15-80

123-152. Regulations for Nonnative Wildlife.

## Synopsis:

The South Carolina Department of Natural Resources is proposing to add Regulation 123-152, Regulations for Nonnative Wildlife. The proposed regulation provides for the implementation of authority granted by S.C. Code of Laws section 50-15-55 and establishes the list of Restricted Nonnative Wildlife. This includes species that have the potential to become established in this State in sufficient numbers to become a nuisance and/or pose a demonstrable deleterious and widespread threat to wildlife, agriculture, or human health and safety. Regulations include restrictions on possession, sale, offer for sale, transfer of possession, import, release, reproduction, and escape of designated species and associated permitting. The Black and White Tegu *(Salvator merianae)* is added to the list of Restricted Nonnative Wildlife, and regulations establish specific provisions for the possession and permitting of this species.

The Notice of Drafting was published in the State Register on October 23, 2020.

# **Instructions:**

Add Regulation 123-152 as indicated below. Included are specific changes and additions. Unless specifically listed as a change, all other existing regulations remain intact.

### 123-152. insert new text as specified

- A. insert new text as specified
  - 1. insert new text as specified and add calendar date of the approval of regulation
- B. insert new text as specified
- C. insert new text as specified
- D. insert new text as specified

1. insert new text as specified

i.-vii. insert new text as specified

E. insert new text as specified

Text:

# ARTICLE 5

# NON-GAME AND ENDANGERED SPECIES

123-152. Regulations for Nonnative Wildlife.

A. The Department has determined that the species designated as Restricted Nonnative Wildlife have the potential to become established in this State in sufficient numbers so as to become a nuisance and pose a demonstrable deleterious and widespread threat to wildlife, agriculture, or human health and safety. As used in this regulation, Restricted Nonnative Wildlife and the associated Listing Date are:

1. Black and White Tegu (*Salvator merianae* and, as used in this regulation, their hybrids) (listing date: May 28, 2021)

B. Unless otherwise authorized by the Department, no person, firm, corporation, partnership, association, or any other entity shall possess, sell, offer for sale, transfer possession of, import, bring, release, reproduce, allow to escape, or cause to be brought or imported into the State of South Carolina any Restricted Nonnative Wildlife. Pursuant to the Department's authority to regulate nonnative wildlife under S.C. Code Section 50-15-55, the provisions of S.C. Code Section 50-16-60 do not apply to Restricted Nonnative Wildlife.

C. The Department may issue a permit for the possession, import, release, reproduction, and transfer of Restricted Nonnative Wildlife for scientific and other special purposes at its discretion, provided that any such permit shall be conditioned to minimize risks of the hazardous exposure, release and proliferation of the Restricted Nonnative Wildlife.

D. Additional provisions for specific Restricted Nonnative Wildlife

1. Black and White Tegu

i. A person, firm, corporation, partnership, association, or any other entity possessing a Black and White Tegu has 120 days from the listing date, the Registration Period, to register the total number of Black and White Tegu in their possession with the Department and obtain a permit, as conditioned herein, in order to retain the registered animals. During the Registration Period, Black and White Tegus may be possessed, bought, sold, or transferred but may not be imported, brought, released, reproduced, or allowed to escape in South Carolina.

ii. All Black and White Tegus must be microchipped with a unique identification number, at the owner's expense. The unique identification number must be supplied to the Department at the time of registration and to receive a permit.

iii. Permits for registered animals are valid for three years and must be renewed within 30 days of expiration. After the Registration Period, no Black and White Tegu may be possessed without a permit issued by the Department. Permits may not be transferred. If Black and White Tegus are removed from South Carolina, the permit becomes void and must be surrendered to the Department within five days.

iv. Reproduction of permitted Black and White Tegus is not allowed.

v. Black and White Tegus must be kept indoors in escape proof enclosures, or outdoors in locked enclosures with primary and secondary containment barriers, each sufficient to prevent escape.

vi. Escaped or missing Black and White Tegus must be reported to the Department within 24 hours.

vii. Upon death of the Black and White Tegu, possession permits become void and must be surrendered to the Department within five days.

E. Failure to comply with permit terms and conditions is a violation of these regulations. Violations of these regulations are subject to the penalties and enforcement provisions of S.C. Code Section 50-15-80.

# **Fiscal Impact Statement:**

The addition of Regulation 123-152 will result in limited fiscal impact and may prevent damage to the state's natural resources. These regulations are targeted to prevent the establishment of nonnative wildlife known to pose a threat to the State's resources. Preventing the introduction and establishment of these species will prevent

negative fiscal impacts to State resources. Additionally, there are numerous other species available in the pet trade that can be bought, sold, and traded freely available to offset any impact by limitations on sale of an individual species of Restricted Nonnative Wildlife.

### **Statement of Rationale:**

Rationale for the formulation of these regulations is based on over 70 years of experience by SCDNR in managing wildlife populations. These regulations have been developed with the input of staff, professional biologists, and stakeholders

# Document No. 5007 DEPARTMENT OF NATURAL RESOURCES CHAPTER 123

Statutory Authority: 1976 Code Sections 50-15-15, 50-15-70, and 50-15-80

123-151.1. Regulations for Spotted Turtle.

123-151.3. Exchange and Transfer for Certain Native Reptiles and Amphibians.

123.151.4. Possession Limits for Certain Native Reptiles and Amphibians.

### Synopsis:

These regulations amend Chapter 123-151.1-Regulations for Spotted Turtle, add regulations 123-151.3-Exchange and Transfer for Certain Native Reptiles and Amphibians, and add regulations 123.151.4-Possession Limits for Certain Native Reptiles, for the management of native reptile and amphibian species. This includes limitations on, and permitting for, the possession, transfer, sale, barter, trade, shipment, and removal from this State of native reptile and amphibian species.

A Notice of Drafting for this regulation was published on September 25, 2020 in the *South Carolina State Register*, Volume 44, Issue No. 9.

# Instructions:

Amend Regulation 123-151.1 as indicated below and add Regulations 123-151.3 and 123-151.4 as included below. Included are specific changes, deletions and additions. Unless specifically listed as a change, all other existing regulations remain intact.

123-151.1. Regulations for Spotted Turtle.

- A. delete stricken text and insert new text as indicated
  - 1. delete stricken text and insert new text as indicated
- B.1. delete stricken text and insert new text as indicated
- B.2. delete stricken text and insert new text as indicated and new (a.) a. insert text as indicated
- B.3. delete stricken text and insert new text as indicated
- B.4. delete stricken text and insert new text as indicated a.-c. delete
- B.5.insert new (5.), add text as indicated
  - a. add new (a.) insert text as indicated
  - b. add new (b.) insert text as indicated
  - c. add new (c.) insert text as indicated
  - d. add new (d.) insert text as indicated
  - e. add new (e.) insert text as indicated
- C.1. delete stricken text and insert new text as indicated

a.-d. delete

C.2. insert new (2.) add text as indicated

D. delete stricken text and insert new text as indicated

123-151.3. add new 123-151.3 and insert text as indicated

123-151.4. add new 123-151.4 and insert text as indicated

Text:

#### ARTICLE 5 NON-GAME AND ENDANGERED SPECIES

123-151.1. Regulations for Spotted Turtle (*Clemmys guttata*).

A. Spotted Turtle Protection

1. A person shall not take, possess, transport, import, export, process, sell, purchase, offer for sale, trade, gift, barter, ship, or receive for shipment any spotted turtle (*Clemmys guttata*) without a permit from the Department.

B. Spotted Turtle Permits

1. No new permit for the possession of spotted turtles shall be issued by the Department unless for scientific and/or conservation purposes pursuant to Regulation 123-150, et seq. at the discretion of the Department.

2. Any person in possession of a Spotted Turtle Permit granted by the Department as of the adoption of this regulation has 90 days from the adoption of this regulation to register with the Department the current number of Spotted Turtles, both wild-caught and captive born, in their possession. Spotted turtles will be assigned a unique number and must be shell notched with the identification number provided by Department personnel.

a. Permit applicants will shell notch spotted turtles in their possession as prescribed by the Department with the Department issued identification numbers. Permit applicants must provide evidence of applied shell notches and signed affidavit confirming all individual turtles in their possession were shell notched as directed by the Department and that they understand the regulations as they pertain to spotted turtles. Upon completion, the Department will issue a permit for the registered spotted turtles.

3. Current permit holders as of the date of adoption of this regulation may not add additional spotted turtles to their collection or allow reproduction

4. Current permit holders' as of the date of adoption of this regulation permits are valid for five (5) years from the date of issue; however, upon completion and certification of marking, the Department will issue a new permit valid for 1 year. Subsequent permits will be valid for 1 year and may be renewed at the discretion of the Department.

5. The Department may set permit conditions consistent with the protection of spotted turtles. Permit conditions include but are not limited to:

a. Sale, purchase, trade, exchange, gift, or barter of any spotted turtles is prohibited.

b. No wild-caught spotted turtles may be collected.

c. All spotted turtles must be individually marked via shell notching with a unique identification number issued by the Department.

d. No unmarked spotted turtles may be possessed, unless covered by a scientific collection permit.

e. Reproduction of captive spotted turtles is prohibited unless authorized by the Department for scientific or conservation purposes. Offspring from unauthorized reproduction must be surrendered to the Department.

C. Permit Reporting Requirements

1. At the time of permit renewal, spotted turtle permit holders will report to the Department the number of wild-caught and captive-bred spotted turtles in their possession and provide evidence documenting the identification number indicated by shell notch.

2. Any death or disposition of a spotted turtle must be reported to the Department immediately.

D. The penalties for violation of this regulation are prescribed in Section 50-15-80. Each spotted turtle taken or possessed in violation of these regulations shall constitute a separate offense.

123-151.3. Exchange and Transfer for Certain Native Reptiles and Amphibians.

A. No native reptile or amphibian, including parts, products, eggs, and derivatives may be sold, purchased, traded, exchanged, bartered, exported or shipped, transferred and/or re-homed, except:

1. Transferring possession of a native reptile or amphibian to the Department or the Department's designated recipient. The circumstances of acceptance shall be at the Department's discretion.

2. Transferring possession of native reptiles or amphibians when lawfully possessed and transfer is specifically authorized pursuant to other applicable federal or state laws, including those in Title 50. With respect to S.C. Code Section 50-16-60 this exception shall not apply and the provisions of S.C. Code Section 50-15-15 and the associated regulations in 123-151.3 and 123-151.4 shall have priority concerning possession and transfer of reptiles and amphibians.

3. Zoos and Aquaria maintaining accreditation or certification by the Association of Zoos and Aquariums, accredited research institutions under Institutional Care and Use Committees, and schools and educational displays open to the public may transfer and receive transferred reptiles and amphibians and must provide written notification to the Department specifying the number and species prior to transfer. Any such transfer may not be a sale, purchase, barter, or other commercial transaction. This exception also applies to the donor of a native reptile or amphibian to the above entities.

4. Venom or venom derivatives obtained or produced by a laboratory.

5. Any non-native phenotype (*i.e.* – "morph" or genetic mutation) of native snake species.

6. Any native wild phenotype of the following species reproduced in captivity and under 10 inches in total length, eastern garter snake (*Thamnophis sirtalis*), mole king snake (*Lampropeltis calligaster*), and eastern milksnake (*Lampropeltis triangulum*).

7. Any native wild phenotype of the following species reproduced in captivity and under 20 inches in total length, corn snake (*Pantherophis guttatus*), rat snake (*Pantherophis sp.*), and eastern king snake (*Lampropeltis getula*)

8. Any native wild phenotype of the following species reproduced in captivity and, or under 24 inches in total length, pine snake (*Pituophis melanoleucus*).

9. The yellow-bellied slider (*Trachemys scripta*) species and the common snapping turtle (*Chelydra serpentina*) species if these turtles were taken from a) a permitted aquaculture facility or b) a private pond pursuant to a permit issued by the Department at the request of the owner or owner's agent. Any person transporting more than five yellow-bellied sliders (*Trachemys scripta*) species or common snapping turtle (*Chelydra serpentina*) species must be in possession of a permit pursuant to which the turtles were taken or acquired. A person selling, offering to sell, or purchasing these species must have documentation from the aquaculture facility or permitted private pond as to the origin of the turtles.

10. American alligators (*Alligator mississippiensis*), alligator eggs, alligator parts, and alligator products, while subject to regulation under other provisions of Title 50.

11. Bull Frogs Lithobates (Rana) catesbeianus.

12. Native reptiles and amphibians may be transferred to department-permitted wildlife rehabilitators for the purpose of rehabilitation and release. Any transfer may not be a sale, purchase, barter, or other commercial transaction. Wildlife rehabilitators may be permitted by the Department by demonstrating the following:

a. All captive reptiles and amphibians must receive proper care to ensure:

i. appropriate bedding, cover, temperature regulation, and secure shelter;

ii. potable water is accessible at all times or sufficient to meet daily requirements;

iii. food of a quantity and nutritive value to meet normal requirements; and

iv. an effective program for the control of diseases, parasites, and pests is established and maintained.

b. Any permitted wildlife rehabilitator must show proof of veterinary care either:

i. by being a licensed veterinarian; or

ii. with a letter from the treating or consulting veterinarian, or veterinary practice, listing the permit holder and those species for which the veterinary practice will provide treatment or consultation.

c. Providing an annual report documenting all reptiles and amphibians transferred to the permitted individual or facility and from the permitted individual or facility and will describe the final disposition of each individual.

13. Native American Indian tribes recognized Federally or by the State of South Carolina's Commission for Minority Affairs, pursuant to S.C. Code Section 1-31-60, and their members may transfer possession of parts

of dead native reptiles when such parts are or will be incorporated in Native American cultural items and religious items, including but not limited to regalia, decorative attire, religious items, and musical instruments. This exception does not apply to live animals.

B. An otherwise lawful collection of native reptiles or amphibians may be exported from the State of South Carolina if an export permit is first obtained from the Department. Export permits are only available when an individual or legal entity is permanently relocating to another state.

C. Temporary export permits for native reptiles and amphibians may be granted at the discretion of the Department for the purposes of education, rehabilitation, and conservation where the animals will return to their state of origin.

D. Any state endangered or threatened and in need of management species are subject to the protections provided by S.C. Code Sections 50-15-10, *et seq.* and shall not be possessed or transferred except by permit issued by the Department.

E. The penalties for violation of this regulation are prescribed in S.C. Code Section 50-15-80.

123-151.4. Possession Limits for Certain Native Reptiles and Amphibians.

A. A person shall not possess any species listed as endangered or threatened and in need of management pursuant to S.C. Code Sections 50-15-10, *et seq.* except by permit issued by the Department.

B. A person shall not possess more than 10 native turtles in aggregate.

C. Any person in possession of more than 10 native turtles and in excess of the established possession limits as of September 28, 2020 has 90 days from September 28, 2020 to register with the Department the current number by species of native turtles, both wild-caught and captive born, in their possession. No additional turtles may be acquired until such time as the number of turtles in possession is below the limit set in regulation.

D. A person shall not possess more than 2 eastern box turtles (*Terrapene carolina*). Any person in possession of eastern box turtles in excess of the established possession limits as of September 28, 2020 has 90 days from September 28, 2020 to register with the Department the current number of eastern box turtles, both wild-caught and captive born, in their possession. No new turtles may be acquired until such time as the number of turtles in possession is below the limit set in regulation. Registered turtles will be assigned a unique identification number and must be shell notched with the identification number provided.

1. Permit applicants will shell notch turtles in their possession as prescribed by the Department with the Department issued identification numbers. Permit applicants must provide evidence of applied shell notches and signed affidavit confirming all individual turtles in their possession were shell notched as directed by the Department and that they understand the regulations as they pertain to eastern box turtles. Upon completion, the Department will issue a permit for the registered box turtles.

2. Box turtle permit holders will be required to submit an annual report on the status and number of registered box turtles on a Department provided form.

E. A person shall not possess more than 2 diamondback terrapins (*Malaclemys terrapin*). This provision does not prohibit the incidental catch of diamondback terrapins by persons engaged in a lawful fishery when the terrapins are returned immediately to the water.

F. A person shall not possess more than 5 turtles total from any of the following species/subspecies: Florida cooter (*Pseudemys floridana*), river cooter (*Pseudemys concinna*), chicken turtle (*Deirochelys reticularia*), eastern painted turtle (*Chrysemys picta*), spiny softshell turtle (*Apalone spinifera*), Florida softshell turtle (*Apalone ferox*), eastern mud turtle (*Kinosternon subrubrum*), striped mud turtle (*Kinosternon bauri*), common musk turtle (*Sternotherus odoratus*), yellow-bellied slider (*Trachemys scripta*) and common snapping turtle (*Chelydra serpentina*). The above limit does not apply to the lawful possession of yellow-bellied slider (*Trachemys scripta*) species pursuant to Regulation 123-151.3.

G. The Department may issue scientific collection permits as described in Regulation 123-150.3 in excess of the above limits for scientific and conservation purposes.

H. Zoos and Aquaria maintaining accreditation or certification by the Association of Zoos and Aquariums, accredited research institutions under Institutional Care and Use Committees, schools and educational displays open to the public, and Department permitted wildlife rehabilitators may request a permit to exceed the above listed possession limits at the discretion of the Department.

I. Pursuant to S.C. Code Section 50-15-15(B), no native reptiles or amphibians may be possessed or transferred pursuant to S.C. Code Section 50-16-60 except as provided in Regulations 123-151.3 and 123-151.4. J. The penalties for violation of this regulation are prescribed in S.C. Code Section 50-15-80.

### **Fiscal Impact Statement:**

The amendment of Regulations 123-151 will result in limited fiscal impact. These regulations decrease exploitation of wild collected native reptiles and amphibians while allowing educational, rehabilitation, and research to continue. While the sale of wild collected native species will be curtailed, sales tax generation through the sale of a number of species of captive produced reptiles important to the trade and associated business licensing will continue and should provide an increased demand for these specimens that are legally produced.

## **Statement of Rationale:**

Rationale for the formulation of these regulations is based on over 70 years of experience by SCDNR in managing wildlife populations. These regulations have been developed with the input of staff, professional biologists, members of the public, and an array of stakeholders. These regulations have been circulated in draft form to stakeholders since late 2019 and incorporate many of the comments and suggestions that have been provided.

### Document No. 5017 DEPARTMENT OF NATURAL RESOURCES CHAPTER 123

### Statutory Authority: 1976 Code Sections 50-21-610 and 50-21-710

123-12. Orange Canal, French Quarter Creek—Restriction of Watercraft.

123-13. Saluda Lake (Jerry's Cove)—Restriction of Watercraft.

123-15. Ashepoo River.

123-19. No Wake Zones.

123-19.1. Lake Moultrie (Lions Beach)-Restriction of Watercraft.

123-19.2. Restrictions on Use of Watercraft in Certain Portions of Waters of Lake Murray, Lexington County, South Carolina.

123-19.3. Restrictions on Use of Watercraft in Certain Portions of Waters of Shem Creek, Charleston County, South Carolina.

123-19.4. Restrictions on Use of Watercraft in Certain Portions of Waters of Lake Murray, Lexington County, South Carolina.

123-19.6. Restrictions on Use of Watercraft in Certain Portions of the Waters of Lake Marion, Orangeburg County, South Carolina.

123-19.7. Restrictions on the Use of Watercraft in the Waters of a Certain Portion of Goose Creek, Berkeley County, South Carolina.

123-19.8. Restrictions on Use of Watercraft in a Certain Portion of the Water of Wappoo Creek, Charleston County, South Carolina.

123-19.9. Modification of a No Wake Zone in the Lake Murray Marina Area, Lake Murray, Richland County, South Carolina.

123-19.10. Restrictions on the Use of Watercraft in Certain Portions of the Waters of Black River, Williamsburg County, South Carolina.

123-19.11. Restrictions as to Use of Watercraft Within Certain Areas of South Carolina Electric & Gas Company Public Park No. 1.

123-19.12. Restrictions as to Use of Watercraft Within Boat Launching Ramp at Dreher Island State Park.

123-19.13. Restrictions as to Use of Watercraft in Certain Areas of Durham Creek.

123-19.14. Restriction as to Use of Watercraft Within Swimming Area of Dreher Island State Park.

123-19.15. Restrictions as to Use of Watercraft Within Certain Areas of South Carolina Electric & Gas Company Public Park No. 3.

123-19.16. Restrictions on Use of Watercraft in Certain Portions of the Waters of Lake Marion, Clarendon County, South Carolina.

123-19.17. Restrictions on Use of Watercraft in Certain Portion of Waters of Ashley River, Charleston County, South Carolina.

123-19.18. Restrictions on Use of Watercraft in Certain Portion of Waters of Lake Wylie, Near Commodore Yacht Club, York County, South Carolina.

123-19.19. Restrictions on Use of Watercraft in Certain Portion of Waters of Lake Keowee called Lake Keowee Marina, Oconee County, South Carolina.

123-19.20. Restrictions on Use of Watercraft on Certain Portion of Wappoo Creek, Charleston County, South Carolina.

123-19.21. Restrictions on Use of Watercraft in Certain Portion of Lake Russell and Savannah River, Abbeville County, South Carolina.

123-19.22. Restrictions on Use of Watercraft in Certain Portion of Kiawah River, Charleston, South Carolina.

123-19.23. Pack's Landing Area of Waters of Lake Marion, Sumter County, Declared No Wake Zone.

123-19.24. Restrictions on Use of Watercraft in Certain Portion of Waters of Lake Marion, Orangeburg County, South Carolina.

123-19.25. Restrictions on Use of Watercraft in Certain Portion of Waters on Lake Keowee, Pickens County, South Carolina.

123-19.26. Restrictions on Use of Watercraft in Certain Portion of Lake Murray, Newberry County, South Carolina.

123-19.27. Restrictions on Use of Watercraft in Certain Portions of Scott Creek, Colleton County, South Carolina. 123-19.28. Restrictions on Use of Watercraft in Certain Portion of Battery Creek, Beaufort County, South Carolina 123-19.29. Restriction on Use of Watercraft in Certain Portion of Parsonage Creek, Murrells Inlet, Georgetown County, South Carolina.

123-19.30. Restriction on Use of Watercraft in Certain Portion of Morgan Creek, Charleston County, South Carolina.

123-19.31. Restrictions on Use of Watercraft in a Certain Portion of Stono River, Charleston County, South Carolina.

# Synopsis:

The South Carolina Department of Natural Resources (SCDNR) proposes to repeal Regulations 123-12, 123-13, 123-15, 123-19, 123-19.1, 123-19.2, 123-19.3, 123-19.4, 123-19.6, 123-19.7, 123-19.8, 123-19.9, 123-19.10, 123-19.11, 123-19.12, 123-19.13, 123-19.14, 123-19.15, 123-19.16, 123-19.17, 123-19.18, 123-19.19, 123-19.20, 123-19.21, 123-19.22, 123-19.23, 123-19.24, 123-19.25, 123-19.26, 123-19.27, 123-19.28, 123-19.29, 123-19.30, and 123-19.31, all relating to restrictions on the use of watercraft in certain areas and no wake zones. These regulations are no longer necessary due to the ability of the Department to restrict the use of watercraft in these areas through the use of regulatory markers pursuant to 1976 Code Section 50-21-710. Therefore, SCDNR proposes to repeal them in their entirety. These changes were approved by the Natural Resources Board on August 20, 2020.

The Notice of Drafting was published in the State Register on October 23, 2020.

# Instructions:

Repeal Regulations 123-12, 123-13, 123-15, 123-19, 123-19.1, 123-19.2, 123-19.3, 123-19.4, 123-19.6, 123-19.7, 123-19.8, 123-19.9, 123-19.10, 123-19.11, 123-19.12, 123-19.13, 123-19.14, 123-19.15, 123-19.16, 123-19.17, 123-19.18, 123-19.19, 123-19.20, 123-19.21, 123-19.22, 123-19.23, 123-19.24, 123-19.25, 123-19.26, 123-19.27, 123-19.28, 123-19.29, 123-19.30, and 123-19.31 as printed below.

# Text:

- 123-12. Repealed.
- 123-13. Repealed.
- 123-15. Repealed.
- 123-19. Repealed.
- 123-19.1. Repealed.
- 123-19.2. Repealed.
- 123-19.3. Repealed.
- 123-19.4. Repealed.
- 123-19.6. Repealed.
- 123-19.7. Repealed.
- 123-19.8. Repealed.
- 123-19.9. Repealed.
- 123-19.10. Repealed.
- 123-19.11. Repealed.
- 123-19.12. Repealed.
- 123-19.13. Repealed.
- 123-19.14. Repealed.
- 123-19.15. Repealed.
- 123-19.16. Repealed.
- 123-19.17. Repealed.
- 123-19.18. Repealed.
- 123-19.19. Repealed.
- 123-19.20. Repealed.
- 123-19.21. Repealed.
- 123-19.22. Repealed.
- 123-19.23. Repealed.

123-19.24. Repealed.
123-19.25. Repealed.
123-19.26. Repealed.
123-19.27. Repealed.
123-19.28. Repealed.
123-19.29. Repealed.
123-19.30. Repealed.
123-19.31. Repealed.

# **Fiscal Impact Statement:**

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

### **Statement of Rationale:**

Regulations 123-12, 123-13, 123-15, 123-19, 123-19.1, 123-19.2, 123-19.3, 123-19.4, 123-19.6, 123-19.7, 123-19.8, 123-19.9, 123-19.10, 123-19.11, 123-19.12, 123-19.13, 123-19.14, 123-19.15, 123-19.16, 123-19.17, 123-19.18, 123-19.19, 123-19.20, 123-19.21, 123-19.22, 123-19.23, 123-19.24, 123-19.25, 123-19.26, 123-19.27, 123-19.28, 123-19.29, 123-19.30, and 123-19.31, all relating to restrictions on the use of watercraft in certain areas and no wake zones, are no longer necessary due to the ability of the Department to restrict the use of watercraft in these areas through the use of regulatory markers pursuant to 1976 Code Section 50-21-710. These regulations should be repealed.

# Document No. 5019 DEPARTMENT OF NATURAL RESOURCES CHAPTER 123

Statutory Authority: 1976 Code Sections 50-15-30, 50-15-40, 50-15-50, and 50-15-70

123-153. Sea Turtle Protection.

# Synopsis:

Regulation 123-153 is no longer necessary due to the language and effect of the regulation being codified in Sections 50-5-515 and 50-5-765 of the 1976 Code of Laws, as amended. Therefore, SCDNR proposes to repeal Regulation 123-153 in its entirety. This change was approved by the Natural Resources Board on August 20, 2020.

The Notice of Drafting was published in the State Register on October 23, 2020.

### Instructions:

Repeal Regulation 123-153. (Sea Turtle Protection) as printed below.

Text:

123-153. Repealed.

# **Fiscal Impact Statement:**

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

# **Statement of Rationale:**

Regulation 123-153 is no longer necessary due to the language and effect of the regulation being codified in Sections 50-5-515 and 50-5-765 of the 1976 Code of Laws, as amended. The regulation should be repealed.

### Document No. 5011 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, 50-11-520, 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.

# **Synopsis:**

These regulations amend Chapter 123-40 Wildlife Management Area Regulations and 123-51 Turkey Hunting Rules and Seasons in order to set seasons, bag limits and methods of hunting and taking of wildlife on existing Wildlife Management Areas and revise turkey regulations on properties in the WMA program.

A Notice of Drafting for this regulation was published on September 25, 2020, in the South Carolina State Register, Volume 44, Issue No. 9.

# Instructions:

Amend Regulations 123-40 and 123-51 as indicated below. Included are specific changes, deletions and additions. Unless specifically listed as a change, all other existing regulations remain intact and unchanged.

123-40. Wildlife Management Area Regulations.

- B. Game Zone 2
  - 6.(e)(i) Delete stricken text and insert new text as indicated (e)(ii) Insert new text as indicated
  - 12.(c)(i) Delete stricken text and insert new text as indicated
  - (c)(ii) Insert new text as indicated
- C. Game Zone 3
  - 4.(b)(i) Delete stricken text and insert new text as indicated (b)(ii) Insert new text as indicated
  - 6.(d)(iv)(1) Delete stricken text and insert new text as indicated (f)(iv)(1) Delete stricken text and insert new text as indicated
  - 7.(c)(ii)(1) Delete stricken text and insert new text as indicated
    - (c)(ii)(2) Insert new text as indicated
  - 8.(f)(i) Delete stricken text and insert new text as indicated
    - (f)(ii) Insert new text as indicated

9.(f)(i) Delete stricken text and insert new text as indicated

- 11.(e)(i) Delete stricken text and insert new text as indicated (e)(ii) Insert new text as indicated
- 13.(b)(i)(1) Delete stricken text and insert new text as indicated(e)(i) Delete stricken text
- 14.(d)(i) Delete stricken text and insert new text as indicated (d)(ii) Insert new text as indicated
- 16.(d)(i) Delete stricken text and insert new text as indicated (d)(ii) Insert new text as indicated
- 18.(g)(i) Delete stricken text and insert new text as indicated
- 20.(b)(i) Delete stricken text and insert new text as indicated (b)(ii) Insert new text as indicated
- 22.(g)(i) Delete stricken text and insert new text as indicated

# D. Game Zone 4

- 5.(d)(i) Delete stricken text and insert new text as indicated (d)(ii) Insert new text as indicated
- 6.Insert new (h). Insert new text as indicated
  - (h)(i) Insert new text as indicated
  - (i)(i) Delete stricken text and insert new text as indicated
  - (i)(ii) Insert new text as indicated
- 7.Insert new (g). Insert new text as indicated
  - (g)(i) Insert new text as indicated
  - (h)(i) Delete stricken text and insert new text as indicated
  - (h)(ii) Insert new text as indicated

8.Insert new (g). Insert new text as indicated

- (g)(i) Insert new text as indicated
- (h)(i) Delete stricken text and insert new text as indicated
- (h)(ii) Insert new text as indicated
- 9.(c)(i) Delete stricken text and insert new text as indicated
- (c)(ii) Insert new text as indicated
- 10.(a) Delete
  - (b) Change "b" to new "a" to accommodate change above
  - (a)(i) Delete stricken text and insert new text as indicated
  - (c) Delete
  - (c)(i) Delete
  - (b) Insert new "b" to accommodate changes above. Insert new text as indicated
  - (b)(i) Insert new text as indicated
  - (b)(ii) Insert new text as indicated
  - (d) Change "d" to "c" to accommodate changes above
  - (c)(ii) Delete stricken text as indicated
  - (e) Delete
  - (e)(i) Delete
  - (e)(ii) Delete
  - (e)(iii) Delete
  - (f) Change "f" to "d" to accommodate changes above
  - (d)(i) Delete stricken text and insert new text as indicated
  - (d)(ii) Insert new text as indicated
  - (d) Delete stricken text and insert new text as indicated
  - (d)(i) Delete stricken text
  - (d)(ii) Delete stricken text
  - (d)(iii) Delete stricken text
  - (e) Insert new section "e". Insert new text as indicated
  - (e)(i) Insert new text as indicated

- (g) Change "g" to "f" to accommodate changes above 13.(a) Delete
  - (b) Change "b" to "a" to accommodate change above
  - (c) Change "c" to "b" to accommodate change above
  - (b)(i) Delete stricken text and insert new text as indicated

(b)(ii) Delete stricken text and insert new text as indicated
(d) Change "d" to "c" to accommodate changes above
(c)(i) Delete stricken text and insert new text as indicated
(e) Change "e" to "d" to accommodate changes above
(d)(i) Delete stricken text and insert new text as indicated
15.(a)(i) Delete stricken text and insert new text as indicated

- (b)(i) Delete stricken text and insert new text as indicated
- (e)(i) Delete stricken text and insert new text as indicated
- (e)(ii) Insert new section "ii" with text as indicated
- (e)(iii) Delete stricken text and insert new text as indicated
- 18.(b)(i) Delete stricken text and insert new text as indicated(b)(ii) Insert new text as indicated
- 19.(e)(i) Delete stricken text and insert new text as indicated (e)(ii) Insert new text as indicated
- 20.(f)(i) Delete stricken text and insert new text as indicated (f)(ii) Insert new text as indicated

Weapons

3.6 Delete stricken text as indicated

Waterfowl and Dove Regulaitons

10.10 Insert new text as indicated

# Public Bird Dog Training Area

12.2 Delete stricken text as indicated

123-51. Turkey Hunting Rules and Seasons.

- C.10.(a) Delete stricken text and insert new text as indicated
  - B.10.(c) Delete stricken text
  - 12.(c) Delete stricken text
  - 14.(c) Delete stricken text

# 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) 1<sup>st</sup> and 2<sup>nd</sup> Sat. in Dec., 3<sup>rd</sup> and 4<sup>th</sup> Wed. in Dec., 1<sup>st</sup> and 2<sup>nd</sup> 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
- (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) Thanksgiving Day Mar. 1
  - (ii) Game Zone 2 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) Thanksgiving Day Mar. 1
  - (ii) Game Zone 2 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
  - (i) 1<sup>st</sup> Fri. and Sat. in Oct
- (c) Primitive Weapons Deer Hunts (no buckshot).
- (i) 2<sup>nd</sup> Fri. and Ŝat. in Oct.
- (d) Still Gun Hunts for Deer
  - (i) 3<sup>rd</sup> Fri. in Oct. Jan. 1, Fri., Sat. and Thanksgiving Day only except closed Dec. 25.
- (e) Raccoon and Opossum

(i) 3<sup>rd</sup> Sat. night in Oct. – Jan. 1, Sat. nights only, except closed Dec. 25, 1<sup>st</sup> 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) 1<sup>st</sup> 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) 3<sup>rd</sup> 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) Thanksgiving Day Mar. 1
    - (ii) Game Zone 3 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) 3<sup>rd</sup> full week in Mar., 3<sup>rd</sup> 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)  $1^{st}$  Sat. in Nov.,  $1^{st}$  Sat. in Dec.

(a) 2 deer per day, buck only

(iv) Youth Only Deer Hunt with Dogs

(1)  $2^{nd}$  Sat. 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 3<sup>rd</sup> Sat. in Nov. and 2<sup>nd</sup> Sat. in Oct., first 2 days excluding Sunday after Dec. 25

(a) 2 deer per day, buck only

(2)  $2^{nd}$  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)  $3^{rd}$  Saturday 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 2<sup>nd</sup> Sat. in Oct., Fri. before the 4<sup>th</sup> Sat. in Nov., 3<sup>rd</sup> day excluding Sunday after Dec. 25

(a) 2 deer per day, buck only

(2)  $2^{nd}$  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.

(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) 2<sup>nd</sup> Fri. and Sat. in Sept., Wed. and Thurs. before the 4<sup>th</sup> Sat. in Oct., 1<sup>st</sup> Fri. in Dec.

(a) 2 deer per day, buck only

(2)  $2^{nd}$  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)  $3^{rd}$  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) Thanksgiving Day Mar. 1
  - (2) Game Zone 3 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) Thanksgiving Day Mar. 1
  - (ii) Game Zone 3 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) 1<sup>st</sup> Thurs. – Sat. in Mar., 2<sup>nd</sup> Thurs. – Sat. in May, 4<sup>th</sup> Thurs. – Sat. in June, 4<sup>th</sup> Thurs. – Sat. in July, and last Thurs. - Sat. in August

- (d) Quail Hunts
  - (i) 2<sup>nd</sup> and 4<sup>th</sup> Wed. in Jan., 2<sup>nd</sup> and 4<sup>th</sup> Sat. in Jan., 1<sup>st</sup> and 3<sup>rd</sup> Sat. in Feb., 1<sup>st</sup> and 3<sup>rd</sup> 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) Thanksgiving Day through the following Saturday, 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) 1<sup>st</sup> Thurs. Sat. in March
- (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) 1<sup>st</sup> Thurs. Sat. in March
- (e) Small Game (no fox squirrels)
  - (i) Thanksgiving Day Mar. 1
  - (ii) Game Zone 3 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

(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 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) 2<sup>nd</sup> 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) Thanksgiving Day – Mar. 1

(ii) Game Zone 3 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) Thanksgiving Day – Mar. 1

(ii) Game Zone 3 bag limits

**17. Canal WMA** 

(a) Ouail 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) 1<sup>st</sup> Thurs. – Sat. in Mar., 2<sup>nd</sup> Thurs. – Sat. in May, 4<sup>th</sup> Thurs. – Sat. in June, 4<sup>th</sup> Thurs. – Sat. in July, and last Thurs. - Sat. in August

(e) Ouail Hunts

(i) 2<sup>nd</sup> and 4<sup>th</sup> Wed. in Jan., 2<sup>nd</sup> and 4<sup>th</sup> Sat. in Jan., 1<sup>st</sup> and 3<sup>rd</sup> Sat. in Feb., 1<sup>st</sup> and 3<sup>rd</sup> 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) Thanksgiving Day through the following Saturday, 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) Thanksgiving Day Mar. 1
  - (ii) Game Zone 3 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) 1<sup>st</sup> Thurs. – Sat. in Mar., 2<sup>nd</sup> Thurs. – Sat. in May, 4<sup>th</sup> Thurs. – Sat. in June, 4<sup>th</sup> Thurs. – Sat. in July, and last Thurs. - Sat. in August.

(e) Quail Hunts

(i) 2<sup>nd</sup> and 4<sup>th</sup> Wed. in Jan., 2<sup>nd</sup> and 4<sup>th</sup> Sat. in Jan., 1<sup>st</sup> and 3<sup>rd</sup> Sat. in Feb., 1<sup>st</sup> and 3<sup>rd</sup> 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) Thanksgiving Day through the following Saturday, 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 ½ 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
  - (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) 3<sup>rd</sup> full week in Mar. and 3<sup>rd</sup> 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, 1<sup>st</sup> & 3<sup>rd</sup> Wed. in December, 1<sup>st</sup> & 3<sup>rd</sup> Sat. in December, 2<sup>nd</sup> 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) Thanksgiving Day – Mar. 1

(ii) Game Zone 4 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)  $3^{rd}$  full week in Mar. and  $3^{rd}$  full week in May

(h) Raccoon and opossum

(i) Game Zone 4 seasons and bag limits

(i) Other Small Game (no fox squirrels)

- (i) Thanksgiving Day Mar. 1
- (ii) Game Zone 4 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) 2<sup>nd</sup> full week in Mar.
- (g) Raccoon and opossum
- (i) Game Zone 4 seasons and bag limits
- (h) Other Small Game (no fox squirrels)
  - (i) Thanksgiving Day Mar. 1
  - (ii) Game Zone 4 bag limits
- (i)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) 3<sup>rd</sup> full week in Mar. and 3<sup>rd</sup> full week in May
  - (g) Raccoon and opossum
  - (i) Game Zone 4 seasons and bag limits
  - (h) Other Small Game (no fox squirrels)
    - (i) Thanksgiving Day Mar. 1
    - (ii) Game Zone 4 bag limits

## 9. Longleaf Pine Heritage Preserve WMA

- (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) Thanksgiving Day Mar. 1
  - (ii) Game Zone 4 bag limits

## 10. Manchester State Forest WMA

- (a) Archery Deer Hunts
  - (i) September 15-30
- (b) Still Gun Hunts for Deer
- (i) October 1-January 1 except during scheduled dog drive hunts
- (ii) No man drives
- (c) Deer Hunts with Dogs

(i) Clubs selected by drawing.

(ii) Last Friday and Saturday in October, 2<sup>nd</sup> Friday and Saturday in November, 1<sup>st</sup> Saturday in December.
 (d) Small Game

(i) Thanksgiving Day – Mar. 1

- (ii) Game Zone 4 bag limits
- (e) Still Gun Hunts for Hogs

(i) First full week of March

(f) Hog Hunts with Dogs

(i)  $2^{nd}$  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) 2<sup>nd</sup> full week in Mar.

(e) Small Game (no fox squirrels)

(i) Game Zone 4 seasons and bag limits apply.

### 13. Oak Lea WMA

- (a) Archery Deer Hunts
  - (i) Sept. 15 30
- (b) Still Gun Hunts for Deer
  - (i) October 1-January 1
  - (ii) No man drives
- (c) Small Game (except quail)
  - (i) Thanksgiving Day Mar. 1 except no other small game hunting during scheduled quail hunts
- (ii) Game Zone 4 bag limits

## (d) Quail

(i) 2nd and 4<sup>th</sup> Wednesdays in January, 2<sup>nd</sup> and 4<sup>th</sup>Saturdays in January, 1<sup>st</sup> and 3<sup>rd</sup> Wednesdays in February, 1<sup>st</sup> and 3<sup>rd</sup> Saturdays in February.

(ii) Game Zone 4 bag limits

(iii) Shooting hours end 30 minutes prior to official sunset

## 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) 2<sup>nd</sup> 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 Sept. 30
- (b) Still Gun Hunts for Deer
  - (i) Oct. 1 Jan. 1

(c) Still Hog Hunts (i) First full week in March (d) Hog Hunts with Dogs (i) 2<sup>nd</sup> full week in March (e) Small Game (no fox squirrels, no fox hunting) (i) Thanksgiving Day – Mar. 1 (ii) Game Zone 4 bag limits (iii) 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) 2<sup>nd</sup> 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) 2<sup>nd</sup> 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) Thanksgiving Day – Mar. 1 (ii) Game Zone 4 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 (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) Thanksgiving Day – Mar. 1 (ii) Game Zone 4 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)  $2^{nd}$  full week in Mar.

- (f) Small Game (no fox squirrels)
  - (i) Thanksgiving Day Mar. 1
  - (ii) Game Zone 4 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
  - (1) 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.

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 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 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.

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 and the entire week of Thanksgiving, Sundays excluded.

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
    - (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.

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:

#### 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  $\hat{3}$  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 26. 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) Saturdays only from April 1 – April 30 (b) Bag limit 1 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 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.  $1 - \text{April } 3\overline{0}$ (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 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 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 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 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.

### **Fiscal Impact Statement:**

The amendment of Regulations 123-40 and 123-51 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 and public hunting opportunities 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. 4969 **PUBLIC SERVICE COMMISSION** CHAPTER 103 Statutory Authority: 1976 Code Section 58-3-140

#### 103-823.2. Protection of Customer Data.

#### **Synopsis:**

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." 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."

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 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.

The Notice of Drafting regarding this regulation was published on January 24, 2020, in the *State Register, Volume* 44, *Issue 1*.

## Instructions:

Print the new regulation as shown below.

Text:

103-823.2. Protection of Customer Data.

A. Definitions of Key Terms.

(1) Aggregated Data. The term "aggregated data" means customer data, alone or in combination with non-customer data, resulting from processing (e.g., average of a group of customers) or the compilation of customer data from which all unique identifiers have been removed.

(2) Commission. The term "Commission" means the Public Service Commission of South Carolina.

(3) Customer Data. For purposes of this section, "customer data" means data about a current or former customer's electric, natural gas, water, or wastewater usage; information that is obtained as part of an advanced metering infrastructure; and personal identifying information, as defined in S.C. Code Ann. Section 39-1-90(D)(3) and S.C. Code Ann. Section 16-13-510(D), as may be amended, including the name, account number, billing history, address of the customer, email address, telephone number, and fax number, in the possession of electric, natural gas, water or wastewater public utilities.

Also, "customer data" means non-public retail customer-specific data or information that has been obtained or compiled by a public utility in connection with the supplying of Commission-regulated electric, natural gas, waste, or wastewater services. Customer data includes data or information that is: (a) collected from the meter, by the public utility, and stored in its data systems for billing purposes; (b) customer-specific usage information for regulated public utility service; (c) about the customer's participation in regulated public utility programs, such as renewable energy, demand-side management, load management, or energy efficiency programs; or (d) any other non-public information specific to a customer that is related to electricity consumption, load profile, or billing history.

(4) Non-Public Utility Operations. The term "non-public utility operations" means all business enterprises engaged in by a public utility that are not regulated by the Commission or otherwise subject to public utility regulation at the state or federal level.

(5) Primary Purpose. The term "primary purpose" means the acquisition, storage or maintenance of customer data by a public utility, as defined by Title 58 of the South Carolina Code, which provides services pursuant to state law, federal law, or Order of the Commission.

(6) Secondary Commercial Purpose. The term "secondary commercial purpose" means any purpose that is not a primary purpose.

(7) Third Party. The term "third party" means a person who is not the customer, nor any of the following: (i) an agent of the customer designated by the customer with the public utility to act on the customer's behalf; (ii) a regulated public utility serving the customer; or (iii) a contracted agent of the public utility. For purposes of this regulation, "third party" includes any non-public utility operations or affiliate of the public utility.

(8) Unique Identifier. The term "unique identifier" means a customer's name, account number, meter number, mailing address, telephone number, or email address.

B. Aggregated data which has been aggregated to a degree that individual customer information is not identifiable shall not be considered "customer data."

C. Customer Consent.

(1) A public utility shall not share, disclose, or otherwise make accessible to any third party a customer's data, except as provided in subsection (F) or upon the consent of the customer.

(2) A public utility shall not sell a customer's data for any purpose without the consent of the customer.

(3) The public utility or its contractors shall not provide an incentive or discount to the customer for accessing the customer's data without the prior consent of the customer.

(4) Before requesting a customer's consent for disclosure of customer data, a public utility shall be required to make a full disclosure to the customer of the nature and scope of the data proposed to be disclosed, the identity of the proposed recipient and the intended use of the data by the proposed recipient.

D. If a public utility contracts with a third party for a service that allows a customer to monitor the customer's usage, and that third party uses the data for a secondary commercial purpose, the contract between the public utility and the third party shall provide that the third party prominently discloses that secondary commercial purpose to the customer and secures the customer's consent to the use of his or her data for that secondary commercial purpose prior to the use of the data.

E. A public utility shall use reasonable security procedures and practices to protect a customer's unencrypted consumption data from unauthorized access, destruction, use, modification, disclosure, and to prohibit the use of the data for a secondary commercial purpose not related to the primary purpose of the contract without the customer's consent.

F. Exceptions to Sections A through E.

(1) This section shall not preclude a public utility from disclosing aggregated data for analysis, reporting, or program management.

(2) This section shall not preclude a public utility from disclosing customer data to a third party for system, grid, or operational needs, or the implementation of demand response, energy management, or energy efficiency programs, or for fraud prevention purposes, provided that the public utility has required by contract that the third party implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal identifying information contained in the customer data from unauthorized access, destruction, use, modification, or disclosure, and prohibits the use of the data for a secondary commercial purpose not related to the primary purpose of the contract without the customer's prior consent to that use.

(3) This section shall not preclude a public utility from disclosing customer data in the course of its operations:

(a) Where necessary to provide safe and reliable service;

(b) As required or permitted under state or federal law or regulation or by an Order of the Commission;

(c) Including disclosures pursuant to and permitted by the Fair Credit Reporting Act Section 1681 et seq., Title 15 of the United States Code including for purposes of furnishing account and payment history information to and procuring consumer reports from a consumer reporting agency as defined by 15 U.S.C. Section 1681;

(d) Upon valid request from law enforcement;

(e) To respond to an emergency;

(f) To respond to service interruption reports or service quality issues;

(g) To restore power after a storm or other disruption;

(h) To respond to customers' requests for line locations, installation or repair of streetlights, support for construction or tree trimming/removal by customer, or other service orders or requests;

(i) To inform customers as to tree trimming/vegetation control plans and schedules;

(j) To respond to claims for property damage by the customer resulting from tree trimming/vegetation control or public utility construction;

(k) To respond to customer complaints;

(l) To protect the health or welfare of the customer or to prevent damage to the customer's property;

(m) To assist the customer in obtaining assistance from social services, community action, or charitable agencies;

(n) To perform credit checks or review payment history where customer deposits might otherwise be required or retained;

(o) Where circumstances require prompt disclosure of specific information to protect customers' interests or meet customers' reasonable customer service expectations; or

(p) This section shall not preclude a public utility from, in its provision of regulated public utility service, disclosing customer data to a third party, consistent with the public utility's most recently approved Code of Conduct, to the extent necessary for the third party to provide goods or services to the public utility and upon written agreement by that third party to protect the confidentiality of such customer data.

(4) Nothing in this section precludes the utility from advising a municipality when service is disconnected.

G. If a customer discloses or authorizes the utility to disclose his or her customer data to a third party, the public utility shall not be responsible for the security of that data, or its use or misuse.

H. Public Utility Guidelines.

(1) Each electrical, natural gas, water or wastewater public utility shall develop and seek Commission approval of guidelines for implementation of this section.

(2) The electrical, natural gas, water or wastewater public utility shall file its initial guidelines within 180 days of the effective date of this regulation for Commission approval. The guidelines should, at minimum, address the following:

(a) Customer Notice and Awareness – practices to explain policies and procedures to customers.

(b) Customer Choice and Consent – processes that allow the customer to control access to customer data including processes for customers to monitor, correct or limit the use of customer data.

(c) Customer Data Access – procedures for use of customer data, purpose for collection, limitations of use of customer data and processes for customer non-standard requests.

(d) Data Quality and Security Procedures and Measures – procedures for security and methods to aggregate or anonymize data.

(e) Public Utility Accountability and Auditing – reporting of unauthorized disclosures, training protocol for employees, periodic evaluations, self-enforcement procedures, and penalties.

(f) Frequency of Notice to Customers – practices and procedures to provide initial and annual notification of its privacy policy to customers.

(g) Due Diligence Exercised by Utility When Sharing Customer Data with Third Parties – practices, policies, and procedures when selecting the third party with whom the utility will share data so as to minimize unauthorized or inadvertent disclosure of customer data.

I. No Private Right of Action. This regulation shall be enforced by regulatory enforcement actions only. No private right of action for damages is created hereby.

J. Penalties. Failure to comply with this section is subject to any authority granted to the Commission by statute or regulation.

#### **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 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.

#### Document No. 4992 OFFICE OF REGULATORY STAFF CHAPTER 111 Statutory Authority: 1976 Code Sections 58-27-2620, 58-27-2630, 58-27-2640, and 58-27-2660

111-10 through 111-66. Lessors of Renewable Energy Facilities.

#### Synopsis:

The Office of Regulatory Staff proposes to add Chapter 111 to provide a consumer protection framework applicable to the lease of renewable energy generation facilities. South Carolina Code Section 58-27-2660(A)(1) provides that the Department of Consumer Affairs and the Office of Regulatory Staff develop such consumer protection regulations, which shall, at a minimum, include appropriate disclosures to be made by sellers and lessors.

Notice of Drafting was published in the State Register on December 27, 2019.

### **Instructions:**

Print new regulation as shown below.

Text:

#### CHAPTER 111 OFFICE OF REGULATORY STAFF Statutory Authority: 1976 Code Sections 58-27-2620, 58-27-2630, 58-27-2640, and 58-27-2660

### ARTICLE 1 LESSORS OF RENEWABLE ENERGY FACILITIES

## SUBARTICLE 1 GENERAL PROVISIONS

Reg.

111-10. Authorization of Rules.

111-11. Application of Rules.

111-12. Severability.

111-13. Definitions.

#### 111-10. Authorization of Rules.

A. Section 58-27-2660, Code of Laws of South Carolina, 2019, provides:

1. "The Office of Regulatory Staff and the Department of Consumer Affairs are directed to develop consumer protection regulations regarding the sale or lease of renewable energy generation facilities pursuant to the distributed energy resource program in Chapter 40 of this title. These regulations shall provide for the appropriate disclosure provided by sellers and lessors. Sellers must comply with Title 37. Nothing herein alters existing protections afforded by Title 37."; and

2. "The Office of Regulatory Staff is authorized to enforce any applicable consumer protection provision set forth in this title."

B. In accordance with the above provisions, and pursuant to South Carolina Code Sections 58-27-2620, 58-27-2630, 58-27-2640, ORS has adopted the following rules and regulations.

### 111-11. Application of Rules.

A. Jurisdiction. These rules shall apply to any person, firm, partnership, association, establishment or corporation (except any other exempt by South Carolina statutes), which is now or may hereafter become engaged as a Lessor of a renewable energy facility within the State of South Carolina pursuant to Title 58, Article 23 except where specifically exempt by statute.

B. Purpose. The rules are intended to define good practice. They are intended to insure adequate and reasonable consumer protections. The Lessor shall assist ORS in the implementation of these rules and regulations.

#### 111-12. Severability.

If any provision, or the application of any provision, of this Article is determined to be invalid, null, or void, such determination shall not affect or invalidate any other provision, or the application of any other provision, of this Article, and to this end, the provisions or the application of any of the provisions of this Article shall be deemed severable.

#### 111-13. Definitions.

The following words and terms, when used in these rules and regulations, shall have the meaning indicated below.

A. Customer. "Customer" means the person who is named on the retail electric provider's bill for the premises.

B. Lease Agreement. "Lease Agreement" means an agreement between a Customer and Lessor for the exclusive rights to use a renewable energy facility for a specified period of time in exchange for payment.

C. Lessee. "Lessee" means a customer subject to a Lease Agreement with a Lessor for the use of a renewable energy facility.

D. Lessor. "Lessor" means an entity that owns a renewable energy facility subject to any Lease Agreement.

E. Certificate. "Certificate" means the certificate of fit, willing, and able authorized to be issued under provisions of Title 58, Chapter 27, Article 23. Certificates shall be required of all entities operating as Lessors of renewable energy facilities within the State of South Carolina.

F. ORS. "ORS" means the South Carolina Office of Regulatory Staff.

G. Renewable energy facility. "Renewable energy facility" means any facility for the production of electrical energy that utilizes a renewable generation resource such as solar photovoltaic and solar thermal resources, wind resources, low-impact hydroelectric resources, geothermal resources, tidal and wave energy resources, recycling resources, hydrogen fuel derived from renewable resources, combined heat and power derived from renewable resources, and biomass resources.

H. Retail Electric Provider. "Retail Electric Provider" means an electrical utility as defined in Section 58-27-10 and also means other entities that provide retail electric service in South Carolina, but excluding electric cooperatives organized under the laws of a state other than South Carolina.

#### SUBARTICLE 2 APPLICATION FOR CERTIFICATE

Reg.

111-20. Application Required for Certificate.

111-21. Processing of Application.

111-22. Certificate.

111-20. Application Required for Certificate.

Any person, entity, business, or corporation desiring to operate in this State as a Lessor first shall file an application for a Certificate with ORS on forms to be furnished by ORS. All required information on the application forms must be correctly completed before filing of such application will be accepted.

111-21. Processing of Application.

Without good cause shown, any application for a Certificate submitted to ORS not in compliance with ORS's instructions, and any deficiencies thereof not corrected by the applicant within 90 days of submittal, may be rejected.

111-22. Certificate.

Upon ORS approval of the application, a numbered Certificate will be issued to the Lessor.

#### SUBARTICLE 3 OPERATIONS OF LESSORS

Reg.

111-30. Authority to Operate.

111-31. Operations of Lessors.

111-32. Requirements for Lease Agreements.

111-33. Requirements for Consumer Protection and Education.

111-34. Sale or Transfer of Certificate Prohibited.

111-30. Authority to Operate.

A. A Lessor may not market, sell, construct, or otherwise conduct business in the State of South Carolina prior to receiving a Certificate issued by ORS.

B. An entity that owns a renewable energy facility subject to any Lease Agreement entered into outside of Title 58, Chapter 27, Article 23 and these regulations shall be considered an "electrical utility" under Section 58-27-10 and therefore subject to applicable federal and state laws and regulations, and the rules and regulations of the Public Service Commission of South Carolina.

111-31. Operations of Lessors.

A. Lessors must conduct business in compliance with all applicable rules and regulations regarding installations, safety, interconnection, licensure, bonding, and insurance.

B. Lessors must require all personnel performing installation of renewable energy facilities to maintain bonding, liability insurance and worker's compensation insurance that meets applicable federal and state laws.

C. Lessors must require renewable energy facilities to meet the specifications of county and municipal permits. D. Lessor Prohibitions.

1. Customer payments to a Lessor under a Lease Agreement shall be for the lease of a renewable energy facility only.

a. Lease payments must not be calculated upon metered output.

b. Energy generated by the Lessee's renewable energy facility must not be sold by the Lessee or Lessor to any customer of any retail electric provider.

2. Renewable energy facilities shall serve only one premises or residence and shall not serve multiple Lessees or multiple premises or residences.

111-32. Requirements for Lease Agreements.

A. Lease Agreements must contain provisions as required by Title 37 and applicable regulations, Title 58, Chapter 27, Article 23 and these regulations.

B. In addition to the requirements contained in Title 37 and applicable regulations, the Lease Agreements and appropriate disclosures shall include the following provisions:

1. Lease Agreements shall include:

a. Prominent display of the Certificate number issued by ORS.

b. ORS phone number and e-mail address for Consumer Complaints including the statement in bold 12-point font 'If you are unable to resolve your complaint with the Lessor, you have the right to contact the South Carolina Office of Regulatory Staff.'

c. A copy of any warranties for renewable energy facilities.

2. Appropriate disclosures as required by Title 37 and applicable regulations, shall include the following additional provisions:

a. ORS phone number and e-mail address for Customer Complaints including the statement in bold 12-point font 'If you are unable to resolve your complaint with the Lessor, you have the right to contact the South Carolina Office of Regulatory Staff.'

b. A description of the renewable energy facility, including the make and model of the renewable energy facility's major component(s).

c. A guarantee concerning the energy production output that the renewable energy facility will provide, and the impact of such guarantee on monthly payments as set forth in the Lease Agreement. A production guarantee that meets these requirements does not violate Section 111-31(D)(1)(a).

d. A description of any warranties to include, but not limited to:

i. A disclosure notifying the Lessee of the transferability of the obligations under the warranty to a subsequent Lessee.

ii. A disclosure describing any warranty for the repair of any damage to the roof of the premises in connection with the installation or removal of renewable energy facilities.

iii. A disclosure regarding whether the warranty or maintenance obligations related to renewable energy facilities may be sold or transferred to a third party.

e. An explanation of any interest, installation fees, document preparation fees, service fees, escalation rates, cancellation fees, roof repair costs or other costs to be paid by the Customer.

f. In the event that a Lessor causes a financing statement to be filed pursuant to the Uniform Commercial Code-Secured Transactions, the Lessor, or any successor in interest to the Lessor, shall provide to the Lessee a copy of the filed financing statement within thirty calendar days of the filing.

g. A disclosure describing the transferability of the Lease Agreement and any conditions on transferring the Lease Agreement in connection with the Lessee selling his or her premises.

h. A description of any restrictions the Lease Agreement imposes on the modification or transfer of the premises to which the renewable energy facility serves.

i. The total number of payments, including the interest, the payment frequency, the estimated amount of the payment expressed in dollars, and the payment due date over the leased term.

j. The estimated amount of the total payments due under the Lease Agreement, including, without limitation, any incentives that are included in the estimated lease payments.

k. A description of any state or federal tax incentives that are included in the calculation of Lease payments.

1. A description of the billing and payment procedures.

m. A statement in bold 12-point font with substantially the following same form and content: "Utility rates, structures and estimated savings are subject to change, and incentives may change or be terminated by executive, legislative or regulatory action."

n. A statement in bold 12-point font with substantially the following form and content: "All provisions contained in the Lease Agreement and disclosures are considered agreed to by the Lessee upon signature. NO employee or representative of [name of Lessor] is authorized to make any promise to you that is not contained in the Lease Agreement or disclosures concerning the cost savings, tax benefits, or government or utility incentives. You should not rely upon any promise or estimate received verbally or in writing which is not clearly contained in this Lease Agreement or disclosures."

111-33. Requirements for Consumer Protection and Education.

In addition to the requirements contained in Title 37 and applicable regulations, all Lessor marketing materials for use in the state of South Carolina, regardless of medium or channel such as printed, mailed, emailed, accessible via social media or website, and which promote specific leasing products or payment plans shall include:

A. The Certificate number issued by ORS;

B. The State Energy Office's solar consumer information website address; and

C. ORS telephone number and e-mail address for Customer Complaints.

111-34. Transfer or Sale of Certificate Prohibited.

Transfer or sale of a Certificate to another entity is prohibited.

#### SUBARTICLE 4 RECORDS AND REPORTS

Reg.

111-40. Retention of Records.

111-41. Data to be Filed with ORS.

111-42. Inspections and Tests.

111-40. Retention of Records.

In addition to the recordkeeping requirements of Title 37 and applicable regulations, Lessor shall maintain the following records:

A. All documents provided to a potential customer prior to execution of a Lease Agreement, including but not limited to, marketing materials, diagrams of proposed renewable energy facility design, estimates of potential savings and benefits, information pertinent to the interconnecting utility, and estimates of cost and Lease Agreement payments.

B. All documents provided to, obtained from, or executed on behalf of Lessee including, but not limited to:

1. Affirmative acknowledgement and consent to receive documents electronically, and tracking information of paper or electronic transmittal of Lease Agreements to Lessees;

2. Change orders to existing Lease Agreements, transfers of Lease Agreements, and any other documents relating to Lessor business transactions with Lessee regarding the Lease Agreement; and

3. Records of retail electric provider interconnection applications, approvals, and communications to and from the retail electric provider on behalf of the Lessee to construct and safely interconnect the renewable energy facility.

C. All documentation and records of all customer complaints as will enable Lessor to review and analyze its procedures and actions, to include, but not limited to:

- 1. Name and address of the complainant, the date and character of the complaint;
- 2. All contact to and from the customer regarding the complaint; and
- 3. The adjustment or disposal made by Lessor to resolve the complaint.
- D. Documentation and records of investigations by ORS including, but not limited to:
  - 1. ORS investigation documents and Lessor responses;
  - 2. Lessor or ORS actions as a result of any investigation; and
  - 3. Name of Lessor representative(s) assisting ORS with the investigation.

111-41. Data to be Filed with ORS.

A. Lessors must file with ORS a Monthly Report of installed leased facility equipment as required by Title 58, Chapter 27, Article 23.

B. The Lessor shall annually, on or before April 1, on a form provided by ORS, file the name, title, address, and telephone number of the person who should be contacted in connection with:

- 1. General management duties;
- 2. Customer relations;
- 3. Engineering operations; and
- 4. Emergencies during non-office hours.

#### 111-42. Inspections and Tests.

When requested by ORS, Lessor or representative of Lessor, shall be present to test or confirm energy production by the renewable energy facility.

### SUBARTICLE 5 INVESTIGATION OF ALLEGED VIOLATIONS

Reg.

- 111-50. Violations.
- 111-51. Customer Complaints.
- 111-52. Investigation of Alleged Violations.
- 111-53. Notice of Violations.
- 111-54. Response to Notice of Violation.
- 111-55. Decision.
- 111-56. Request for Review of Decision.
- 111-57. Appeal of Agency Action.
- 111-58. Cooperation with Other Agencies.

### 111-50. Violations.

A. Violations. It shall be considered a violation of law for an entity to engage in any practice or action in marketing, or leasing renewable energy facilities contrary to the requirements set forth in Title 37 and applicable regulations, Title 58, Chapter 27 and applicable regulations, Title 58, Chapter 40, and these regulations.

B. ORS is authorized to enforce against any entity that owns a renewable energy facility installed on a customer's premise, for the customer's use, and leased to the customer, the requirements of Title 37 and applicable regulations, Title 58, Chapter 27, Article 23, Title 58, Chapter 40 as applicable, and these regulations.

#### 111-51. Customer Complaints.

A. Complaints concerning the charges, practices, renewable energy facilities or service of a Lessor shall be investigated promptly, thoroughly, and professionally by Lessor.

B. If the customer is not satisfied with the Lessor's actions to remedy the complaint, the customer may request an investigation of the matter by ORS. The Lessor shall notify the Customer of their right to file a request for investigation at ORS.

## 111-52. Investigation of Alleged Violations.

A. ORS may investigate an alleged violation or refer the customer to the appropriate state agency to resolve the customer's complaint. ORS may notify the customer of its decision to investigate or refer the customer to the appropriate state agency.

B. ORS may request information and documents during the course of an investigation.

C. ORS will notify the Lessor at the commencement of an investigation. The Lessor must provide the following: 1. Acknowledgement of receipt of the complaint in writing within one (1) business day.

2. A response to ORS no less than seven (7) business days from date of notification of the complaint.

D. Lessor must grant ORS access with reasonable notice to properties and areas, objects, and records during the course of the investigation.

E. An investigation will be deemed closed when ORS issues a Final Decision.

### 111-53. Notice of Violation.

ORS may issue a Notice of Violation. Such notice may present the results of ORS's investigation and any recommendations to remedy deficiencies and/or establish fines.

### 111-54. Response to Notice of Violation.

Lessor has twenty (20) days to respond to ORS Notice of Violation. The Response shall contain the Lessor's response to each finding presented in the Notice of Violation. It shall also contain the Lessor's response to ORS's recommendations for remediation or penalty. Such response must be provided under oath.

### 111-55. Decision.

A. ORS shall issue a decision on the Notice of Violation and Lessor's response in a timely manner. ORS may request additional information from the Lessor as necessary to render a decision.

B. ORS will provide a copy of the decision to the affected customer, the Lessor, and any other state agency or party involved in the investigation or remedy of the alleged violation. The decision will be considered the Final Decision after twenty-five (25) days from the date the decision is rendered by ORS, unless a timely Request for Review of Decision is filed pursuant to 111-56.

## 111-56. Request for Review of Decision.

A. Effect of Filing a Review. Filing a Request for Review of Decision shall not excuse or delay the Lessor's compliance with a Decision issued by ORS, unless specifically provided by ORS.

B. Submit Request. A Lessor may submit a Request for Review of Decision to ORS within twenty-five (25) days after the issuance of ORS's Decision.

C. Timeframe for Final Decision tolled. The timeline provided in 111-56 (B) will be tolled upon the filing of a Request for Review of Decision.

D. Review. During the Review of Decision, ORS may request additional information from the Lessor. ORS will issue its Final Decision on the matter in a timely manner.

E. Unless otherwise provided by law, no cause of action shall accrue in any court of competent jurisdiction to vacate or set aside any decision of ORS, either in whole or in part, unless a Request for Review of Decision and proof of service are filed with ORS, and a Final Decision has been issued disposing of the matter.

#### 111-57. Appeal of Agency Action.

A Lessor may appeal an ORS Final Decision with the Administrative Law Court.

111-58. Cooperation with Other Agencies.

In addition to the powers and responsibilities relating to consumer protection, ORS will cooperate with and assist all federal, state, and local agencies performing consumer protection functions in carrying out their legal enforcement responsibilities for the protection of consumers.

# SUBARTICLE 6 PENALTIES AND FINES

Reg.

- 111-60. Penalty.
- 111-61. Violation of Time Requirements.
- 111-62. Voiding of Lease Agreement.
- 111-63. Monetary Fines and Penalties.
- 111-64. Suspension of Operations.
- 111-65. Revocation of Certificate.
- 111-66. Cumulative Regulation.

#### 111-60. Penalty.

Subsequent to the conclusion of an investigation by ORS and upon being found non-compliant with applicable regulations and statute, ORS may issue a penalty according to the provisions in these regulations.

#### 111-61. Violations of Time Requirements.

ORS may specify the time within which a violation is required to be corrected. When a specific time is designated for correction, each day such violation exists after expiration of the time established by ORS shall be considered a subsequent violation.

## 111-62. Voiding of Lease Agreement.

ORS may void a Lease Agreement between a Lessor and Lessee when:

A. The Lease Agreement executed does not meet the requirements for Lessor certification in these regulations.

B. The Lessor fails to provide a copy of an executed Lease Agreement to the Lessee within the timeframes and methods as described in these Regulations.

C. The Lessor fails to cancel a Lease Agreement upon written request of a Lessee that occurs within the right of rescission period.

#### 111-63. Monetary Fines and Penalties.

A. Administrative Fine. An entity may be assessed an administrative fine. The administrative fine may not exceed two thousand five hundred dollars per violation.

B. Civil Penalty levied against Lessors. An entity that is subject to S.C. Code Ann. § 58-27-2620(A) may be fined a civil penalty of not more than ten thousand dollars per occurrence of the following violations:

1. Operating without Certificate. An entity that solicits business as a Lessor of renewable energy facilities without a valid certificate issued by ORS, or that otherwise violates the terms of Chapter 58, Article 23;

2. Unfair or Deceptive Marketing Practices. A Lessor that engages in unfair or deceptive marketing practices in the leasing of renewable energy facilities.

C. Determination of Monetary Fine or Penalty. In determining the appropriate monetary Administrative Fine or Civil Penalty to be levied, ORS shall consider the following:

1. Timely response to an ORS request in accordance with applicable regulations and law; and

2. The number of violations, including repeat violations; specific conditions and their impact or potential impact on health and safety of persons as a result of the lease of the renewable energy generation facility; efforts to correct cited violations; behavior that would reflect negatively on an entity's character, such as illegal or illicit activities; history of compliance; any other pertinent conditions that may be applicable to statutes and regulations.

#### 111-64. Suspension of Operations.

ORS may suspend the certificate and require the Lessor to immediately cease and desist from engaging in business as a Lessor in this State until the violation is resolved.

## 111-65. Revocation of Certificate.

ORS may petition the Administrative Law Court to revoke a Certificate issued pursuant to S.C. Code Ann. 58-27-2600 et seq.

111-66. Cumulative Regulation.

The provisions of Subarticle 6 of this regulation are cumulative of and in addition to any other action at law and any other action taken by ORS pursuant to Title 58.

# **Fiscal Impact Statement:**

Staff time will need to be expended in the enforcement process. However, a finite amount is undetermined due to uncertainty in estimating the number of matters that might warrant intervention and the extent to which any litigation will ensue.

# **Statement of Rationale:**

The creation of these regulations was mandated by South Carolina Code Section 58-27-2660 in order to govern the practices of lessors of renewable energy generation facilities and protect consumers.

Document No. 5023 **DEPARTMENT OF SOCIAL SERVICES** CHAPTER 114 Statutory Authority: 1976 Code Section 43-1-80

114-550. Licensure for Foster Care.

# Synopsis:

As the administrator of the State's foster care system, the Department of Social Services is responsible for establishing and promulgating rules and regulations for the licensure of family foster homes and the approval of adoptive homes for children who are in the State's foster care system. The existing regulations regarding family foster homes and adoption of children who are in foster care (S.C. Code of Regulations Section 114-550) need to be amended.

The Department is promulgating these proposed regulations so that South Carolina family foster home licensing standards will be consistent with model licensing standards published by the United States Department of Health and Human Services, Administration for Children, Youth and Families and to make clear that the department will apply these licensing standards to persons who seek to adopt children who are in the State's foster care system. The proposed regulations promote the application of a consistent set of rules and regulations for the licensure of family foster homes and the approval of adoptive homes for children who are in the State's foster care system. The consistent application of one set of rules and regulations furthers the Department's mission to promote the safety, permanency, stability, and well-being of children who are in the State's foster care system.

The Notice of Drafting was published in the State Register on October 23, 2020.

#### **Instructions:**

- 1. Delete Regulations 114-550 (A through O) in their entirety.
- 2. Replace with Proposed Regulations 114-550 (A through Z) as follows:
  - 114-550A sets forth a statement of applicability.
  - 114-550B sets forth definitions relating to licensure for foster care.
  - 114-550C sets forth general application process requirements.

114-550D sets forth the application procedure.

114-550E sets forth the types of licenses that may be issued.

114-550F sets forth assessment study requirements.

114-550G sets forth eligibility standards.

114-550H sets forth physical and mental health standards.

114-550I sets forth home study standards.

114-550J sets forth capacity standards.

114-550K sets forth sleeping arrangement standards.

114-550L sets forth living space standards.

114-550M sets forth fire safety and evacuation plan standards.

114-550N sets forth health and safety standards.

114-5500 sets forth criminal history records check standards.

114-550P sets forth abuse and neglect background check standards.

114-550Q sets forth requirements of certain assurances from applicants.

114-550R sets forth training standards.

114-550S sets forth emergency placement standards.

114-550T sets forth records requirements for child placing agencies.

114-550U sets forth standards relating to issuance, renewal, denial, revocation, or termination.

114-550V sets forth standards relating to kinship foster parents.

114-550W sets forth standards relating to confidentiality.

114-550X repeals prior licensing regulations.

114-550Y sets forth period to review regulations regarding need for revision.

114-550Z sets forth effective date.

The Department of Social Services proposes the placement of these regulations in the South Carolina Code of Regulations, Chapter 114, Article 5, Subarticle 5, governing foster care. Specifically, the amended regulations will replace Regulation 114-550, titled Licensure for Foster Care.

The title of Regulation 114-550 will be changed to, "Licensure of Family Foster Homes and Approval of Adoptive Homes for Children in Foster Care."

# Text:

114-550. Licensure of Family Foster Homes and Approval of Adoptive Homes for Children in Foster Care.

A. Applicability: The department will apply these regulations to decisions related to licensing family foster homes and approval of adoptive homes for children who are in foster care.

B. Definitions.

(1) "Adoptive Parent" means a person who is seeking or has adoptive placement of a child in foster care.

(2) "Agency" means the South Carolina Department Social Services (SCDSS).

(3) "Applicant" means a person who has submitted an application and is seeking a license to operate a family foster home or who is seeking approval to adopt a child from the State's foster care system.

(4) "Assessment Study" means documentation of the assessment of an applicant, completed by designated SCDSS staff, a certified investigator, designated staff of a child placing agency, or other persons approved by SCDSS.

(5) "Board Payment" means funds appropriated for the care and maintenance of children in foster care.

(6) "Child Placing Agency" means a 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 retains its own system of foster homes. Homes assessed by child placing agencies are licensed in accordance with SCDSS licensing regulations and are issued a license by SCDSS.

(7) "Community standards" means local norms bounding acceptable conduct. For housing, the term means acceptable building standards based on the neighborhood and similar homes.

(8) "Corporal punishment" means physical punishment inflicted directly upon the body.

(9) "Family foster care" means continuous 24-hour care and support services provided for a child in a family foster home.

(10) "Family foster home" means the private home of an individual or family that is licensed by the department and in which a child in foster care has been placed in the care of an individual; who resides with the child; who has been licensed by the department to be a foster parent that the department deems capable of adhering to the reasonable and prudent parent standard as defined in Section 63-7-20(24); that provides 24-hour substitute care for children placed away from their parents or other caretakers; and that provides care for children subject to capacity limitations set forth in Section 63-7-2400. This term includes a kinship, relative, and child-specific home.

(11) "Foster parent" means an individual who provides family foster care with a license from the department.

(12) "Home study" means the screening of the home, life, and parental fitness of a prospective foster or adoptive parent by a certified investigator through face-to-face encounters

(13) "Household member" means any relative or nonrelative who regularly lives, shares common areas, and sleeps in a home.

(14) "Kin" means an adult who is related to a child by blood, marriage, or adoption and means, an adult who is not related to a child by blood, marriage, or adoption, but who has a relationship with the child or the child's family (fictive kin).

(15) "License" means the approval, verification, or certification of a home and applicant to provide family foster care or adoptive placement.

C. Applications.

(1) An application form shall be completed by all applicants desiring to be licensed or relicensed to provide foster care or approved as an adoptive home.

(2) Applicants must supply thorough, complete, and accurate information. Incomplete or erroneous information or violation of regulations shall be grounds for denial of an application, revocation of a current license, and denial of a renewal to provide foster care and denial or termination of approval to become an adoptive parent.

(3) SCDSS or a licensed child placing agency reserves the right to request and consider additional information if needed during the foster care licensing or renewal process and the adoptive home approval process for persons seeking to adopt children who are in the State's foster system. This additional information may be considered during the licensing or renewal and the adoptive home approval decision-making processes.

D. Licensing Procedure.

(1) An 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 of the date the application is completed and received by SCDSS or the child placing agency. If SCDSS or the child placing agency has requested information that has not been provided by the applicant, 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 the director's designee based on the result of the assessment study and recommendation of SCDSS or the child placing agency.

(4) A standard license shall be renewed based on the results of the assessment study and recommendation of SCDSS or the child placing agency prior to the expiration of the existing standard license.

E. Licenses.

(1) The issued license shall not be transferable from either the address or foster parent 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 issued.

(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 the child placing agency is waiting to receive written clearance on all background checks for that individual.

(4) The agency may issue a provisional license for kinship foster care. Except in extenuating circumstances, a provisional license should remain in effect for no more than 90 days. SCDSS shall provide a monthly stipend to kin 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; and

(b) Kin has indicated in writing that the kin wants to become a licensed kinship foster parent; and

(c) Kin is eighteen years of age or older; and

(d) Kin and other adults living in the home have provided a written statement containing information necessary to determine whether a criminal history or history of child abuse or neglect exists and whether this

history indicates there is a significant risk that a child would be threatened with abuse or neglect if placed in the home of the kin.

(e) The agency has completed a thorough review and home assessment to verify the information contained in the written statements provided pursuant to 114-550(E)(4)(d) by completing a check of the Central Registry of Child Abuse and Neglect and other relevant records, a sex offender registry check, a check of criminal records for the preceding five years of the State Law Enforcement Division, and to the extent reasonably possible, criminal records of other jurisdictions in which the kin or other adult resided during that period. The department must not agree to or acquiesce in a placement if the review and assessment indicate there is a significant risk that a child would be threatened with abuse or neglect if placed in the home. Kin and other adults living in the kin's home must consent to a check of records by the department.

F. Assessment Study.

(1) Each prospective foster family applicant and prospective adoptive family applicant shall be assessed by designated staff of SCDSS, a certified investigator, designated staff of a child placing agency, or other persons approved by the agency.

(2) The assessment for initial licensing and renewal to provide foster care and approval to become and an adoptive parent shall be conducted to determine the following:

(a) Whether the applicant complies with SCDSS licensing requirements and standards;

(b) Whether the applicant fully understands the purpose of foster care or adoptive placement; and

(c) Applicant's ability to provide quality foster care or adoptive placement.

(3) The assessment summary for initial family foster home licensing and renewal and adoptive home approval must include documentation of the following:

(a) motivations to be a foster parent or adoptive parent;

(b) preferences related to placements;

(c) family history, relationships, parenting experiences, and coping ability;

(d) education, mental health, physical health, and work history of applicant and household 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 required training;

(h) results of background checks;

(i) compliance with all requirements;

(j) financial status including financial resources, income, and expenses;

(k) appropriateness of day care arrangements for children placed in the home; and

(l) applicant's overall understanding of the purpose of foster care or adoption and ability to provide quality foster care.

(4) The assessment and recommendation shall be explained to the applicant. If SCDSS or the child placing agency is not recommending family foster care licensure or renewal or approval to become an adoptive parent, the applicant should be offered the opportunity to elect to withdraw the application. If the applicant elects to continue their request to be licensed to provide family foster care or to receive approval to provide adoptive placement, the reasons for the denial shall be provided in writing. The applicant shall be advised regarding any right to appeal.

G. Eligibility Standards.

(1) All applicants must submit a complete application and accompanying documentation for a family foster home license or adoptive home approval. The agency or child placing agency must maintain copies of the application.

(2) To apply for a family foster home license or for renewal of a license or approval to become an adoptive parent, the following must apply:

(a) Non-kin applicants must be age twenty-one or older. Kin or fictive kin applicants must be age eighteen or older.

(b) Applicants who are married or who reside with another adult resident of the household (e.g. a spouse, romantic partner, or roommate) must apply together with the spouse or other resident of the household. Other household members must be included in the assessment and support the applicants interest in fostering.

(c) Applicants must be able to communicate with the licensing agency and health care and other service providers.

(d) Applicants must have verifiable income or resources to make timely payments for shelter, food, utility costs, clothing, and other household expenses prior to the addition of a child in the home. Income must be verified through income tax records, pay stubs, and bank account statements. Promised gifts or donations do not constitute income or financial resources.

(3) The agency must not deny to any individual the opportunity to become a foster parent or adoptive parent on the basis of the race, color, or national origin of the individual, or of the child, as required by the federal Multiethnic Placement Act (MEPA), 42 U.S.C.A. sec. 1996b, and Title IV-E of the Social Security Act, 42 U.S.C.A. sec. 671(18). MEPA also provides that this law must not be construed to affect the application of the Indian Child Welfare Act, which contains preferences for the placement of eligible American Indian and Alaska Native children in foster care, guardianship, or adoptive homes. Furthermore, the agency must not discriminate with regard to the application or licensure of a foster family or approval of an adoptive family on the basis of age, disability, gender, religion, sexual orientation, gender identity or marital status.

H. Physical and Mental Health Standards.

(1) All applicants and household members must have physical exams completed by a licensed health care professional recognized by the agency. The exam results must be current and within one year of application and must state that the applicant can care for additional children. In its discretion, the agency may require further documentation and evaluation to make such a determination.

(2) All children who are household members must be current on immunizations jointly recommended by the American Academy of Pediatrics, the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, and the American Academy of Family Physicians, unless the immunization is

contrary to the child's health as documented by a licensed health care professional or the department determines that other extenuating circumstances exist.

(a) All household members who will be caregivers of infants must have an up-to-date pertussis (whooping cough) vaccine consistent with the recommendations of the ACIP, unless the immunization is contrary to the individual's health as documented by a licensed health care professional or the department determines that other extenuating circumstances exist.

(b) All household members who will be caregivers of infants and children with special medical needs must have an up-to-date annual influenza vaccine consistent with the recommendations of the ACIP, unless the immunization is contrary to the individual's health as documented by a licensed health care professional or the department determines that other extenuating circumstances exist.

(3) Applicants and all household members must disclose any past or current mental health or substance abuse issues. The agency may require further documentation and evaluation to determine the suitability of the home.

I. Home Study Standards.

(1) The agency must conduct a written comprehensive family assessment and home study in collaboration with the applicants upon initial application and renewal to include the following:

(a) At least one scheduled on-site visit to assess the safety of the home using the SCDSS licensing standards.

(b) At least one scheduled home, individual interview of each applicant must be conducted to observe family functioning and assess the family's capacity to meet the needs of a child in foster care. It is preferred that all additional household members be interviewed in the home; however, a virtual interview may be conducted if additional household members are unable to be interviewed in person at an alternative time. The agency will determine whether to interview or just observe each household member based on his or her age and development.

(2) The agency must obtain at least three references, including at least one from a relative and one from a non-relative.

(3) Tribal agencies may also be involved in conducting home studies for American Indian and Alaska Native children. 42 U.S.C.A. sec. 671(26)(B) provides that any receiving state must treat any tribal home study report as meeting the requirements imposed by the state for the completion of a home study.

J. Capacity Standards.

(1) The total number of children in a family foster home, including the family's own children living in the home, must not exceed eight, of which no more than five may be children in foster care. The agency may determine lower capacities based on the family assessment and home study.

(2) The maximum number of children may be increased with agency approval to allow for siblings to remain together, to allow applicants to provide care to a child who has an established, meaningful relationship with the applicants' family, such as a child who was formerly in foster care with the family, or in accord with Section 63-7-2400.

K. Sleeping Standards.

(1) Each child in foster care must have a sleeping space with an individual bed or crib, mattress and linens, as appropriate for the child's needs and age and similar to other household members.

(a) Children who are relatives may share a bed with agency approval.

(b) All cribs in the home must be in compliance with Consumer Product Safety Commission standards.

(c) All bunk beds in the home must have no more than two tiers.

(i) The top bunk of a bed shall not be used by any children with conditions limiting mobility.

(ii) The top tier must not be used by a child under the age of six.

(2) There must be no more than four children total sharing a room used as a sleeping space.

(a) A child over the age of five must not share a room used as a sleeping space with a child of the opposite gender.

(b) Children of the opposite gender who are relatives may share a room used as a sleeping space with agency approval.

(c) A child under twelve months of age in an individual crib may share a room used as a sleeping space with the foster parent or adoptive parent.

(d) A child over 12 months of age may share a room used as a sleeping space with the foster parent or adoptive parent with agency approval.

L. Other Living Space Standards.

(1) The home may be a house, mobile home, housing unit, or apartment occupied by an individual or a family.

(2) The applicants' home and all structures on the grounds of the property must be maintained in a clean, safe, and sanitary condition and in a reasonable state of repair within community standards.

(3) The home must satisfy the following living space standards:

(a) Be free from objects, materials, and conditions that constitute a danger.

(b) Prevent or eliminate rodent and insect infestation.

(c) Regularly dispose of trash and recycling.

(d) Foster and adoptive parent and foster child must have access to a working phone at all times.

(e) Have at least one toilet, sink, and tub or shower in safe operating condition.

(f) Have kitchen facilities with a sink, refrigerator, stove, and oven in safe operating condition.

(g) Have safe operating heating and cooling system in the home as outlined by state fire regulations.

(h) Have ventilation where household members and children eat, sleep, study, and play.

(i) Have artificial lighting where household members and children study and read.

M. Fire Safety/Evacuation Plan Standards.

(1) The applicants' home must meet the following fire safety and evacuation plan standards:

(a) Have an approved carbon monoxide alarm installed and maintained outside of each separate sleeping area in the immediate vicinity of the bedrooms if the home has fuel fired appliances installed, attached garages (3 sides enclosed), or a Fireplace. Carbon monoxide alarms expire based on the manufacturer's guidelines. Bedrooms with fuel fired appliances of fireplaces shall have carbon monoxide alarms.

(b) Have at least one operable fire extinguisher that is readily accessible.

(c) Be free of obvious fire hazards, such as defective heating equipment or improperly stored flammable materials. Household heating equipment must be equipped with appropriate safeguards, maintained as recommended by the manufacturer.

(d) Have a written emergency evacuation plan to be reviewed with the child within 24 hours of placement in the home and posted in a prominent place in the home. The plan must identify multiple exits from the home and designate a central meeting place close to the home that is known to the child yet at a safe distance from potential danger. The plan must include evacuation from the home to an area outside the emergency evacuation zone in the event an emergency evacuation is ordered.

(2) Applicants must maintain a comprehensive list of emergency telephone numbers, including poison control, and post those numbers in a prominent place in the home. If there is a landline phone located in the home, the numbers must be posted next to the phone.

N. Additional Health and Safety Standards.

(1) The applicants' home must meet the following standards concerning weapons:

(a) The following weapons must be stored in an inoperative condition in a locked area inaccessible to children:

(i) Firearms;

(ii) Air guns;

(iii) BB guns;

- (iv) Hunting slingshots; and
- (v) Any other projectile weapon.

(b) All ammunition, arrows or projectiles for such weapons must be stored in a locked space separate from the weapons.

(c) Applicants who are also law enforcement officials and can document that their jurisdiction requires them to have ready and immediate access to their weapons may be exempt from these weapon requirements provided the applicants adopt and follow a safety plan approved by the agency.

(2) The applicants' home must meet the following standards concerning water:

(a) A family foster home or adoptive home must have a continuous supply of safe drinking water.

(b) If a home uses private well water or another source of drinking water other than water through the municipal water supply, then it must be tested for safety.

(c) The temperature of any water heaters must be set to no higher than 120 degrees.

(3) The applicants' home must meet the following standards concerning animals:

(a) Any animal that poses a threat to the safety or health of a child in must be confined away from and inaccessible to the child.

(b) Unless the department concludes that extenuating circumstances exist, pets that are required to be vaccinated by state or tribal law must be vaccinated against diseases that can transmit to humans, including rabies.

(4) The applicants' home must meet the following standards concerning swimming pools, wading pools, hot tubs, and spas:

(a) Swimming pools and wading pools shall be enclosed with protective fencing at least four feet high, secured with a safety device (i.e. latch, lock, etc.) to restrict child's access, and any method of access must be through a safety device.

(b) Swimming pools must be equipped with a life saving device, such as a ring buoy.

(c) If the swimming pool cannot be emptied after each use, the pool must have a working pump and filtering system.

(d) Hot tubs and spas must have safety covers that are locked when not in use.

(5) The applicants' home must meet the following standards concerning hazardous materials and first aid supplies:

(a) Prevent the child's access, as appropriate for his or her age and development, to all medications, poisonous materials, cleaning supplies, other hazardous materials, and alcoholic beverages.

(b) Maintain first aid supplies.

O. Criminal History Records Check Standards.

(1) Applicants and any other household members who are adults age 18 or older must submit to fingerprint-based checks of national (Federal Bureau of Investigation ("FBI") and state (SLED) crime information databases before the applicants may be approved for placement of a child. Both national and state fingerprint-based background checks must be conducted at the time of initial application. Applications for renewal must include SLED checks conducted no earlier than one year prior to renewal and FBI checks conducted no earlier than five years prior to renewal.

(2) The agency must also check the National Sex Offender Registry and state sexual offender registries for mention of the applicants and any other household members who are adults age eighteen or older. Both national and state sexual offender registry searches must be conducted at the time of initial application and no earlier than one year prior to renewal.

(3) If a record check reveals a conviction for a crime included in S.C. Code section 63-7-2350, approval for placement of a child must not be granted.

(4) If an applicant was convicted for a crime other than those included in S.C. Code section 63-7-2350, the agency must consider the following:

- (a) the type of crime;
- (b) the number of crimes;
- (c) the nature of the offenses;
- (d) the age of the individual at the time of conviction;
- (e) the length of time that has elapsed since the last conviction;
- (f) the relationship of the crime to the capacity to care for children;
- (g) evidence of rehabilitation; and
- (h) opinions of community members concerning the individual in question.

(5) Applicants and all household members have an ongoing duty to report any juvenile offenses committed by any member of the household. The existence of a household member with a juvenile offense does not automatically exclude the applicants. The agency must consider the suitability of the home based on the criteria used to assess crimes set forth in subsection (O)(4) herein.

P. Abuse and Neglect Background Check Standards.

(1) The agency must meet the following abuse and neglect background checks standards:

(a) Check all child abuse and neglect registries maintained by the state for information on applicants and any other household members who are age eighteen or older. These checks must be conducted at the time of initial application and no earlier than one year prior to the time of renewal.

(b) Request that any other state in which applicants and other adult household members who are age eighteen and older have resided in the preceding five years also check all child abuse and neglect registries maintained by that state. These checks must be conducted at the time of initial application

(c) Comply with any request described in (1)(b) above that is received from another state.

(2) The applicant must not be licensed if the applicant or any household member who is an adult age eighteen or older has been the subject of a substantiated allegation of abuse or neglect.

(3) Applicants and all household members have an ongoing duty to report any juvenile offenses committed by any member of the household. The existence of a household member with a juvenile offense does not automatically exclude the applicants. The agency must consider the suitability of the home based on the criteria used to assess crimes set forth in subsection (O)(4) herein.

Q. Assurances from Applicants.

(1) Applicants must sign an agreement containing the following assurances that they and all household members will comply with their roles and responsibilities as discussed with the agency once a child is placed in their care:

(a) Applicants will not use any inhumane or corporal punishment on any child placed by the agency. Cruel, inhumane, and inappropriate punishment is prohibited. This includes, but is not limited to, the following: head shaving or any other dehumanizing or degrading act; deprival of food or family visits; deprival of mail; slapping or shaking; the use of handcuffs; a pattern of threats of removal from the home as punishment; use of

profanity or any language that the foster parent or adoptive parent knows or should know may ridicule a child; authorizing, directing or asking a child to discipline another child; discipling a child for a medical or psychological problem over which the child has no control (e.g. bedwetting, stuttering, etc.); denial of communication and visits with family members; demeaning acts designed to embarrass children; denial of shelter, clothing, or personal needs; excessive physical exercise; excessive work tasks; and verbal abuse.

(b) Applicants will not use any illegal substances, abuse alcohol by consuming it in excess amounts, or abuse legal prescription and nonprescription drugs by consuming them in excess amounts or using them contrary to as indicated.

(c) Applicants will not smoke in the family foster home or in the vehicle while transporting foster children. Furthermore, guests will not be allowed to smoke in the family foster home or in any vehicle while transporting children.

(d) Applicants will closely supervise the child in foster care when the child is near any swimming pool or body of water. When applicants cannot supervise, they must restrict the child access to swimming pools or bodies of water. The child must never be left to swim alone.

(e) Applicants will provide water safety instruction to the child in foster care as appropriate for his or her age and development if the home is adjacent to any body of water or has a swimming pool. Water safety instruction addresses key knowledge and skills on how to be safe around water and does not necessarily mean swimming lessons.

(f) Applicants will maintain the swimming pool in safe condition, including testing and maintaining the chlorine and pH levels as required by the manufacturer's specifications.

(g) Applicants will lock all entry points when the swimming pool is not in use.

(h) Applicants will remove or secure any steps or ladders to the swimming pool to make them unusable when the pool is not in use.

(i) Applicants will set up and maintain wading pools according to the manufacturer's instructions, and empty and store them when not in use.

(j) Applicants will coordinate legal and safe transportation to and from health care, therapy, and agency appointments; school; extracurricular activities; social events; and scheduled meetings or visitation with parents, siblings, extended family members, and friends.

(k) Applicants will confirm that if a privately-owned vehicle, owned by the applicants, family or friends, is used to transport the child in foster care, it must be inspected (if applicable under state or tribal law), registered, and insured, and meet all applicable state or tribal requirements to be an operable vehicle on the road.

(i) The driver will have a valid driver's license.

(ii) Safety restraints will be used that are appropriate to the child's age, height, and weight.

(iii) Weapons must not be transported in any vehicle in which the child is riding unless the weapons are made inoperable and inaccessible.

(1) Applicants may need to take additional steps for the safety of the child in foster care, depending on the home, the area in which it is located, and the age and any cognitive and behavioral challenges of the child. For example, applicants may be required to child proof their home or place a fence to prevent the child from accessing nearby railroad tracks or another hazard.

(m) Applicants will adhere to the reasonable and prudent parent standard as defined and set forth in S.C. Code sections 63-7-20, 63-7-25, and 63-7-2310.

(2) The agency will review the assurances agreement with the foster parents and adoptive parents at initial licensing and approval and when a child is placed in their care. Additionally, the agency will review the assurances agreement with foster parents annually thereafter.

R. Pre-License and Adoptive Home Training Standards.

(1) All applicants must complete at least 14 hours of pre-license and adoptive home training on care of the child.

(2) Pre-license training topics must include:

(a) An overview of the child welfare system:

(i) Legal rights, roles, responsibilities and expectations of foster parents and adoptive parents;

(ii) Agency purpose, policies, and services;

(iii) Courts, and applicable laws and regulations.

(b) Information, including, but not limited to, trauma concepts and behavioral management, to provide for the needs of the child who is or may be placed in the home; early learning; child and adolescent brain development; healthy eating; protective factors; child abuse and neglect prevention; grief, loss, trauma, and separation issues; independent living skills; internet and social media safety for kids; sex trafficking prevention and warning signs; and first aid (including cardiopulmonary resuscitation (CPR) for the ages of children in placement, and bloodborne pathogen.

(3) Foster parents will subsequently be required to complete at least fifteen (15) hours training each year, or thirty (30) hours prior to each subsequent license renewal

(4) Viewing standard television programs or reading popular news or magazine articles will not be accepted for training hours. The training shall be provided by SCDSS or another source approved by SCDSS.

S. Emergency Placement Standards.

(1) A child may be placed in a home on an emergency basis pending licensure for a maximum of ninety calendar days with kin. The applicants must agree to complete the full assessment and approval process for a family foster home license within ninety calendar days. For emergency placements of American Indian and Alaska Native children, agencies should work closely with tribal and urban Indian organizations that have expertise in recruiting and licensing tribal family foster care homes.

(2) The agency must complete the following prior to approving an emergency placement:

(a) State (SLED) criminal background check of applicants and any other household member who is an adult age eighteen or older. To determine eligibility, the results of the check will be assessed using the criteria set forth in S.C. Code section 63-7-2350 and SCDSS licensing regulation section (O) herein.

(b) State, tribal, and/or local child abuse and neglect registry check for information on applicants and any other household member who is an adult age eighteen or older, and a national sex offender registry check for all household members twelve and older. To determine eligibility, the results of the check will be assessed using the criteria set forth in S.C. Code Section 63-7-2350 and SCDSS licensing regulation section (P) herein.

(c) For other states in which applicants and any other household member who is an adult age eighteen and older have resided in the preceding five years, applicants and household members must attest that they are not on the child abuse and neglect registry or the adult protective services registry. At that time, the agency will submit its request that the other states check their registries.

(d) Preliminary visual inspection to assess the safety of the home.

(e) Preliminary assessment of the ability of the applicants to meet the needs of the child.

(f) Discuss assurances agreement, as described in standard 12 above, with applicants and obtain their signatures on the agreement.

(3) If the home is not licensed within ninety calendar days, the child must be removed from the home, unless:

(a) A direct placement of the child in the home is ordered by the court while the child is still in the custody of the child welfare agency.

(b) The applicants petition for and receive care and custody of the child directly from the court.

(c) The agency grants an extension of up to ninety calendar days for applicants to complete licensure if it determines that removal of the child would be detrimental to the best interests of the child.

T. Records Required for Child Placing Agencies.

(1) All child placing agencies in the State shall keep records regarding each foster child placed by that agency, including records 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.

U. Initial Licensing, Renewal, Denial, Revocation, and Termination of License.

(1) Licenses shall be studied for renewal every two years and prior to the expiration of the last license.

(2) Adoptive home approval will be updated in accordance with SCDSS policies and procedures, but if the waiting period for an adoptive placement exceeds one year from the date of the approval, the approval must be updated before the placement of a child for the purpose of adoption to determine any change in circumstances.

(2) License renewal process requirements and adoptive home approval updates include documentation of safety requirements, training hours, background checks, home visits, 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, and adoptive home approval will not continue 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 to a child to be placed in the home. The agency may also deny an application to renew a family foster home license if the family has a demonstrable record of refusing to accept placement of children in foster care. Written notification of the denial, signed by the director of SCDSS or the director's designee shall be mailed via certified mail from SCDSS to the applicant or license holder. The notification will inform the applicant or license holder of any right to appeal this decision pursuant to established SCDSS procedure.

(4) A license or adoptive home approval 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 a child to be placed in the home. The agency may also revoke a family foster home license if the family has a demonstrable record of refusing to accept placement of children in foster care. Written notification of the revocation, signed by the director of SCDSS or the director's designee shall 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 license or adoptive home approval shall be terminated when:

(a) The time specified on the license has elapsed; or

(b) The foster parent or adoptive parent has moved to a new location without applying for a change in licensure or adoptive home approval; or

(c) The license or adoptive home approval has been revoked or renewal denied and the time frame for appeal has elapsed; or

(d) A foster parent voluntarily returns the current license to SCDSS or the child placing agency for cancellation or otherwise informs SCDSS or the child placing agency that he or she no longer desires to be licensed.

(e).An Adoptive parent voluntarily informs SCDSS that he or she no longer desires to be an approved adoptive home.

V. Kinship Foster Parents.

(1) Subject to the emergency placement standards set forth in section (S) above, kin must be licensed in accordance with the same requirements as nonrelative applicants. SCDSS may waive, on a case by case basis, for kin, non-safety elements as SCDSS deems appropriate. Safety elements such as abuse or neglect history or criminal history must not be waived. SCDSS must note on the standard license if there was a waiver of a non-safety element and identify the element being waived.

(2) Kin are given preference for placement, provided that such placement is in the best interest of the child.

W. Confidentiality.

(1) No foster family or adoptive placement home shall directly or indirectly disclose any information

regarding foster children, their biological families, or other individuals who have had control of the foster children, other than to professionals treating, caring for, and providing services for the child or others as SCDSS or the licensed child placing agency deems appropriate.

(2) No foster family or adoptive placement home shall post identifying information about foster children placed in their homes, including pictures on any closed or open social media group. Schools, daycares, and other extracurricular or childcare services may post pictures of foster children with permission from the agency.

(3) Information about a foster child that is disclosed shall be limited to information that is necessary to provide for the child's needs and in their best interest.

X. Prior Regulation Repealed.

All regulations concerning foster family homes previously promulgated by the agency are hereby repealed.

Y. Regulations Review.

These regulations shall be evaluated at least every five years from the date of initiation, to assess the need for revision.

Z. Effective Date.

This Regulation shall become effective on September 12, 2021.

### **Fiscal Impact Statement:**

The Department of Social Services estimates the costs incurred by the State and its political subdivisions in complying with the proposed regulations will be approximately \$ 180,000.

#### **Statement of Rationale:**

These regulations are proposed to enhance and improve the licensing regulations for family foster homes and to clarify that family foster home licensing regulations apply to person's seeking to adopt a child who is in the State's foster care system. These regulations are also proposed for consistency with the model foster family licensing standards published by the United States Department of Health and Human Services, Administration for Children, Youth and Families (see ACF Information Memorandum ACYF-CB-IM-19-01). The proposed regulations establish standards that promote the health, safety, stability, and well-being of children residing in family foster homes and who are placed for adoption by the department.

#### Document No. 5022 **DEPARTMENT OF SOCIAL SERVICES** CHAPTER 114 Statutory Authority: 1976 Code Section 63-11-30

114-590. Licensing of Residential Group Care Organizations for Children. 114-595. Standards for Supervised Independent Living.

#### Synopsis:

The Department of Social Services is updating Regulation 114-590 to support the licensure of residential group care organizations after the passage of the Family First Prevention Services Act of 2018 (Public Law

115-123). The Department of Social Services is also repealing Regulation 114-595 because the regulation is no longer necessary.

As the administrator of the State's foster care system, the Department of Social Services is responsible for establishing and promulgating rules and regulations for the licensure of residential group care facilities for children. The existing regulations regarding licensure of residential group care facilities for children (S.C. Code of Regulations 114-590) need to be amended and repealed (S.C. Code of Regulations 114-595).

The Department of Social Services is proposing regulations that set forth the requirements for the licensure of residential group care facilities for children. The proposed regulations promote the application of a consistent set of rules and regulations for the licensure of group care facilities for children, including child care institutions and group care facilities operating qualified residential treatment programs. The consistent application of one set of rules and regulations furthers the Department's mission to promote the safety, permanency, stability, and well-being of children who are in the State's foster care system.

The Notice of Drafting was published in the State Register on October 23, 2020.

# **Instructions:**

114-590. Licensing of Residential Group Care Organizations for Children.

1. Delete Regulation 114-590 Sections A through F in its entirety.

2. Replace with Proposed Regulation 114-590(A) and (B) which set forth a general statement of purpose and definitions.

3. Add 114-591(A) through (R) which sets forth requirements for organization and administration.

4. Add 114-592(A) through (C) which sets forth requirements for physical environment and safety.

5. Add 114-593(A) through (Y) which sets forth requirements for services to children.

6. Add 114-594(A) through (E) which sets forth requirements for specified group home populations.

114-595. Standards for Supervised Independent Living.

1. Delete Regulation 114-595 Sections A through I in its entirety.

2. Replace with Proposed Regulation 114-595(A) through (I) which explains licensing and enforcement of the regulations.

#### Text:

# SUBARTICLE 9 RESIDENTIAL GROUP CARE FACILITIES FOR CHILDREN

#### (Statutory Authority: 1976 Code Section 63-11-30)

114-590. Licensing of Residential Group Care Organizations for Children.

A. General Purpose and Compliance with Other Laws.

The South Carolina Department of Social Services is authorized to license residential group care organizations for children. In carrying out this authority, the overall purpose of licensing by the agency is to promote the provision of a temporary, safe, stable and humane environment for children who are placed in residential group care settings, and that these settings include adequate supervision, supports for mental and physical health, safe physical facilities, and opportunities for appropriate learning experiences to maximize the potential of each child to be well-adjusted, responsible and independent. When interpreting and enforcing these regulations, regulations that provide greater specificity supersede regulations that are more general in nature and are therefore, the

controlling authority. All residential group care organizations shall comply with these regulations and all other applicable requirements of State and Federal law.

B. Definitions.

(1) "Age- or developmentally-appropriate activities" means activities that are generally accepted as suitable for children of the same chronological age or level of maturity or that are determined to be developmentally-appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; and in the case of a specific child, activities or items that are suitable for the child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the child.

(2) "Behavior intervention" means any containment, management or treatment technique or procedure used to intervene in a child's behavior when that behavior poses a clear and present danger of serious physical harm to the child or to others

(3) "Caregiver" means any of the following: A person who is, or is expected to be, an employee or contractor of a facility, who is or is expected to be under the control of the facility, as defined by the Agency by rule, and who has, or is expected to have, regular, direct unsupervised contact with children of the facility.

(4) "Care plan" means a written plan of services to meet the specific goals and care needs of a child.

(5) "Chemical restraints" mean drugs administered to temporarily restrain a child who poses a threat to harm themselves or others.

(6) "Child" means a person under the age of twenty-one.

(7) "Child Care Institution means a private residential group care facility, or public residential group care facility which accommodates no more than twenty-five children, and is licensed by the Agency. The setting does not include wilderness camps or training schools, nor does it include any facility that exists primarily for the detention or correction of children.

(8) "Commercial Sex Act" means any sex act for which anything of value is given, promised or received, directly or indirectly, by any person.

(9) "Corporal punishment" means physical punishment inflicted directly upon the body.

(10 CSEC" means Commercial Sexual Exploitation of Children.

(11) "De-escalation" means behavior that is intended to escape escalation of conflicts. It also refers to approaches in conflict resolution. De-escalation techniques may use verbal and non-verbal cues.

(12) "Department" means the Department of Social Services.

(13) "Fictive kin" means an individual who is not related by birth, adoption, or marriage to a child, but who has an emotionally significant relationship with the child.

(14) "Gender identity" means a person's internal identification or self-image as male or female, which is usually established by age three.

(15) "Group care" means the care and services provided by group care facilities and child care institutions.

(16) "Group care facility" means a residential organization, including residential institutions, residential facilities, and child care institutions, licensed by the Department to provide temporary or long-term, full-time residential care for children on a year-round basis, emergency shelters, and group homes. State contracts may also further categorize group care facilities by population and services provided. Boarding schools that do not operate year-round or that do not offer services beyond those associated with school programming are not encompassed within these regulations. All group care facilities are considered "residential institutions" for purposes of S.C. Code Section 63-7-1210, governing institutional abuse and neglect.

(17) "Group care staff" means an adult who works in a group care facility. "Group care staff" includes a person who has or is seeking a license to operate a group care facility and does not include an unpaid volunteer.

(18) "Infant" means a child under one year of age.

(19) "Licensing agency" or "agency" means the South Carolina Department of Social Services.

(20) "LGBTQ+" means lesbian, gay, bisexual, transgender, questioning or other sexual identities.

(21) "Sex Trafficking" means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for a commercial sex act. For minors, under the age of 18, there is no requirement of force, fraud, coercion or inclusion of a third party. No child or youth under the age of 18 can consent to commercial sex.

(22) "Victim of Child Trafficking" - a minor who is under 18 years old who is sex trafficked or labor trafficked as defined in S.C Code Section 16-3-1210.

(23) "Normalcy" means a child's ability to easily engage in healthy and age or developmentally appropriate activities that promote his or her well-being, such as participation in social, scholastic, and enrichment activities.

(24) "Program director" means the person responsible for coordinating the general management, administration, and care of the children of a facility in accordance with licensing requirements and policies established by the advisory board.

(25) "Psychotropic medication" means any drug that affects the mind and is used to manage inappropriate behavior or psychiatric symptoms and may include an anti-psychotic, an antidepressant, lithium carbonate or a tranquilizer.

(26) "Qualified Residential Treatment Program (QRTP)" means a program that serves children with serious emotional or behavioral disorders or disturbances.

(27) "Residential Group Care Organization" means child care institutions, residential institutions, residential facilities, and group care facilities.

(28) "Reasonable and prudent parent standard" means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child, that a caregiver shall use when determining whether to allow a child in foster care under the responsibility of the State to participate in extracurricular, enrichment, cultural, and social activities.

(29) "Relative" means an adult who is related to a child or youth by blood, marriage, or adoption, as well as an adult who is not related by blood, marriage, or adoption, but who has a relationship with the child, youth, or young adult, or their family (fictive kin). Under the Indian Child Welfare Act (ICWA), a relative is defined as a family member who is related to the child by blood, marriage, or adoption only.

(30) "Restraint" means an emergency safety intervention defined as any manual method, physical or mechanical device, material, or equipment attached or adjacent to the child's body, that the individual cannot remove easily which restricts freedom of movement or normal access to one's body.

(31) "Staff' means an adult who is employed within the group care facility full-time or part-time, including, but not limited to, management, administrative, caregiving, program, maintenance, food service, and service personnel. This definition does not include adults whose presence in the group care facility or contact with children is incidental in nature. However, the group care facility must ensure that full-time or part-time staff provide line-of-sight supervision for any adult whose presence in the facility or contact with children is incidental in nature.

(32) "Standard license" means a license issued when a facility meets all regulatory requirements to obtain a license.

(33) "Supervision" means guidance of the behavior and activities of a child by a staff member who is within sight or sound of a child to ensure the safety and well-being of the child.

(34) "Time out" means a behavior intervention technique that is defined as the temporary restriction of an individual for a period of time to a designated area from which the person is not physically prevented from leaving, for the purpose of providing the individual an opportunity to regain self-control. Time-out will last only for the shortest amount of time needed.

(35) "Toddler" means a child at least one year of age but less than 2 years of age.

(36) "Transgender person" means a person whose gender identity (their understanding of themselves as male or female) does not correspond with their anatomical sex. A transgender woman is a woman whose birth sex was male but who understands herself to be female. A transgender man is a man whose birth sex was female but who understands himself to be male.

(37) "Volunteer" means a person, who of their own free will, provide goods or services to a facility with no monetary or material compensation and has no opportunity for unsupervised contact with children.

(38) "Volunteer staff" means persons, who of their own free will, provide goods or services and works in a facility with no monetary or material compensation and have opportunity for unsupervised contact with children.

114-591. Organization and Administration.

A. Purpose and Need.

(1) At the time of application for licensing of a new facility, a facility shall submit:

(a) A detailed description of the why there is a need for this particular facility and any facts that support the applicant's assertion for that need.

(b) Letters of support documenting a need for their services from at least three community partners, including referral sources (e.g. Department of Social Services, Department of Juvenile Justice, Department of Disabilities and Special Needs, etc.).

(c) A concise written statement addressing the following:

(i) Definitive statement of purpose and objectives with respect to type of residential child care to be provided;

(ii) Description of services offered;

(iii) Ages and genders of children accepted;

(iv) Types of children accepted (e.g., abused/neglected, emotionally disturbed, dependent/neglected, status offenders, etc.);

(v) The geographical areas from which children are accepted.

(2) The facility shall reevaluate its functions periodically and redefine them as community needs change. A copy of the revised statement shall be submitted to the Agency when changes occur.

B. Board of Directors.

(1) A for profit group care facility may elect to have a board of directors. If

applicable, a list of names of board members shall be submitted annually or whenever there is a change, outlining the chain of command and the appropriate contact person(s), including names, addresses, electronic mail addresses, related phone numbers and positions held on the board. In the absence of a board of directors, the group care facility shall submit names, addresses, electronic mail addresses, related phone number and positions held for executive management or any person or each person of an entity that oversees the group home director.

(2) A not for profit group care facility shall be chartered by the Secretary of State and shall have a board which functions in accordance with the organization's constitution and bylaws. A list of names of board members shall be submitted annually or whenever there is a change, outlining the chain of command and the appropriate contact person(s) including names, addresses, electronic mail addresses, related phone numbers and position held on the board. Facilities operated by a state agency are exempt from this requirement.

(3) The bylaws of a board of a not for profit group care facility shall provide for the following:

- (a) At least one annual meeting held at the group care facility;
- (b) A limitation on the number of consecutive terms a member may serve;
- (c) An orientation for new board members; and

(d) A provision that prohibits board members from receiving financial compensation for their services.(4) Responsibilities of a board of a not for profit group care facility shall include:

- (a) Selecting the director to whom administrative responsibility is to be delegated;
- (b) Assuring that adequate funds are available;
- (c) Formulating or approving policies;
- (d) Accounting for the expenditure of funds and providing financial oversight;
- (e) Evaluating on an annual basis the performance of the director;
- (f) Ensuring that the Agency is informed of changes in administration; and
- (g) Ensuring adherence to legal standard and ethical norms.
- C. Finances.

(1) The group care facility shall utilize funds in a manner that is safe, child-centered, responsible, and free from fraud. Policies and practices shall be in accord with sound budgeting, disbursement, and audit control procedures.

(2) The group care facility shall maintain a system of business management and staffing to ensure complete and accurate accounts, books, and records are maintained.

(3) A new group care facility shall have a predictable source of funds to finance its first year of operation and reserve funds equal to the operating costs of the first six months. However, existing licensed group care facilities that are in good standing with the Agency and increasing the capacity by no more than twenty-five (25) percent are exempt from the requirements to submit evidence of reserve funds or available credit.

(4) The group care facility shall prepare a budget each year for its group care facility showing anticipated income (broken down by category, e.g.: private donations, government grants, community fundraisers, etc.) and expenditures. The budget shall include projected costs for administration, insurance, vehicles, equipment, programming, personnel expenses, shelter (mortgage, rent, maintenance, etc.), property taxes, food, utilities, clothing, and other household expenses. A copy shall be submitted to the Agency.

(5) All board administered accounts shall be reviewed at least annually by a certified public accountant who does not serve on the board nor is otherwise employed by the group care facility. The report shall be made a part of the group care facility's record and a copy of the balance sheet submitted to the Agency at the time of relicensing.

(6) In the event financial stability is questionable, the Agency may require a financial audit to be conducted by a certified public accountant.

#### D. Policies and Procedures.

(1) The facility shall develop and implement (and update as appropriate) a policy and procedural manual that includes all of the following:

(a) Services to Children- activity planning, admission of a child, allowances, behavior intervention, community involvement for children, complaints and grievances, confidentiality of child records, critical incident reporting, disaster plan, discharge of a child, electronic use, including cell phones, tablets, etc., emergency care in the event of a placement disruption, emergency safety intervention (if applicable), exploitation, family involvement and visitation, first aid and cardiopulmonary resuscitation (CPR) training, hospitalization, facility rules, procedures related to a child's absence from the group home without permission, independent living services (if applicable), LGBTQ+ youth, management of children's money, medical care of children (including dental care), medication administration, storage and disposal, out of state placements (if applicable), prohibition of smoking, prohibition of the use of child labor as a substitute for employment, reasonable and prudent parenting, religion, routine and emergency medical care, social media, suicide prevention, supervision of children on-site and off-site, the use of universal precautions, time-out, gang affiliation, drug paraphernalia, and weapons.

(b) Administration- designation of the chain of command or supervisory structure in the group care facility, finance, job descriptions and social media.

(c) Personnel- a workable plan for contacting the facility or a staff member when necessary, confidentiality of child records, disciplinary actions, documenting staff arrival and departure times, grievances, orientation for new staff, boundaries for staff, procedures for revisions of personnel policies, prohibition of smoking on the facility premises and in vehicles used to transport children, role of staff as mandated reporters, routine or universal health precautions and infection control, social media, training and staff development, volunteers and work schedule requirements.

(2) The staff of the facility shall be familiar with policy and procedural manuals and a copy of the manuals shall be made available to staff and the licensing agency.

E. Communications and Notifications.

(1) The facility shall be able to communicate with the child, the Agency, health care providers, and other service providers.

(2) A telephone that is operational shall be available on the premises at all times.

(3) The facility shall provide an electronic mail address to the Agency and be able to access the internet.

(4) The facility is subject to South Carolina laws relating to child abuse and neglect. The facility shall immediately report incidents of suspected abuse or neglect to the South Carolina Department of Social Services.

(5) The facility shall notify the Agency licensing unit in writing within 24 hours regarding occurrences involving children in care, including but not limited to:

(a) Any federal, state or private legal action by or against the facility which affects any child, the conduct of the facility or any person affiliated with the facility;

(b) Closure of a living unit due to disaster or emergency situations such as fires or severe weather;

(c) A decision to evacuate the facility (if possible) and the names and location of all children who have evacuated in the case of an emergency.

(6) The facility shall notify the Agency licensing unit in writing at least 30 calendar days before:

- (a) Discontinuing operation of a facility;
- (b) Any change in executive leadership responsible for the facility;
- (c) Any planned construction or major structural changes to the facility;

(d) Any impending change that would necessitate a change in the conditions of the license, i.e., capacity, age range, gender, location or name.

F. Staff and Volunteer Responsibilities.

(1) A staff member, or volunteer who knows or has reasonable cause to suspect that a child has been abused or neglect as defined in S.C. Code Section 63-7-20 shall immediately inform by phone, in writing, or in person, the Agency or a local law enforcement agency.

(2) Staff members and volunteers shall keep information and records on children confidential pursuant to the requirements in S.C. Code Section 63-7-940 and S.C. Code Section 1990.

(3) Each staff member or volunteer shall notify the group care facility as soon as possible, but no later than the staff member's next working day of all of the following:

(a) A conviction of any crime.

(b) A current or past investigation by any governmental agency for any act, offense, or omission, including an investigation related to the abuse or neglect, or threat of abuse or neglect, to a child or other client, or an investigation related to misappropriation of a client's property.

(c) A governmental finding substantiated against them of abuse or neglect of a client or of misappropriation of a client's property.

(d) A denial, restriction, or other limitation of a license or credential from the Agency of safety and professional services.

(4) The staff member or volunteer shall demonstrate competency in the group care facility's program statement, policies and procedures, roles and responsibilities, and resident rights.

# G. Directors.

(1) Executive Directors shall have qualifications consistent with the responsibilities of the position as determined by the governing board.

(2) Program Directors are employed full-time and are responsible for the daily operations of a facility and shall have the following qualifications and responsibilities:

(a) Be at least 21 years old;

(b) Have a bachelor's degree in one of the major fields of study including, social work, sociology, psychology, special education, counseling and guidance, criminal justice and any other area in the human services field as approved by the Agency;

(c) Have two (2) years of professional supervisory experience in child welfare;

(d) Oversee program operation and development, and

(e) Review the appropriateness of admission of each child to the facility, participate in developing, reviewing, and updating child assessments and care plans, provide technical assistance to the group care staff and agencies and periodically review and update facility policies and procedures.

(3) Documentation of qualifications (e.g., a resume, application, etc.) shall be on file at the facility and shall be reviewed at the time of licensing/relicensing.

(4) Program Directors employed prior to July 1, 2021 will have a transition period of six years to meet the educational requirements. Alternatively, work experience may be considered in lieu of a bachelor's degree at the Agency's discretion for program directors employed prior to July 1, 2021.

# H. Caregivers.

(1) Caregivers have regular, direct contact with children and, at a minimum, shall be responsible for the care, nurture, monitoring and supervision of children; supporting and promoting parental involvement when appropriate; reporting suspected child abuse and neglect to the Out of Home Abuse and Neglect Unit of the

South Carolina Department of Social Services and/or to a law enforcement agency in the county where the child resides or is found; and guidance on independent living services, as appropriate.

- (2) A caregiver shall be at least twenty-one years old and five years older than the oldest child.
- (3) Caregivers shall have a minimum of a high school diploma, certificate or equivalent.

I. Hiring and Employment.

(1) Before a group care staff applicant begins employment, the group care facility shall do all of the following:

- (a) Ensure that the applicant meets the qualifications for their position
- (b) Conduct and document background checks pursuant to regulation 114-591(L), on each applicant.
- (c) Conduct and document a general orientation to the facility.

(d) Determine that the caregiver applicant is at least twenty-one years old and at least one year of childcare experience, either paid or unpaid.

(e) Obtain and file documentation to confirm that the caregiver applicant has a high school diploma, certificate or equivalent.

(f) No more than three months prior to employment or no later than 30 days after employment, provide certification from a physician, physician assistant, or nurse practitioner that the caregiver meets the minimum physical requirements of the position and that the caregiver is in general good health. Physical examinations report forms can be obtained from the Agency website.

(g) Conduct and document additional training, including CPR, bloodborne pathogen, first aid, and restraint training as needed.

J. Personnel Records.

(1) The facility shall establish and maintain on the premises a personnel record for each group care staff member and volunteer staff.

(2) Each personnel record shall contain all of the following for the staff member for which the record was created:

(a) A completed application for employment that shall include the staff member's name, address, date of birth, training, education, work experience, and date of hire and proof that educational requirements have been met, if applicable;

- (b) Current address and all addresses within the five years prior to hire;
- (c) A completed and current background information disclosure form;
- (d) The results of all background checks required in 114-591 (L);
- (e) A job description that is signed and dated by the staff member or volunteer;
- (f) A completed physical examination for caregivers or volunteer staff;

(g) The staff member or volunteer staff's driver's record, if the staff member or volunteer is assigned to transport children;

(h) A training record that shall include documentation of the staff member or volunteer's receipt of the orientation, training, and continuing education and the training record shall be documented as specified in 114-591 (M) (4);

- (i) Documentation of all first aid and CPR certifications, if applicable;
- (j) Documentation of restraint training certification, if applicable;
- (k) For RPPS decision makers, documentation of the training required;
- (1) Any disciplinary actions issued to the group care staff person or volunteer.

K. Staff Medical Exams.

(1) Each caregiver or volunteer staff person shall be physically, mentally and emotionally able to provide responsible care for children and shall not pose an imminent threat of harm to children or to the quality and manner of their care.

(2) All caregivers shall provide a medical statement on the medical history form approved by the Agency at the time of their hiring. This form should be kept in the caregiver's employee file for the duration of their employment.

(3) Caregivers or volunteer staff persons included in staff-to-child ratios shall have a medical examination conducted by a physician, physician assistant, or nurse practitioner no more than three months prior to employment or no later than thirty days after employment to certify that the caregiver meets the minimum physical requirements of the position and that the caregiver is in general good health that will not adversely affect the care of children in placement. The facility shall utilize the official Agency medical examination report form, which can be obtained from the Agency website.

(4) If the Agency has reason to believe that the physical or mental health of a caregiver or volunteer staff person or an applicant for employment may endanger a resident, the Agency may require that a written statement be submitted by a physician or, if appropriate, by a licensed mental health professional, that certifies the condition of the individual and the possible effect of that condition on the facility or the children in care.

#### L. Criminal Activity.

(1) No child may be placed in a group care facility with a person if the person or anyone eighteen years of age or older residing in the facility or working in the facility:

- (a) Has a substantiated history of child abuse or neglect; or
- (b) Has pled guilty or nolo contendere to or has been convicted of:
  - (i) An 'Offense against the Person' as provided for in Chapter 3, Title 16;
  - (ii) An 'Offense against Morality or Decency' as provided for in Chapter 15, Title 16;
  - (iii) Contributing to the delinquency of a minor as provided for in Section 16-17-490;

(iv) The common law offense of assault and battery of a high and aggravated nature when the victim was a person seventeen years of age or younger;

- (v) Criminal domestic violence as defined in Section 16-25-20;
- (vi) Criminal domestic violence of a high and aggravated nature as defined in Section 16-25-65;
- (vii) A felony drug-related offense under the laws of this State;
- (viii) Unlawful conduct toward a child as provided for in Section 63-5-70;
- (ix) Cruelty to children as provided for in Section 63-5-80;
- (x) Child endangerment as provided for in Section 56-5-2947; or
- (xi) Criminal sexual conduct with a minor in the first degree as provided for in Section 16-3-655(A).

(c) A person who has been convicted of a criminal offense similar in nature to a crime enumerated in L(1)(b), when the crime was committed in another jurisdiction or under federal law, is subject to the restrictions set out in this section.

(d) This section does not exclude any person in L(1)(b) when a conviction or plea of guilty or nolo contendere for one of the crimes enumerated in L(1)(b) has been pardoned. However, notwithstanding the entry of a pardon, the Agency or other entity making placement or licensing decisions may consider all information available, including the person's pardoned convictions or pleas and the circumstances surrounding them, to determine whether the applicant is unfit or otherwise unsuited to work or volunteer in a group care facility.

(2) Prior to employment all persons referenced in L(1)(b) shall undergo a background check to be conducted by the State Law Enforcement Division, a fingerprint review to be conducted by the Federal Bureau of Investigation, a check of the State Central Registry of Child Abuse and Neglect and department records, the equivalent registry system check for each state in which the person has resided in the previous five years, the National Sex Offender Registry, and the state sex offender registry.

(3) Group care staff background checks shall be submitted to the Agency upon request.

(4) If a staff person or volunteer staff person separates from the facility for any period of time, then all background checks cited in L(2) shall be repeated prior to re-employment.

(5) A fingerprint review conducted by the Federal Bureau of Investigation shall be required for all group care staff, including administrative staff and other support staff, and all volunteer staff. The fingerprint review shall be required prior to employment and every five years thereafter.

(6) A background check conducted by the State Law Enforcement Division, a check of the State Central Registry of Child Abuse and Neglect and department records, the equivalent registry system check for each state in which the person has resided in the previous five years, the National Sex Offender Registry, and the state sex offender registry shall be completed annually prior to re-licensure for facility staff and volunteer staff.

(7) A background check conducted by the State Law Enforcement Division, a check of the State Central Registry of Child Abuse and Neglect and department records, the equivalent registry system check for each state

in which the person has resided in the previous five years, the National Sex Offender Registry, and the state sex offender registry shall be completed prior to any person eighteen years of age or older residing on the premises and annually thereafter. In extenuating circumstances, if the background check cannot be completed before placement, the background check must be completed within thirty (30) days. Requests for background checks must be submitted at least three months prior to a current placement's eighteenth birthday.

(8) The chief executive officer or the person authorized to hire staff shall agree to comply with the conditions of the Memorandum of Agreement on Criminal Record Checks.

(9) When a group care staff person or volunteer staff person is under investigation by the Agency, then the Agency may restrict that staff person's access to children until the investigation is complete if the seriousness of the allegations warrant such action.

#### M. Staff Orientation and Continuing Education.

(1) The director shall submit an annual training plan to the licensing agency prior to implementation to ascertain that the plan will comply with this requirement. Training topics shall include trauma concepts and behavioral management, to provide for the needs of the children who are or may be placed in the group care facility, early learning, child and adolescent brain development, healthy eating, protective factors, and child abuse and neglect prevention. The annual training plan shall include proposed training topics, the planned month and number of training hours expected for each topic.

(2) Documentation of completed training shall be on file at the facility and shall be reviewed at the time of licensing, monitoring, or relicensing visits.

(3) The training record shall include documentation of the staff member's receipt of the orientation, training, and continuing education. Documentation shall include a summary training log for each caregiver for each license year followed by supporting documentation (e.g. certificates, training sign-in sheets if legible, etc.). The staff training log shall include all of the following:

(a) Date and time of orientation and each training session;

- (b) Name of each person that conducted each orientation and training;
- (c) Training topic;
- (d) Total hours of training or continuing education received;
- (e) Whether the staff member completed the requirements of the training or continuing education session.

(4) Each volunteer staff person included in staff-to-child ratios shall meet the training requirements specified for caregivers.

(5) Within the first week of hire and prior to working alone with children, the group care facility shall provide the group care staff member with all of the following:

(a) A job description and the job description shall be signed and dated by each staff member upon receipt by the staff member;

(b) The facility's program statement and policies and procedures, including the personnel policies and procedures;

(c) Requirements of child abuse and neglect reporting and information on how to identify and report abuse or neglect situations;

- (d) Instruction on how to use fire extinguishers, and on emergency and evacuation procedures;
- (e) Any other information that would orient the staff member to the facility;

(6) Each license year caregivers shall complete a minimum of fifteen (15) hours of training related to the population served by the group care facility (not including first aid and cardiopulmonary resuscitation). A maximum of four training hours can be carried over from the previous license year as long as the training hours did not count towards the previous license year's fifteen hour requirement. The Agency encourages the facility to offer training regularly throughout the license year.

(7) Types of training that may be acceptable to the Agency to meet continuing education requirements include all of the following:

- (a) Formal courses resulting in credits or continuing education units.
- (b) Training provided by the facility, a staff member, or a volunteer;
- (c) Workshops, conferences, seminars, or lectures;

(d) Online training, limited to seven (7) hours of training per staff annually; however, unlimited instructor-led online training is allowed.

(8) Training topics include, but are not limited to: skill training in specific methods employed by the program, crisis management protocol, significance and value of birth and extended family, the importance of maintaining meaningful connections between the child and parents, including regular visitation, identifying and reporting child abuse and neglect, role of staff as mandated reporters, basic communication, interviewing skills, information related to the transmission and prevention of infection or universal precautions, group dynamics, fire life safety, water safety (for staff who will provide supervision for children around bodies of water), history and development of the service being provided (from the facility) and its current status, grief and loss issues for children in care, specific organizational policies and procedures, supervision and teaching skills, working with children who may have emotional, behavioral, physical problems or developmental delays, treatment care specific to the needs of the population served, individualized education and development plans, developmental needs of children, behavior management, de-escalation techniques, suicide prevention, cultural competency and culturally responsive services, LGBTQ+ issues, gang activity, drug and alcohol education, sex education, medication administration, trauma-informed care, prudent parenting, psychotropic medications, medical consent, child-specific training and/or may address issues relevant to the general population of children and other education and/or training required by the state.

(9) The fifteen hour training requirement will be pro-rated for new caregivers based on the number of months worked during the license year.

Months Worked	Hours
During License	Required
Year	1
1	1
2	2
3	3
4	5
5	6
6	7
7	8
8	9
9	10
10	12
11	13
12	14

(10) At all times at least one caregiver in each cottage shall be certified in first aid and cardiopulmonary resuscitation appropriate to the age of the population served. The training shall be from the American Red Cross or a program or trainer certified by the American Red Cross, American Heart Association, or the Health and Safety Institute. The certification shall be renewed in accordance with training guidelines.

(11) If it is a facility's policy to implement physical restraints, then all caregivers shall complete restraint training. New staff cannot participate in a restraint prior to completing the facility's restraint training.

N. Volunteers.

(1) If volunteers are used as part of a group care facility's program of services, the group care facility shall have written policies to screen, select and supervise volunteers.

(2) Those volunteers who have opportunity for unsupervised contact with children shall be known as "volunteer staff" and shall supply a written application and have an interview with the staff who is responsible for the supervision of volunteers before volunteering.

(a) Volunteer staff may be used to meet the staff-to-child ratio requirements if the volunteer meets the requirements specified for caregivers under regulation 114-591 (H), (I), (L), (M) and (K).

(3) Volunteers shall be invited to participate in annual training required of other caregivers.

(4) Individuals or groups who offer to provide a one time or occasional voluntary service (parties, trainings, entertainment, etc.) and do not have unsupervised access to children, are not required to undergo a full background screening by the group care facility. At least one facility caregiver shall supervise the interaction between such individuals or groups and the children.

O. Record Storage and Retention.

(1) The facility shall retain in a locked or secured area all children's records for a minimum period of three years from the date the child is discharged from the program, and all staff records for a minimum period of three years from the date the staff separates employment.

(a) If any litigation, claim, or other action involving the records have been initiated prior to the expiration of the three year period, the records shall be retained until completion of the action and resolution of all issues that arise from it or until the end of the three year period, whichever is later.

(b) A facility that no longer operates shall secure the records until the requirements above are met.

(2) In accordance with the South Carolina Electronic Transactions Act (S.C. Code Ann. 26-6-10 et seq.), electronic records will be accepted assuming that the information is in a reasonably accessible format. The Provider shall ensure that the electronic record is accessible to reviewers and auditors and the integrity of the

record is preserved.

P. Supervision and Staff-to-Child Ratios.

(1) Caregivers shall be responsible for the daily supervision of children and direct care to children to ensure their safety and well-being. A facility shall staff each group care facility with caregivers in numbers sufficient to meet the staff to child ratios specified in regulation 114-591 (P)(3) and for any off-premise activities.

(a) A facility shall ensure that supervision is provided for each child appropriate to the child's age, maturity, behavior, and developmental level and sufficient to ensure the safety of all children in the facility.

(b) No child may be in the facility without supervision by a caregiver.

(c) A facility shall ensure that sufficient staffing is available to provide supervision of a child during suspensions and other extended absences from school.

(2) A minimum of two caregivers shall be available, accessible and able to respond on-site in a reasonable amount of time during waking hours. A minimum of two caregivers shall be present during sleeping hours.

(3) The staff-to-child ratios of the facility shall be 1:5 for children from birth to one year old. A facility shall have at least one caregiver awake and providing supervision for every 5 children in this age group during waking hours and during sleeping hours.

(4) The staff-to child ratios of the facility shall be 1:6 for children one to two years old. A facility shall have at least one caregiver awake and providing supervision for every 6 children in this age group during waking and sleeping hours.

(5) The staff-to-child ratios of the facility shall be 1:8 during waking hours and 1:10 during sleeping hours for children three years old and older.

(6) Any child of live-in staff shall be included in the staff-to child ratios.

(7) The staff-to-child ratios in regulation 114-591(P) are the minimum staffing requirements for caregivers. The number of caregiver staff on duty shall be increased as necessary to meet the needs of children and to ensure their safety and welfare.

(8) The Agency may require a higher staff-to-child ratio if an on-site review indicates that a child is at risk of abuse, and more supervision is needed to maintain appropriate control, discipline, adequate care and safety.

(9) The facility shall have a responsive system to provide for on-call caregivers (available, accessible and able to respond on-site) in the event of an emergency or disruption. A schedule of on-call caregivers shall be made immediately available to the Agency upon request.

# Q. Time Off for Caregivers.

Each full-time caregiver shall have at least two consecutive days off each month in addition to one day off each week or the equivalent. The facility shall comply with state labor laws.

#### R. Effective Date.

This Regulation shall become effective on September 12, 2021.

114-592. Physical Environment and Safety.

A. Physical Plant and Environment.

(1) Zoning Compliance and Building Codes.

(a) The construction of a new facility, the conversion of an existing building for residential child care purposes, or the remodeling of a facility shall comply with all applicable local zoning regulations and local and state building and fire codes.

(b) Architectural plans for new construction or structural changes shall be approved by the appropriate authority and meet all required codes prior to construction.

(2) Acceptable Buildings.

(a) Group care facilities shall utilize single-family residences or single-owner properties and permanent structures.

(b) Neither mobile homes nor individual apartments or townhomes shall be licensed.

(c) If the facility will serve children under the age of six years old, it shall meet applicable lead base paint requirements, as established by the South Carolina Department of Health and Environmental Control (DHEC), pursuant to Section 44-53-1310, et seq., and regulation (61-85). 25 to prevent lead poisoning in children.

(3) Documentation of Buildings and Grounds.

(a) The facility shall provide a copy of a campus map to identify all buildings, common areas, recreational space and any distinguishing features or hazards on the property.

(b) The facility shall provide a floor plan for each residential building that identifies each sleeping quarter and bathroom.

(4) Condition.

(a) The group care facility, grounds, and all structures on the grounds of the property shall be properly maintained in a clean, safe, and sanitary condition and in a reasonable state of repair.

(b) The interior and exterior shall be free from dangerous objects and conditions, and from hazardous materials.

(c) The facility shall have adequate lighting, ventilation and proper trash and recycling disposal, if recycling is available.

(5) Water and Sewer.

(a) The group care facility shall have an adequate and safe water supply.

(b) If the facility's water supply is from a private well, the well shall be tested at least annually for bacteria and approved by the Department of Health and Environmental Control.

(c) If the facility population includes children under six years of age or expectant mothers, the water shall also be tested at least annually for lead and approved by the Department of Health and Environmental Control.

(d) The facility shall have an adequate sewage disposal system. If the facility has a private sewage disposal system, the system shall be approved by the appropriate governmental approving authority.

(e) The facility shall be equipped with a water heater sufficient to meet the needs of all children.

(f) The hot water delivered to the facility's sinks, tubs, and showers shall be no less than  $100^{\circ}$ F and shall be no more than  $120^{\circ}$ F

(6) Heating and Cooling.

(a) There shall be proper equipment for adequately heating and cooling in living, sleeping, sanitary, and working areas.

(b) Heating equipment shall be capable of maintaining a room temperature of not less than 68 degrees Fahrenheit. Cooling equipment shall be capable of maintaining a room temperature of not more than seventy-five (75) degrees Fahrenheit.

(c) Safety barriers shall be placed around all heating and cooling sources, such as hot water pipes, wood, coal and gas burning fire places, hot water heaters, and radiators that are accessible to children to prevent accidents or injuries upon contact by the child.

(d) Rooms with toilets, bathrooms, and bedrooms without operable windows shall have adequate ventilation.

(7) Bedrooms and Acceptable Sleeping Conditions.

(a) Bedrooms for children shall provide a minimum of fifty square feet of space per child.

(b) Bedrooms rooms for children shall be suitable and comfortably furnished with beds that are placed at least two feet apart.

(c) Bedrooms shall have outside window exposure or auxiliary means of ventilation, both intake and exhaust, and means to egress.

(d) Each child shall have a separate bed with a level mattress long and wide enough to accommodate the child.

(e) Bunk beds shall be limited to no more than one (1) bed above the other bed.

(f) Children sleeping in the top bunk of a bunk bed shall be at least six years of age or older.

(g) The top bunk of a bunk bed shall not be used by children with conditions limiting mobility and shall have a safety rail if used by a child under eight years of age.

(h) There shall be at least five feet of space between bunk beds. The top of a mattress of a bunk bed shall be at least three feet below the lowest point of the ceiling and there shall be at least three feet between upper and lower bunks.

(i) Sleeping Conditions.

- (j) Children shall not sleep in a bed with an adult under any circumstances.
- (k) Children of the opposite sex who are five years of age or older shall not share a bedroom except:

(i) When it is necessary to facilitate the placement of sibling groups; or

(ii) To meet the needs of transgender children.

(1) A child who is 18 years of age or older may not share a bedroom with a child who is under 18 years of age, unless the child who is 18 years of age or older is continuing to share a bedroom with a child he or she had already been sharing the bedroom with before turning 18 years of age.

(m) No child shall sleep in a detached unsafe building, an unfinished attic or basement, a stairway, hall, or room designated or commonly used for other than bedroom purposes.

(n) Sufficient bed coverings to include linens appropriate to the climate shall be provided.

(o) Waterproof mattresses, pillows and coverings shall be provided as needed.

(p) Bedding provided by the facility shall be clean and sanitary. All bedding shall be laundered, at minimum, between assignments to different children.

(q) Linens shall be changed as often as required for cleanliness and sanitation, but not less frequently than once a week.

(r) There shall be a quiet area in the facility well-lit, furnished and suitable for study.

(8) Bathrooms.

(a) There shall be at least one lavatory with adequate hot and cold water for every six children, a tub or shower and one indoor flush toilet for every eight children. Multiple toilets in one area shall be in separate compartments.

(b) Separate bathroom facilities shall be provided for girls and boys over five years of age.

(c) Ventilation shall be provided with either an open screened window or functioning exhaust fan.

(d) Mirrors or non-breakable reflective surfaces shall be provided in the bathrooms at levels easily accessible to children.

(e) Easily cleanable receptacles with lids shall be available in all bathrooms.

(f) Liquid or granular soap and disposable towels or cloth towels designated for individual use shall be provided at each sink.

(9) Laundry.

(a) A facility shall have as many clothes washing machines and clothes dryer as needed to adequately launder clothing for the population served.

(b) Any laundry equipment in the facility shall be installed and vented in accordance with the manufacturer's recommendations.

(10) Video Monitoring in Facilities.

(a) Facilities that utilize video monitoring are prohibited from the placement of cameras in areas where persons dress and undress.

(b) Facilities that utilize restraints must be equipped with video monitoring and must maintain video footage for a minimum of 30 days.

(c) Facilities that use utilize restraints must retain any audio associated with video footage for a minimum of 30 days.

(d) Facilities that utilize restraints must make video footage available to the Agency in an accessible format within 24 hours of request.

(11) Staff Facilities.

(a) Staff who reside on campus shall be provided with sleeping quarters separate from the children. An exception for sleeping areas will be provided for facilities with staff awake during the night.

(b) Staff shall be provided with bathroom facilities that are separate from the children.

(12) Outside Recreational Space.

(a) The outdoor space shall be free from hazards and litter.

(b) Outdoor walkways shall be free from debris, leaves, ice, snow, and obstruction.

(c) Children shall be restricted from unsafe areas and conditions such as traffic, parking areas, ditches, and steep slopes by a fence or natural barrier that is at least four feet high and in good repair.

(d) Outdoor recreational equipment shall be age-appropriate for the population served and meet the standards of the US Consumer Products Safety Commission (CPSC), if applicable. Recalled products listed by the CPSC shall not be accessible to children.

(e) Outdoor recreational equipment shall be made of durable, non-rusting, non-poisonous materials, and shall be sturdy and well-maintained.

(f) Stationary outdoor equipment shall be firmly anchored and shall not be placed on a concrete or asphalt surface.

(g) Swings shall be located to minimize accidents and shall have soft and flexible seats.

(h) Cushioning material such as mats, wood chips or sand shall be used under climbers, slides, swings, and large pieces of equipment. Cushioning material shall extend at least six feet beyond the equipment and swings.

(i) Slides shall have secure guards along both sides of the ladder and be placed in a shaded area.

(j) Outdoor metal equipment that is uncoated shall be located in shaded areas or otherwise protected from the sun. Staff shall check the temperature by touch prior to children playing on it.

(k) Outdoor equipment shall be arranged so that children can be seen at all times.

(1) A properly fitting bicycle helmet that is approved by American National Standards Institute, Snell Memorial Foundation, or American Society for Testing and Materials, shall be worn by each child when riding a bicycle, skateboard, roller blades, or skates. Helmets are optional for use with tricycles.

(13) Water Safety.

(a) Swimming pools located at the facility or used by the facility shall conform to the regulations of DHEC for construction, use, and maintenance.

(b) Swimming and wading pools shall be enclosed with protective fencing at least four feet high, secured with a safety device (i.e. latch, lock, etc.) to restrict children's access, and any method of access must be through the safety device.

(c) Swimming pools shall be equipped with a life saving device, such as a ring buoy.

(d) If the swimming pool cannot be emptied after each use, the pool shall have a working pump and filtering system.

(e) At any swimming or boating activity provided by or arranged for children, the facility must adhere to the following:

(i) A certified life guard is preferred for all swimming activities; however, the facility must enforce written policies and procedures that ensure that on each outing, each child demonstrates their level of swimming proficiency when first entering the water. The demonstration must provide staff with sufficient information to allow staff to make basic judgments as needed relative to the child's safe use of the swimming facilities (i.e., limiting access to shallow swimming areas as opposed to deeper swimming areas, diving boards, etc.). If any child is unable to demonstrate an ability to swim, the facility will require the child to wear a Coast Guard approved vest.

(ii) The facility must document in each child's record the child's level of swimming proficiency, once known.

(iii) A buddy system must be employed for children.

(iv) Staff must actively supervise children during swimming and boating, including, but not limited to, maintaining line-of-sight supervision of each child, staff communicating with one another, remaining aware, and being accountable for each child at all times.

(v) Any boats utilized for recreational purposes must comply with any required federal, state, or local registration, and meet safety standards.

(vi) All children and staff engaged in boating activities must wear a Coast Guard approved vest.

(f) The following staff to child ratios must be utilized during water activities:

- (i) Birth to two years: 1:1
- (ii) Two to three years: 1:2
- (iii) Three to four years: 1:3
- (iv) Four to five years: 1:6
- (v) Five years and older: 2:25

B. General Safety.

(1) Fire Safety.

(a) Each facility shall comply with the regulations and codes of the State Fire Marshal.

(c) The facility shall have an annual fire safety inspection. The results of the inspection shall be reported to the Agency.

(d) Based on the recommendations of the fire authorities, the Agency will decide as to whether the facility meets standards of fire safety for child caring purposes.

(e) A facility is responsible for any fees or related expenses for the fire inspection.

(f) A fire escape plan shall be posted in the facility in areas accessible to staff and children.

- (2) Power or Vocational Tools.
  - (a) Staff shall supervise children (on campus) while using equipment or tools.
  - (b) All equipment shall be well maintained and in good working order.
  - (c) Power tools shall have intact safety devices.
  - (d) Power tools shall be stored in a locked area not accessible to children.
- (3) Pets and Animals.

(a) Healthy animals which present no apparent threat to the health and safety of the children shall be permitted, provided they are cleaned, properly housed, fed and cared for and have had required vaccinations, as appropriate. Live animals shall be excluded from areas where food for human consumption is stored, prepared or served.

(b) Animals shall not be permitted if a child in the room or area is allergic to the specific type of animal.

- (c) Pens, cages, litter boxes and outside areas used by pets shall be kept clean.
- (d) Animal litter and waste shall not be accessible to children.
- (e) Reptiles and rodents shall not be accessible to children.
- (f) Children and adults shall wash their hands after touching animals.
- (g) Pets shall be vaccinated in accordance with state and/or local law.

(h) A pet suspected of being ill or infected shall be treated immediately for its condition or removed from the facility. Each pet shall be kept and handled in a manner that protects the safety and well-being of children and the pet.

(4) Poisons.

(a) Poisons or harmful agents shall be kept locked, stored in the original containers, labeled and inaccessible to children.

(b) Poisons or harmful agents shall be purchased in childproof containers, if available.

(c) Pesticides shall be of a type applied by a licensed exterminator in a manner approved by the United States Environmental Protection Agency. Pesticides shall be used in strict compliance with label instructions and should not be used while children are present. Pesticide containers shall be prominently and distinctly marked or labeled for easy identification of contents and stored in a secure site accessible only to authorized staff.

(5) Other Safety Requirements.

(a) Weapons, firearms, or ammunition are not permitted in the facility or on the premises. This does not apply to a guard, law enforcement officer, or member of the armed forces, or student of military science.

(b) The facility shall be effectively safeguarded against insects and rodents.

(c) Knives, lighters, matches, tobacco products and other items that could be hazardous to children shall not be readily accessible to children.

(d) State laws prohibiting minors from smoking shall be enforced. The facility shall assure that children are not exposed to second-hand smoke while at the facility or in the presence of staff.

(e) Floors, walls, ceilings, windows, doors and other surfaces shall be free from hazards such as peeling paint, broken or loose parts, loose or torn flooring or carpeting, pinch and crush points, sharp edges, splinters, exposed bolts and openings that could cause head or limb entrapment.

C. Sanitation.

(1) General Sanitation.

(a) Clean and sanitary conditions shall be maintained indoors and outdoors, including indoor and outdoor recreational equipment and furnishings.

(b) The facility shall have an annual safety and sanitation inspection.

(c) Based on the safety and sanitation inspection, the Agency will decide as to whether or not the facility meets standards of safety and sanitation for child caring purposes.

(d) A facility is responsible for any fees or related expenses for the health inspection.

(2) Staff Health.

(a) Staff persons shall wash their hands with soap and warm running water before preparing or serving food, before assisting a child with eating, after assisting a child with toileting or diapering, before and after toileting, after administering medication, after cleaning, after assisting with wiping noses, after contact with body fluids, after contact with animals, and after using cleaning materials. Hands shall be washed even if gloves are worn to perform these tasks.

(3) Food Safety and Preparation.

(a) All food shall be properly labeled and stored and shall be protected against contamination.

(b) The facility shall provide refrigeration units and insulated facilities, as needed, to ensure that all potentially hazardous foods are maintained at 45 degrees Fahrenheit or below or 130 degrees Fahrenheit or above, except during necessary periods of preparation.

(c) Thermometers shall be accurate to plus or minus 3 degrees and conspicuously placed in the warmest area of all cooling and warming units to ensure proper temperatures.

(d) Containers of food, food preparation equipment and single service articles shall be stored at least 6" above the floor, on clean surfaces, and in such a manner to be protected from splash and other contamination.

(e) Food not subject to further washing or cooking before serving shall be stored in such a manner to be protected against contamination from food requiring washing

(f) Single-service articles shall be stored in closed cartons or containers to protect them from contamination.

(g) Adequate hand-washing facilities, separate from food preparation sinks, equipped with hot and cold water under pressure supplied through a mixing faucet, shall be provided in the food preparation area.

(h) Hot water shall meet current health and safety regulation 61-25 for Retail Food Establishments. Facilities shall not be required to install an additional hand-washing sink in the food preparation area if, in the opinion of the health authority, the existing hand-washing facilities are adequate.

(i) Sanitary soap and towels shall be provided.

(j) Utensils, such as forks, knives, tongs, spoons, and scoops shall be provided and used to minimize handling of food in all food preparation areas.

(k) Staff shall thoroughly wash their hands and exposed areas of arms with soap and warm water in an approved hand-washing sink before starting work, during work as often as is necessary to keep them clean, e.g., after smoking, eating, drinking, or using the toilet. Staff shall keep their fingernails clean.

(1) The outer clothing of all staff shall be clean. The facility shall ensure proper hair restraints are worn to protect from falling hair.

(m) Potentially hazardous foods requiring cooking shall be cooked to heat all parts of the food to an internal temperature of at least 140 degrees Fahrenheit, with the following exceptions:

(i) Hamburger shall be cooked to at least 155 degrees Fahrenheit.

(ii) Poultry, poultry stuffing, stuffed meats, and stuffing-containing meat shall be cooked to heat all parts of the food to at least 165 degrees Fahrenheit with no interruption of the cooking process.

(iii) Pork and any food containing pork shall be cooked to heat all parts of the food to at least 150 degrees Fahrenheit.

(iv) Rare roast beef and rare beefsteak shall be cooked to surface temperature of at least 130 degrees Fahrenheit.

(n) Spoiled or deteriorated food shall be disposed of immediately.

(o) Prepared food shall be covered and stored at temperatures that protect against spoilage. Dry foods shall be dated and stored in rigid, covered containers or single use food storage plastic bags with a zip top closure. Food in deeply dented, bulging or leaking cans, or in cans without labels, may not be used and must be discarded. A deep dent is one into which a finger can be placed. Deep dents often have sharp points. A sharp dent on either the top or side seam can damage the seam and allow bacteria to enter the can. Discard any can with a deep dent on any seam. If a can containing food has a small dent, but is otherwise in good condition, the food should be safe to eat.

(p) Leftover food that is not served shall be marked with the date of preparation and refrigerated or frozen immediately for later use.

(q) Trash in kitchen areas shall be kept in closed, plastic lined receptacles.

(4) Cleaning, Storage, and Handling of Utensils and Equipment.

(a) Tableware shall be washed, rinsed, and sanitized after each use.

(b) All kitchenware and food-contact surfaces of equipment shall be washed, rinsed, and sanitized.

(c) The cooking surfaces of cooking devices shall be cleaned as often as necessary and shall be free of encrusted grease deposits and other soil.

(d) Non-food contact surfaces of all equipment, including tables, counters, and shelves, shall be cleaned at such frequency as is necessary to be free of accumulation of dust, dirt, food particles, and other debris.

(e) After sanitation, all equipment and utensils shall be air-dried.

(f) Prior to washing, all equipment and utensils shall be rinsed or scraped, and when necessary, presoaked to remove gross food particles and soil.

(g) When manual dishwashing is employed, equipment and utensils shall be thoroughly washed in a detergent solution that is kept reasonably clean, be rinsed thoroughly of such solution, sanitized by one of the following methods:

(i) Complete immersion for at least 30 seconds in a clean solution containing at least 50 parts per million of available chlorine as a hypochlorite and at a temperature of at least 75 degrees Fahrenheit;

(ii) Complete immersion for at least 30 seconds in a clean solution containing at least 12.5 parts per million of available iodine and having a pH no higher than 5.0 and at a temperature of at least 75 degrees Fahrenheit;

(iii) Complete immersion for at least 30 seconds in a clean solution containing at least 200 parts per million of quaternary ammonium at a temperature of at least 75 degrees Fahrenheit; or

(iv) Complete immersion in hot water at a temperature of 170 degrees Fahrenheit in a three-compartment sink.

(h) Other chemical sanitizing agents may be used which have been demonstrated to the satisfaction of the health authority to be effective and non-toxic under use conditions, and for which suitable field tests are available. Such sanitizing agents, in use solution, shall provide the equivalent bactericidal effect for a solution containing at least 50 parts per million of available chlorine at a temperature not less than 75 degrees Fahrenheit.

(i) A sanitizing test kit or other device that accurately measures the parts per million concentration of the solution shall be available and used.

(j) Food-contact surfaces of cleaned and sanitized equipment and utensils shall be handled in such a manner as to be protected from contamination.

(k) Cleaned and sanitized utensils shall be stored above the floor in a clean, dry location so that food-contact surfaces are protected from contamination.

(1) Clean spoons, knives, and forks shall be picked up and touched only by their handles. Clean cups, glasses, and bowls shall be handled so that fingers and thumbs do not contact inside surfaces or lip-contact surfaces.

(m) Dish tables or drain boards of adequate size to properly handle soiled utensils prior to washing and for cleaned utensils following rinsing and sanitizing shall be provided.

114-593. Services to Children.

A. Principles for Nurturing Care.

(1) The facility shall do all of the following:

(a) Provide a safe, stable, and humane environment.

(b) Encourage a child's autonomy, respect a child's need for privacy, and consider a child's preferences and choices while providing care, supervision, and training.

(c) Provide care that is respectful toward the beliefs, interpersonal styles, attitudes and behaviors of children and families of various cultures.

B. Admissions.

(1) Intake policies shall be clearly defined, and admission shall be in keeping with the intake policies and limited to those children who fall within the scope of the facility's purpose.

(2) Decisions about admissions shall be based upon an intake study (gathered by the facility prior to admission) of the needs of the child and their family. If an emergency admission is made, the facility shall compile an intake study in partnership with the placing agency within 72 hours upon the reception of the child.

(3) The intake study shall be maintained in the child's record. The study shall include a summary of the following information. if available:

- (a) General and demographic information;
- (b) Placement need;
- (c) Child characteristics;
- (d) Family members/siblings;
- (e) Sociocultural factors;(f) Placement history;
- (g) Medical and health history;
- (h) Mental and behavioral health (including substance abuse);
- (i) Trauma screening;(j) Education;
- (k) Legal involvement and history, including court orders if available;
- (1) Permanency goal and visitation;
- (m) Contact information for the placement authority;
- (n) An inventory of the child's belongings

(4) The facility is required to complete an assessment and individualized care plan for each child within 30 days of admission.

(5) Decisions regarding admissions shall be the responsibility of either the director and/or a case committee (which may include the director, the facility's social worker, caregivers, etc.) and shall be limited to those persons to whom this responsibility is assigned.

(6) The facility shall comply with the Interstate Compact on the Placement of Children when admitting children from another state.

(7) Before or upon admission to a facility each child shall be provided with all of the following:

(a) Information on exits and evacuation routes.

(b) Oral notification and a written copy of the child's rights. If the child is 17 years of age or younger, a copy shall also be made available to the child's parent or guardian, and legal custodian, if available.

(c) A copy of the facility rules.

(d) A copy of the facility rules shall also be provided to the child's parent, guardian, or legal custodian, as appropriate.

C. Care Plans.

(1) The director or his/her designee shall develop a care plan with the participation of the placing agency; the child; a parent if the child is under 18 years of age; a guardian and legal custodian, if applicable and available; and the persons who will provide the required services to the child.

(2) A completed care plan for each child shall be placed in the child's record and shall identify individualized goals and objectives, including all of the following:

(a) A description of the child's strengths, needs, and preferences;

(b) Any court ordered conditions;

(c) Service goals for the child and the time frames for achieving those goals;

(d) Specific services and supports to be provided to achieve the service goals, and names of persons, agencies or position titles responsible for providing services and implementing any of the service goals;

(e) Specific indicators that service goals have been achieved;

(f) Plan for child's discharge;

(g) Successful transition goals into adulthood, if the child is 14 years of age or older;

(h) Plans for visits to the child by parents, other family members and fictive kin with the approval of the placing agency and in accordance with clients' right standards to ensure that an appropriate relationship is maintained between the child and family members.

(i) Arrangements for public school attendance;

(3) At least once every six months, the facility shall conduct a care plan review and revise the care plan as needed, consistent with the child's needs, care plan goals, and the permanency planning goals of the placing agency, parent or guardian. If available, the individuals who participated in the development of the child's assessment and care plan shall be invited to participate in the review.

D. Discharge and Aftercare.

(1) The governing board shall adopt and update, as appropriate, written policies concerning discharge and aftercare, including those regarding the securing and safekeeping of each child's property and funds, the disbursement of allowances or money earned.

(2) Preparation for discharge shall begin at the time of admission with the outlining of goals to be achieved in a documented discharge plan. Ongoing modifications shall be made as progress towards goals dictates. The facility shall document in the child's record efforts made by staff members to prepare the child and the child's family for discharge.

(3) Careful evaluation shall be made on an ongoing basis by both the facility and the placing agency in order to assess when and if a child may be returned to the child's home, placed in a foster home or with relatives or fictive kin, or transferred to another facility better suited to meet the child's needs.

(4) A facility will complete a discharge summary for any child residing in the facility.

The discharge summary shall be available to the Agency or legal guardian within ten business days of discharge. (5) The discharge summary shall include all of the following:

- (a) Dates of the child's stay;
- (b) Reason for discharge.;
- (c) Person or entity to whom the child discharged;

(d) A list of all services received, as well as any follow-up scheduled and recommended appointments with service providers, including the service provider's contact information and any available information;

(e) Summary of incidents involving the child;

- (f) Description of type of admission;
- (g) If appropriate, any recommendations or suggestions for future placement needs, or services;

(h) Any other relevant information.

(6) The child; the parent, guardian, or legal custodian; and the placing agency shall be given an opportunity to participate in developing a post-discharge plan. The plan shall include recommendations for continuing or additional services upon discharge and the name of the person or agency to receive the child upon discharge, if applicable.

(7) A copy of the summary shall be placed in the child's record.

(8) All of the child's personal belongings, including medical equipment shall accompany the child upon discharge. A complete accounting of these items shall be placed and maintained in the child's record. Medication shall be handled as required under regulation 114-593(R)(1)(e), (f) and (g).

(9) A facility shall allow the placing agency at least ten days to make plans for a child whom the facility requests that the placing agency remove from the facility unless both parties agree to earlier removal. This requirement may be waived for private placements.

(10) The facility shall comply with the Interstate Compact on the Placement of Children when discharging children from another state.

E. Personal Belongings and Hygiene.

(1) Each child shall be permitted to bring safe and appropriate personal belongings with him/her and to acquire belongings of his/her own.

(2) Each child shall have a place separate from that of other children to keep his/her personal belongings (toys, books, pictures, etc.) as well as his/her clothing. Appropriate storage for personal belongings include dressers, chest of drawers, wardrobe, closets, trunks, desks, and night stands.

(3) Each child shall be provided with sufficient amounts of individually dispensed soap, clean towels, toilet paper, toothpaste, shampoo, deodorant, and other personal hygiene products that are gender specific to the child.

(4) A facility shall not withhold personal belongings as a means of behavior management.

F. Clothing.

(1) The facility shall ensure that each child is provided with clothing and shoes individually selected, properly fitted, clean, and in good repair. The facility shall request that the parent, legal guardian or placing agency provides each child with clothing and shoes individually selected, properly fitted, clean, and in good repair.

(2) Clothing shall be appropriate to the season and comparable to that worn by other reasonably dressed children in the community.

(3) Whenever possible, children shall be involved in the purchase and selection of new or donated clothing. Donated clothing may be used if in good condition.

(4) Clothing belonging to child shall be taken with them upon discharge.

(5) Children will be provided with the necessary equipment and supplies for outdoor activities at the facility.

G. Nutrition.

(1) Food shall be available and provided to children in sufficient quantities and varieties and shall provide for nutritional and dietary needs. Food or modified diets ordered by a physician shall be provided for those children who have special needs. In planning menus, the religious practices and cultural patterns of the children shall be considered, and foods offered accordingly.

(2) Meals that conform to the dietary guidelines issued by the USDA shall be provided three times per day.(3) Menus.

(a) Prior to licensure the facility shall submit a menu encompassing four weeks that has been approved by a licensed dietician to demonstrate that the facility understands the minimum nutritional requirements.

(b) When the USDA recommendations are revised the facility shall submit for re-licensure an updated menu encompassing four weeks that has been approved by a licensed dietician to demonstrate that the facility understands the minimum nutritional requirements.

(c) Weekly menus shall

- (i) Be planned in advance of the date of service;
- (ii) Specify the actual food served;
- (iii) Posted in the food serving area or in another place where children can read them;
- (iv) Kept on file and available for at least 30 days after meals have been served.

(d) When it is necessary to substitute one item for another item on a menu, the facility shall ensure that the replacement item has the same nutritional value as the item replaced.

(4) Meals and Snacks.

- (a) Meals shall be served at regular times comparable to normal mealtimes in the community.
- (b) Food served at a meal shall consist of adequate portions based on the ages of children.

- (c) Nutritious snacks shall be provided between meals to children at the facility.
- (d) No child shall be deprived of a meal or snack.
- (e) Children shall not be forced to eat.
- (f) Adults shall be present during the preparation and serving of meals.

(g) The same meal shall be provided for staff and children with the exception of the beverage unless a modified diet is required by a physician or for religious reasons.

# H. Activities.

(1) The facility shall establish and implement a written plan of general age or developmentally-appropriate activities for children that shall include all of the following:

- (a) Leisure-time activities;
- (b) Opportunities to engage in social and community activities;
- (c) Self-expression and communication;
- (d) Opportunities for physical exercise to encourage gross and fine motor development;
- (e) Guidance and assistance in the development of daily living skills;
- (f) Activities appropriate to a child's ethnic culture;
- (g) Opportunities for activities geared towards the individual interests of children.

(2) Appropriate activities for children's participation shall include but not be limited to extracurricular activities, social activities, sports, school events, field trips, afterschool programs or functions, church activities, utilization of community recreation facilities, participation in community affairs, attendance at cultural events, vacations lasting up to two weeks, overnight activities away from the placement lasting up to one week, employment opportunities; and in-state or out-of-state travel, excluding overseas travel.

(3) The facility shall obtain consent from the placing agency, legal guardian or parent(s) to allow such activities for children who are not in the custody of the Agency. The following shall be taken into consideration when deciding the appropriateness of a child's participation in any off-campus event:

- (a) Stipulations of a court order;
- (b) The child's background, presenting problems, abilities and interests; and
- (c) Whether the activity is suitable, positive, and will contribute to the child's development.

(4) A variety of indoor and outdoor recreational activities and developmentally appropriate play equipment shall be offered.

(5) Documentation of recreational activities that were implemented and were appropriate to the developmental needs, and interests of children shall be on file in the facility and available for review by the Agency licensing representative.

(6) Prior to licensure, the facility shall submit an activity plan including three months of proposed activities.

(7) Prior to re-licensure, the facility shall submit activity plans encompassing at least three consecutive months of completed activities.

I. Promoting Normalcy and the Reasonable and Prudent Parent Standard.

(1) Normalcy.

(a) A facility shall promote normalcy and the healthy development of a child by supporting the child's right to participate in extracurricular, enrichment, cultural, and social activities and have experiences that are similar to those of the child's peers of the same age, maturity, or development.

(2) Reasonable and Prudent Parent Decision Maker.

(a) The facility shall ensure the presence on-site of at least one caregiver at all times who is authorized to apply the reasonable and prudent parent standard to decisions involving the participation of each child placed by the Agency in age or developmentally-appropriate activities, and who is provided with training in how to use and apply the reasonable and prudent parent standard.

(b) A reasonable and prudent parent decision maker may be an authorized representative of the facility, executive director, program director, or group care staff member.

(c) A reasonable and prudent parent decision maker shall have knowledge of a child and access to the child's care plan and other child records

(d) A reasonable and prudent parent decision maker shall document decisions made under this section for activities that do not take place in the facility and are not supervised by a caregiver.

(e) A reasonable and prudent parent decision maker shall document any decision made under this section that requires written permission from the facility in lieu of the child's parent or guardian. The completed form shall be placed in the child's record

(3) Reasonable and Prudent Parent Standard.

(a) All facilities serving children placed by the Agency shall satisfy the reasonable and prudent parent standard when facilitating age- and developmentally-appropriate extracurricular, enrichment, cultural, and social activities for children in their care.

(b) When using the reasonable and prudent parent standard, a facility shall consider:

(i) the best interests of the child, based on information known by the placement;

(ii) the overall health and safety of the child;

(iii) the child's age, maturity, behavioral history, and ability to participate in the proposed activity;

(iv) the potential risks and the appropriateness of the proposed activity;

(v) the importance of encouraging the child's emotional and developmental growth; and

(vi) any permissions or prohibitions outlined in an existing court order.

(c) All facilities serving children placed by the Agency shall be permitted use of the reasonable and prudent parent standard.

(d) The Agency shall not require that the facility receive official agency authorization prior to any exercise of the reasonable and prudent parent standard.

(e) The Agency shall require that the facility inform agency staff during routine visits about the activities in which the foster children in their care participate.

(f) If an activity involves one of the following situations, the Agency shall require reasonable notice in advance of the commencement of such an activity:

(i) Out-of-state or otherwise significant travel (excluding overseas travel, which shall require agency authorization);

(ii) Supervision of the child by another adult or allowance of a child to be temporarily unsupervised;

(iii) Contravenes a birth family's expressed wishes or belief system (if parental rights have not been terminated or if a relationship between the child and his or her kin still exists after termination);

(iv) An important social, cultural, or religious event (e.g., baptism, confirmation, bar mitzvah, etc.);

(v) Any increased level of risk to the child (whether physical or otherwise); or

(vi) Any divergence from plans and/or needs previously discussed by the Agency and the foster placement.

(g) Notice shall be in the form of a phone call, text message, email, letter, or in-person conversation with the child's caseworker.

(h) If one of the above activities is to take place routinely, the Agency shall (unless special circumstances exist or the situation changes) only require advance notice for the initial occurrence of the activity.

(i) The facility shall seek agency authorization in situations in which the Agency or birth parent must sign or consent as the child's legal guardian.

(j) Special authorization by the Agency shall be required for applications to obtain a driver's license for the child.

(k) Nothing in this section shall give the facility the authority to change the child's placement status, including through reunification with family members, violate the Standards of Care set forth agency policy, including those related to discipline practices; or violate or obstruct a court order or court-ordered plan. The following activities shall not constitute reasonable and prudent parenting decisions and shall require agency authorization

(i) arranging for a child's travel outside of the United States;

(ii) changing a child's school, school attendance, IEP, or participation in a GED program;

(iii) making drastic, permanent, or long-term changes to a child's physical appearance (e.g., through body piercings, tattoos, etc.);

(iv) changing a child's psychotropic or other prescribed medication, altering the administration of such medication, and/or altering a child's treatment regimen;

(v) changing a child's religion or involving a child in activities related to a religion against the birth family's wishes (if parental rights have not been terminated or if a relationship between the child and his or her kin still exists after termination);

(vi) consenting to medical procedures (except in emergency situations as described in Agency policy);

(vii) disclosing the child and/or birth family's image, name, or other personal information in situations other than those specified in Agency policy;

(viii) changing a child's visitation plan in any way;

- (ix) changing the communication or visitation plan between the child and his or her siblings;
- (x) altering or disrupting a child's case plan or transition plan.

(xi) Nothing in this section shall give the facility the authority to:

(1) A facility shall require each RPPS decision maker to document and communicate with other group care staff and RPPS decision makers about all of the following for children placed by the Agency:

(i) Each child's location, behavior, and program participation;

(ii) Significant incidents involving a child, as specified in the facility's policy and procedures;

(iii) Reasonable and prudent parenting requests and decisions made for children for activities that do not take place in the facility and are not supervised by a caregiver.

(m) All facilities serving children placed by the Agency shall receive training and training materials about knowledge and skills relating to the reasonable and prudent parent standard, including:

(i) The importance of a child's participation in age- and developmentally-appropriate activities;

(ii) The benefits of such activities to a child's well-being;

(iii) Knowledge and skills relating to the developmental stages of the cognitive, emotional, physical, and behavioral capacities of a child; and

(iv) Knowledge and skills relating to applying the standard to decisions such as whether to allow the child to engage in social, extracurricular, enrichment, cultural, and activities, including sports, field trips, and overnight activities lasting one or more days, and to decisions involving the signing of permission slips and arranging of transportation for the child to and from extracurricular, enrichment, and social activities.

(n) All decisions made by the facility in accordance with the reasonable and prudent parent standard shall, when possible and appropriate, include consideration and/or involvement of the child's birth family (as set forth in the principles of Shared Parenting).

J. Behavior Intervention.

(1) The facility shall adopt, and revise as appropriate, a written behavior intervention plan, which shall include:

(a) All facility rules, including a description of acceptable and unacceptable child conduct, curfew requirements, a description of the consequences for violations of facility rules, and procedures related to a child's absence from the group home without permission;

(b) All other policies, procedures and practices related to behavior intervention which are to be utilized by staff, including procedures to be followed in administering the plan and reporting behavior issues.

(2) The behavior intervention plan shall be submitted at the time of licensing or relicensing and when revisions occur.

(3) The written behavior intervention plan shall be shared, initially, and when changes occur, with all staff members, school-aged children, parents, guardians and referral sources.

(4) Cruel, inhumane and inappropriate punishment is prohibited. This includes, but is not limited to, the following: head shaving or any other dehumanizing or degrading act; deprival of food or family visits; deprival of mail; slapping or shaking; the use of handcuffs; a pattern of threats of removal from the facility as a punishment; using profanity, or any language that the staff member knows or should know may ridicule a child; authorizing, directing or asking a child to discipline another child; disciplining a child for a medical or psychological problem over which the child has no control (e.g., bedwetting, stuttering, etc.); denial of communication and visits with family members; demeaning acts designed to embarrass children; denial of essential program services; denial of shelter, clothing, or personal needs; excessive physical exercise; excessive work tasks; verbal abuse; use of any mechanical restraint or equipment that restricts the movement of an child or a portion of the child's body; use of a prone restraint that places a child in a face down position; use of chemical restraints.

(5) Efforts will be made to ensure the language of the behavior intervention plan shall be within each child's cognitive ability.

(6) All behavior intervention techniques shall begin with the least restrictive methods, including de-escalation. Children shall not be subjected to corporal punishment.

K. Time Out.

(1) As used in this subsection, "time-out" means a behavior intervention technique that is defined as the temporary restriction of an individual for a period of time to a designated area from which the person is not physically prevented from leaving, for the purpose of providing the individual an opportunity to regain self-control.

(2) Time-out shall not be used for the convenience of staff members or volunteers, as a means of coercion, discipline, or retaliation.

(3) Time-out shall not be used for a child who is in danger of harming himself or herself or for a child under 3 years old.

(4) Areas used for time-outs shall be free of objects with which a child could self-inflict bodily harm, shall provide a view of the child at all times, shall be equipped with adequate ventilation and lighting, shall not be enclosed by a door and shall comply with the safety requirements as required by the State Fire Code.

(5) The use of time-outs shall be appropriate to the developmental level and the age of the child and may not be for a period longer than the period of time necessary for the child to regain control.

(6) The maximum length of time that a child may be in time-out on each occurrence of time-out shall be one minute per the age of the child, but in no event shall time-out be utilized for a child who is under the age of three (3).

(7) The need for continued use of a time-out shall be reviewed at least every ten (10) minutes and documented in the child's record.

(8) A child that is in a time-out shall be permitted use of the toilet if requested.

(9) Any child that is in a time-out shall be within hearing of a staff member.

(10) A child that is in a time-out shall be permitted to leave the time-out room to eat meals.

(11) Within twelve (12) hours of occurrence, there shall be documentation in the child's record of each time-out, including the name of each staff member involved, the length of the time-out, and rationale for use.

L. Emergency Safety Intervention.

(1) Facilities that use physical restraints shall have a written restraint policy.

(2) All caregivers of a facility shall be trained and certified through the same nationally accredited restraint-training curriculum (i.e. Therapeutic Crisis Intervention, Crisis Prevention Institute, etc.) before participating in a restraint.

(3) The facility staff shall be aware of each child's medical and psychological conditions to ensure that the emergency safety intervention that is utilized does not pose any undue danger to the physical or mental health of the child.

(4) A staff member may not use any type of physical restraint on a child unless the child's behavior presents an imminent danger of harm to self or others and physical restraint is necessary to contain the risk and keep the child and others safe.

(5) A staff member shall attempt other feasible alternatives to de-escalate a child and situation before using physical restraint.

(6) A staff member may not use physical restraint as disciplinary action, for the convenience of the staff member, or for therapeutic purposes.

(7) If physical restraint is necessary, a staff member may only use the physical restraint in the following manner:

(a) With the least amount of force necessary and in the least restrictive manner to manage the imminent danger of harm to self or others;

(b) That lasts only for the duration of time that there is an imminent danger of harm to self or others;

(c) That does not include any of the following:

(i) Any mechanical restraint or equipment that restricts the movement of a child or a portion of the child's body;

(ii) A prone restraint that places a child in a face down position as behavior intervention;

(iii) Any maneuver or technique that does not give adequate attention and care to protection of the child's head;

(iv) Any maneuver that places pressure or weight on the child's chest, lungs, sternum, diaphragm, back, or abdomen causing chest compression;

(v) Any maneuver that places pressure, weight, or leverage on the neck or throat, on any artery, or on the back of the child's head or neck, or that otherwise obstructs or restricts the circulation or blood or obstructs an airway, such as straddling or sitting on the child's torso.

(vi) Any type of choke hold;

(vii) Any technique that uses pain inducement to obtain compliance or control, including punching, hitting, hyperextension of joints, or extended use of pressure points for pain compliance.

(viii) Any technique that involves pushing on or into a child's mouth, nose, or eyes, or covering the child's face or body with anything, including soft objects, such as pillows, washcloths, blankets, and bedding.

(8) After an episode of physical restraint, a debriefing shall take place with the child and staff that were involved in the physical restraint.

(9) Each staff member who uses a physical restraint or who witnesses the use of a physical restraint shall, within 24 hours of each incident, give the director or director's designee a written description of the incident. The director or director's designee shall document each incident, including date, time, and a description of the circumstances of the incident, and complete a critical incident report. Each description shall include all of the following:

(a) The name, age, and sex of each child involved;

(b) The date, time, and location of the incident;

(c) The name and job title of each staff member involved in the restraint and each staff member or volunteer who witnessed the use of the restraint;

(d) Circumstances leading up to the use of restraint, the behavior that prompted the restraint, efforts made to de-escalate the situation and the alternatives to restraint that were attempted;

(e) A description of the administration of the restraint, including the holds used and the reasons the holds were necessary;

(f) The beginning and ending time of the restraint and how the restraint ended;

(g) Behavior of the child during and after the use of the restraint;

(h) Any injuries sustained by a child or staff member and any medical care provided, including the name and title of the person providing the care;

(i) Any follow-up debriefing provided to children and staff.

(10) At least once per quarter, the facility, utilizing a master restraint log and the child's case record, shall review the use of all restraints for each child and staff member, including the type of intervention used and the length of time of each use, to determine whether there was a clinical basis for the intervention, whether the use of the restraint was warranted, whether any alternatives were considered or employed, the effectiveness of the intervention or alternative, and the need for additional training. Written documentation of all such reviews shall be maintained. Where the facility identifies opportunities for improvement as a result of such reviews or otherwise, the facility shall implement these changes through an effective quality improvement plan.

M. Family Involvement and Visitation.

(1) Unless a child has been removed from the custody of the child's family and visitation is specifically prohibited by a court order or other legal document, the child shall not be denied opportunities to maintain relationships with family or fictive kin and every effort shall be made (in coordination with the placing agency when one is involved) to strengthen these relationships. These efforts shall include, but not be limited to, interaction by face-to-face contact; telephone calls; letters; emails; and attendance at routine activities, such as counseling sessions, medical appointments, school events, and faith-related activities.

(2) Plans for family visitation shall be included in the written care plan for the child. The Agency shall provide the facility with the court-ordered visitation plan for children in the Agency's custody and the facility shall implement the visitation plan in coordination with the Agency.

(3) Documentation of family strengthening effort shall be included in the child's record.

(4) Correspondence between the child and the family shall not be censored, except in extreme circumstances (e.g., sending/receipt of contraband, dangerous materials, sexually explicit, etc.) with those involved being advised that their correspondence is being censored. The reason for censorship shall be documented in the child's record.

N. Exploitation.

(1) A facility shall not use a child for solicitation of funds, without the written permission of the parent or legal guardian and the child (if more than ten years of age). This shall include the child making or giving public statements pertaining to his/her history or dependency on or gratitude to the facility; the facility making such public statements about a particular child; or having a child collect or solicit donations on behalf of the facility.

(2) A facility shall obtain the written consent of the child's parent(s), or legal custodian before using the child's name, photograph or other identifying information in any form of written, visual or verbal communication which will be made public (e.g., social media, newspaper, television or radio articles/publicity materials; materials mailed or otherwise distributed by the facility to the public, etc.).

## O. Medical Care.

(1) There shall be adequate provision for health care, with services available at all times. A child's general health care shall be under the direction of one specific doctor, clinic, or other licensed health facility.

(2) A facility shall comply with Agency policy regarding medical consent for each child placed by the Agency.

(3) All necessary medical care with respect to treatment of illness and correction of physical disabilities shall be carried out promptly.

(4) Each child shall be provided with all required inoculations as well as such additional inoculations as may be appropriate under the circumstances, except with a documented medical or religious exemption obtained from a licensed physician or from the Department of Health and Environmental Control.

(5) The facility, in partnership with the parent, legal guardian, or placing agency, shall ensure that each child receives medical and dental care as needed and shall be responsible for seeking care, scheduling medical appointments, transporting the child to and from medical appointments, supervising medical appointments and communicating with medical staff.

(6) Within six months prior to or within seventy-two hours after admission to a facility, the parent, legal guardian, or placing agency shall ensure a child has a recorded medical examination conducted by a licensed physician or a licensed nurse practitioner.

(7) At a minimum, annual health examinations by a licensed physician or a licensed nurse practitioner shall be provided for each child except those less than two (2) years of age, who shall have an examination at least every six months. Children in the Agency's custody must complete health examinations in compliance with Agency policy.

(8) Children shall have had a dental examination by a licensed dentist within the six months prior to admission. Dental treatment shall be provided every six months for children over the age of two.

(9) A facility shall maintain on file a record as to each child's health, including a continuous medical record reflecting each child's growth and development, illnesses, treatments, inoculations, dental care, annual health examination and requests for medical records from the placing authority.

(10) The person or entity with legal custody shall be responsible for payment of any medical services received.

P. Hospitalization.

(1) The facility shall make provision and establish procedures for hospitalization when needed for a child under its care.

(2) Medical consent for planned hospitalization or a medical treatment shall be obtained from the child's legal guardian, parent or an appropriate Agency representative.

(3) If a child needs hospitalization or medical treatment, the child's parent, legal guardian, or placing agency shall be notified as soon as possible.

(4) In the case of an emergency event requiring an evaluation or treatment, a group home staff person shall remain with the child at the hospital or emergency location at all times and the child's parent, legal guardian, or

placing agency shall be notified immediately but no later than two hours. A group home staff person shall remain with the child until a plan can be agreed upon between the group home and the child's parent, legal guardian or placing agency.

Q. Illness and First Aid.

(1) Each caregiver shall be able to recognize the common symptoms of illness of children and to note any obvious physical disability.

(2) Each building and vehicle used to transport children shall have a first aid kit or first aid supplies that will provide care to the maximum number of children allowed under the facility license. The first aid kit or first aid supplies shall be inventoried and re-supplied as needed.

(3) A first aid kit shall be readily available to caregivers on site and away from the facility.

R. Medications.

(1) Medication Storage and Disposal.

(a) Medication including over-the-counter medication, shall be kept in the container in which it was purchased or prescribed. No person may transfer medication that has been prescribed or purchased over-the-counter to another container or change the label on any medication, unless the person is a pharmacist

(b) Medication shall be locked and stored in a location that is inaccessible to children. Only staff members who are designated in writing by the director shall have access to keys to the medication. Prescription and over-the-counter medication shall not be stored next to chemicals or other contaminants.

(c) Medication shall be kept under acceptable conditions of sanitation, temperature, light, moisture, and ventilation according to the requirements of each medication. Medication that requires refrigeration shall be stored in a separate locked compartment or container that is properly labeled, stored separately from food items, and kept inaccessible to children.

(d) If children are away from the facility with staff during the time they need to take their medication or over 24 hours, facility staff shall keep medicines locked, in the original container and kept with the staff person who is responsible and trained to administer medication. The medication administration record shall accompany the medication and be completed as detailed under regulation114-593 (R) (2).

(e) Within 72 hours of the medication's expiration date, the date the medication is no longer in use by the child for whom the medication was prescribed or purchased, or the date the child is discharged, unused medication shall be returned to a parent, guardian, or the placing agency or destroyed.

(f) Unused medications shall be destroyed by the director following the recommendations of the South Carolina Department of Health and Environmental Control or returned to the prescribing pharmacy to be destroyed.

(g) The facility shall maintain a log of medication destroyed. The information logged shall be written in ink and shall include the amount of medication destroyed, the name of the staff member who destroyed the medication, and the name of the child to whom the medication belongs. Whenever medication is released to a child's parent, guardian or legal custodian, that information, including the name of the medication, the amount of the medication released and the person receiving the medication, shall be documented in the child's record.

(2) Medication Administration.

(a) A monthly medication administration record shall be maintained. Immediately upon administering medication to a child, the staff member administering shall record all of the following on the medication administration record:

(i) Full name of the child to whom the medication was administered;

(ii) Date and time the medication was administered;

(iii) Name and dosage of the medication administered, or medical treatments received;

(iv) Signature of the staff member who administered or supervised the administration of medication;

(v) Any refusal of medication;

(vi) Any adverse reaction to the medication and steps taken to notify the child's health care provider, parent, guardian, or legal custodian;

(vii) Documentation from the prescribing physician regarding any medication changes within the current month;

(viii) Any error in medication administration (e.g. failure to administer a medication at the prescribed time, administering an incorrect dosage of medication or administering the wrong medication) and the steps taken to address it;

(b) Each entry made under this subsection shall be written in ink.

(c) Medication administration records shall be reviewed monthly, at a minimum, to ensure medication errors or events are documented and addressed appropriately.

(d) A facility shall designate and authorize specific staff to administer medications and supervise the taking of medications. Only designated and authorized staff shall administer and supervise the taking of medication. Staff will ensure medication has been taken by the person to whom it is prescribed.

(e) Staff administering medication shall have received medication training. Documentation of training shall be filed in the staff person's personnel record.

(f) If a designated and/or authorized staff member makes three medication errors in 30 days, then that staff member shall not administer medications until the staff member receives additional training by the director or designated staff as appropriate to the specific circumstances. Documentation of how the issue was addressed shall be maintained by the facility

(3) Psychotropic Medications Non-Emergency Procedures.

(a) A facility serving a child for whom psychotropic medication is newly prescribed shall ensure that all of the following requirements are met:

(i) A medical evaluation of the child is completed by a physician detailing the reason for the psychotropic medication prescribed. The evaluation or screening shall be documented in the child's record within the first 45 days after the child has first received a psychotropic medication. Subsequent evaluations of the child related to the administration of psychotropic medications shall be completed as recommended by the prescribing physician and the results documented in the child's record.

(ii) The child, if 16 years of age or older, and a parent, or guardian of the child, have signed written consent forms unless psychotropic medications are administered per court order. If the medication is administered per court order, there shall be a copy of the order in the child's record.

(iii) For children in custody of the Agency, the Agency case manager and/or supervisor shall be contacted for consent when a child is prescribed any new psychotropic medication unless the Agency has designated a caregiver to consent on their behalf. In addition, Agency staff shall be consulted and only the case manager and/or supervisor can consent to newly prescribed psychotropic medications when the child is age six or less, the child is prescribed an antipsychotic, or the child is prescribed four or more psychotropic medications.

(4) Psychotropic Medications Emergency Procedures For emergency administration of a psychotropic medication to a child, a facility shall do all of the following:

(a) Have authorization from a physician;

(b) Whenever feasible, obtain written informed consent before using the medication from the child's parent or guardian and legal custodian, if any, and from the child if 16 years of age or older;

(c) If written informed consent of the child's parent or guardian and legal custodian, if any, was not obtained before administration of the medication, notify by phone the parent or guardian and legal custodian if any, as soon as possible following emergency administration, and document the dates, times and persons notified in the child's treatment record;

(d) Document in the child's treatment record the physician's reasons for ordering emergency administration of psychotropic medication.

(5) Refused Medications When a child refuses to take a prescribed psychotropic medication, the facility shall do all of the following:

(a) Document the child's reasons for refusal in the child's record;

(b) Notify the child's physician, the parent or guardian or legal custodian and the child's placing person or agency within 72 hours of the medication refusal. Notification shall be immediate if the child's refusal threatens the child's well-being and safety.

S. Academic and Vocational Training.

(1) The facility shall comply with all state and federal laws regarding education.

(2) Each facility shall be responsible for providing an opportunity for academic training and/or vocational training in accordance with the abilities and needs of the children.

(3) School age children shall be enrolled in school as soon as possible after admission to the facility. The facility shall ensure that each child meets the school attendance requirements unless otherwise excused by school officials.

(4) School attendance shall be in accordance with state law requirements and be in accordance with the ability and best interests of the child.

(5) Facilities providing on-campus educational programs shall meet compulsory education requirements as defined by the South Carolina Department of Education. The education program of choice shall be accredited and provide transferrable Carnegie units.

(6) Educational services provided and documented in each child's record shall include the following:

(a) Placement of the child in an educational program;

(b) Documentation of each child's attendance, courses and grades and academic progress;

(c) Notifying and inviting parents, guardians and placing agency representatives, as appropriate, to attend any school related conferences or events;

- (d) Ensuring that any child experiencing difficulty in school is considered for assistance;
- (e) Providing each child with structured study time and homework assistance;

(f) Providing opportunities for participation in school related extra-curricular activities.

## T. Religion.

Each child shall be provided with opportunities for voluntary religious expression and participation in religious education and attendance at services compatible with the religious preference of the child, or a parent or guardian of the child.

#### U. Disaster Plans.

(1) Each licensed facility shall file a disaster plan with the Agency that would allow the Agency to identify, locate, and ensure continuity of services to children. A disaster plan shall include all of the following information:

(a) Plans for responding to disasters that may occur in the facility's location to include, but not limited to: hurricanes, severe thunderstorms, tornadoes, earthquakes, chemical emergencies, power outages, wildfires, heat waves, floods and winter storm;

(b) Where facility staff and children would go in an evacuation, including one location in the nearby area and one location out of the area;

(c) A plan for transporting children in case of an emergency;

(d) Phone numbers, electronic mail addresses, and other contact information for the facility staff;

(e) A list of items that the facility staff will take if evacuated, including any medication and medical equipment for children;

(f) Phone numbers the facility will call to check in with the Agency.

(2) A facility shall review the disaster plan on an annual basis to ensure it is current and accurate, document the annual review, and provide any updated documentation to the Agency as part of the annual relicensing requirements.

(3) The facility shall have written procedures for all of the following:

(a) Contacting the Agency, parent, guardian, or legal custodian, and emergency service providers as appropriate, in case of emergency;

(b) Fire safety, evacuation drills and response, including evacuation of children with limited mobility, limited understanding, or hearing impairment in case of fire;

(c) Phone numbers of staff members to be notified in case of an accident, the name, address, and telephone number of each child's health care provider and written consent from the child's parent, guardian, or legal custodian for emergency medical treatment shall easily accessible;

(4) In the event of a mandatory evacuation order due to a disaster, children are to be evacuated to a designated shelter or a safe location that is not threatened by the disaster;

## V. Critical Incident Reporting.

(1) The Agency considers the following situations to be critical incidents that shall be reported to the placing agency, legal guardian or parent no more than two hours after the incident:

- (a) Death of client;
- (b) Attempted suicide by client;
- (c) Emergency change in placement (e.g. hospitalization, incarceration);
- (d) Absence without leave/Runaway.

(2) The Agency considers the following situations to be critical incidents that shall be reported to the placing agency, legal guardian or parent within 24 hours:

- (a) Any serious injury or illness;
- (b) Suicidal gesture, not life threatening;
- (c) Prescription medication error;
- (d) Off-site emergency medical treatment;
- (e) Off-site emergency medical assessment;
- (f) Possession of a weapon;
- (g) Possession of an illegal substance;
- (h) Removal from school (e.g. suspension, expulsion, homebound);
- (i) Report/involvement of an outside regulatory agency;
- (j) Placement in seclusion or restraints;
- (k) Emergency change in placement;

(1) Attempt to contact prohibited persons and/or contact with person that suggest the potential child/youth has been a victim of sex trafficking

(3) A facility shall document critical incidents using a critical incident reporting form provided by the Agency and retain one copy in the child's record and a second copy in a comprehensive critical incident log book.

- (4) The critical incident documentation must include:
  - (a) A description of the incident and the circumstances surrounding it,
  - (b) Details regarding the precipitating factors that may have contributed to the incident;

(c) A description of the behavior management or intervention technique used to de-escalate the resident and the resident's response, as well as

(d) Any other follow-up actions taken.

(e) The appropriate internal and external persons must be notified of the incident, including internal staff, the referring agency, parents or guardians, the regulatory agency, law enforcement, etc. as applicable and these notifications shall also be documented on the critical incident reporting form.

W. Child's Record.

(1) Every facility shall maintain on the premises a confidential (as required by Section 63-7-1990 case record) for each current child stored in a locked or secure area, which may not be disclosed except for purposes directly connected with the administration of the facility or for the care and well-being of a child. The file shall contain the following:

(a) Application for services and an intake study. An application may meet the requirements of the intake study, as specified in Section 114-593(B)(3), if complete;

(b) Voluntary placement agreement or court order or both to clarify who holds physical and legal custody of the child. Group care licensing staff may accept a statement of custody in lieu of court documentation for children in the Agency's custody;

- (c) Recent photograph of the child;
- (d) Inventory of the child's clothing and other possessions;
- (e) A copy of the birth certificate provided by the placing agency;
- (f) Authorization for medical treatment signed by placing agency representative, parent or guardian;

(g) Name, address, and telephone number of the person or placing agency and physician to be called in an emergency;

(h) Reports on medical care, medications, immunizations, dental care, and psychological and psychiatric reports, if any are available;

(i) The child's care plan and reviews, if appropriate;

(j) Current record of the child's physical, emotional, social and academic progress in and relationships with family or fictive kin while the child is placed at the facility;

(k) For children in the custody of the Agency, documentation that the designated prudent parent has brought to the child's attention multiple age or developmentally-appropriate activities as required by the Reasonable and Prudent Parent Standard;

(l) Non-medical signed releases and consents;

(m) Discharge plan in preparation for the child's temporary placement at the facility or a discharge summary if the child is no longer placed at the facility;

(n) Documentation that the placing agency, legal guardian or parent has been informed whenever a child has been involved in a critical incident;

(o) Documentation of critical incidents for all children. This documentation shall be completed as required by agency policy for children in the custody of the Agency;

(p) Any other information as appropriate.

X. Transportation.

(1) The facility shall provide safe transportation of children.

(2) Each staff member or volunteer staff person that transports a child shall be at least twenty-one years of age, have at least one year of experience as a licensed driver, and hold a current South Carolina driver's license for the type of vehicle driven.

(3) The Vehicles shall be clean, uncluttered, and free of obstructions on the floors, aisles and seats.

(4) Vehicles transporting children must comply with all state and federal laws.

(5) No vehicle shall transport more children than the manufacturer's rated seating capacity.

(6) Staff and children shall wear seatbelts or safety restraints as appropriate for the child at all

times when the vehicle is in motion. Safety restraints shall be used in accordance with the manufacturer's instructions.

(7) Use of tobacco products or vaping is prohibited in the vehicle.

(8) Each vehicle shall be equipped with an adequately supplied first aid kit.

(9) At least one occupant shall be certified in cardiopulmonary resuscitation and first aid.

(10) The facility shall have a policy and tentative plan for transporting children in the event of an emergency or disaster.

#### Y. Tasks.

(1) Assigned tasks shall be appropriate to the age and abilities of the child and assigned for the purpose of training in skills and attitudes and in the proper assumption of personal responsibility.

(2) The facility shall differentiate between tasks of daily living, jobs to earn spending money, and jobs to gain vocational training.

(3) Daily living tasks shall be made known to the child during orientation and the child shall be given some choice in chores with duties that provide a variety of experiences.

(4) The rules related to jobs to earn spending money or gain vocational training shall be made known to all age appropriate children. Opportunities to participate shall be made available in accordance with the child's age and abilities and so as not to interfere with other educational activities.

(5) Children shall not substitute for staff nor regularly perform tasks more appropriately assigned to staff.

(6) The facility shall comply with all child labor laws.

114-594. Additional Requirements for Specified Group Home Populations.

A. Care for LGBTQ+ Youth.

(1) The facility shall not automatically isolate or segregate LGBTQ+ youth. The facility shall not assign transgender youth to the boys or girls unit strictly according to their anatomical sex. The facility shall accept the gender identity of the youth in question.

(2) The facility shall work with individual LGBTQ+ youth to identify the most appropriate housing assignment in a facility, given the youth's specific preferences, needs, and characteristics.

(3) The facility shall make assignments to a unit, room, or roommate according to the youth's preferences, personality, background, age, developmental status, health status, sophistication, social skills, behavioral history, and other factors that might influence his or her adjustment and contribute to a safe and successful experience.

(4) The facility shall never place an LGBTQ+ youth in a room with another youth who is overtly hostile toward or demeaning of LGBTQ+ individuals.

(5) To avoid subjecting a transgender youth to unnecessary risk of harm, the facility shall work with the youth to determine the best solution for using bathroom and shower facilities. Appropriate solutions might include:

(a) Installing privacy doors or other barriers on bathroom stalls and showers that also permit reasonable staff supervision;

(b) Making single-use bathroom and shower facilities available to transgender youth;

(c) Permitting transgender youth to use the bathroom and shower facilities before or after the other youth on the unit.

(6) Facilities shall make similar accommodations to ensure that transgender youth have sufficient privacy when dressing and undressing.

B. Requirements for Child Care Institutions Providing Care for Prenatal, Post-Partum, or Parenting Youth.

(1) A Child Care Institution that is licensed to provide care to custodial parents or expectant mothers, shall meet the additional requirements of this section.

(2) The care plan developed shall include goals and approaches for all of the following:

(a) Parenting skills instruction that includes all of the following:

(i) Prenatal and other health care services;

- (ii) Child development;
- (iii) Bathing and hygiene;
- (iv) Child safety;
- (v) Child guidance and behavior management;

(vi) Domestic violence issues, sudden infant death syndrome, shaken baby syndrome, and mental health and alcohol and other drug abuse counseling as appropriate.;

- (vii) Nutrition and meal preparation.
- (viii) Childcare options.
- (b) Life skills instruction that includes all of the following:
  - (i) Family planning and relationships;
  - (ii) Independent living skills, economic self-sufficiency, budgeting and job skills;
  - (iii) Parental rights and responsibilities, including child support;
  - (iv) Choosing and monitoring child care providers;
  - (v) Accessing community resources, transportation, and transitional housing.

(3) An expectant mother shall be provided prenatal and postnatal care from a physician or a nurse-midwife. The facility shall ensure that the expectant mother gives birth in a medical facility.

(4) The facility shall ensure the health, safety, and welfare of the children of custodial parents and provide care to those children in compliance with these regulations.

(5) If the child is not on the premises or is otherwise unable to care for his or her child, childcare may be provided on the premises only as follows:

(a) The staff member or volunteer staff used to meet staff to child ratios shall have completed the training requirements for a caregiver.

(b) Childcare may be provided off premises only by a child care provider that is licensed or registered by the Agency.

(6) The facility shall give children of custodial parents the opportunity and encouragement to maintain involvement with non-custodial parents.

C. Requirements for Child Care Institutions Caring for Children Six Years of Age or Younger.

APPLICABILITY. A child care institution admits children under six years of age as children or if the child care institution provides care to a child who is the custodial parent of a child under the age of six, the facility shall meet the additional requirements of this section.

(1) Infant and Toddler Care.

(a) Stimulation and nurturing

(i) Children shall not remain in their cribs or play equipment for other than sleeping and specific, short time-limited quiet play.

(ii) Infants and toddlers shall be routinely held, talked to, rocked, caressed, carried, nurtured, read to, sung to and played with throughout the day.

(iii) There shall be toys and materials that encourage and stimulate children through seeing, feeling, hearing, smelling and tasting.

(iv) Feeding chairs shall be used only for eating or a specific, short time-limited tabletop play activity.

(b) Programs for infants and toddlers

(i) Staff shall provide appropriate attention to the needs of children.

(ii) The daily program for infants and toddlers shall include goals for children, which promote healthy child development and allow for individual choice and exploration.

(iii) Information about the child's daily needs and activities shall be shared with parents.

(2) Infant and Toddler Sleep.

(a) Children over one year of age shall not share a bedroom with an adult unless:

(i) The infant has a physician documented illness; or

(ii) The infant's parent is a child of the facility, the parent is requesting this arrangement, there is adequate space for both, and Agency approval is obtained.

(b) Cribs shall meet the requirements of the US Consumer Products Safety Commission (CPSC) and have a firm crib mattress and tight-fitting crib sheet.

(c) Each infant, toddler, two year old and preschool child shall be assigned an individual, clean, and developmentally appropriate crib, toddler bed, or bed used only by that child.

(d) Infants shall be placed on their backs to sleep.

(e) Infants shall always be placed in cribs alone, with no blankets, bumpers, pillows or toys.

(f) Infants shall never sleep on sofas, chairs, recliners, waterbeds, pillows, cushions or blankets.

(3) Infant and Toddler Feeding.

(a) Bottles shall not be propped. A child unable to hold a bottle shall be held whenever a bottle is given.

(b) Infants and toddlers shall not be put to bed with a bottle.

(c) Microwaving of breastmilk, formulas, or other beverages is prohibited. If used, crock pots, bottle warmers, or other electronic devices shall be in an area not accessible to children.

(d) All warmed bottles shall be shaken well and the temperature tested before feeding to a child.

(e) Any excess formula, juice, or food shall be discarded after each feeding. Formula, juice and food requiring refrigeration shall be maintained at 45 degrees Fahrenheit or below.

(f) Toddlers shall be offered water routinely throughout the day.

(g) If more than one infant is served, then breast milk and formula shall be dated and labeled with the child's name and refrigerated until ready to use.

(h) Round, firm foods shall not be offered to children younger than four years old. Examples of such foods include: hot dogs, grapes, hard candy, nuts, peanuts, and popcorn. Hot dogs may be served if cut lengthwise and quartered; grapes may be served if cut in halves.

(4) Infant and Toddler Sanitation.

(a) Staff shall ensure that children's faces and hands are clean.

(b) Furniture, toys, and equipment that are used by more than one unrelated child and come into contact with children's mouths shall be washed, rinsed, and sanitized daily and more often if necessary.

(c) Furniture, toys and equipment soiled by secretion or excretion shall be sanitized before reuse.

(d) Linens and blankets as well as cribs, cots, and mats shall be cleaned at least weekly.

(e) Each child shall have a separate toothbrush.

(5) Diapering and Toilet Training.

(a) Facilities caring for infants shall provide a diaper changing area.

(b) Diaper changing procedures shall be consistent with those recommended by the Center for Disease Control and Prevention.

(c) Diapering surfaces shall be sanitized.

(d) Diapering surfaces shall be clean, seamless, waterproof and sanitary.

(e) Diapering surfaces shall be cleaned and sanitized after each use by washing to remove visible soil followed by wiping with an approved sanitizing solution (e.g. 1 tablespoon of chlorine bleach per 1 quart of

water) and/or disposable, non-absorbent paper sheets approved for this purpose and shall be discarded immediately after each diapering.

(f) Blood contaminated materials and diapers shall be discarded in a plastic bag with a secure tie. Surfaces contaminated with blood or blood-containing body fluids shall be cleaned with a solution of chlorine bleach and water.

(g) Diapering shall occur only at a diapering changing area or in a bathroom.

(h) Diaper changing areas shall not be used for any purpose other than for diapering.

(i) Individual wipes shall be used at each diaper change and shall be placed in a plastic-lined, covered container and washed or disposed of properly, and kept out the reach of children.

(j) Soiled disposable diapers and disposable wipes shall be kept in a closed, plastic lined receptacle within reach of diaper changing area separate from other trash. Soiled non-disposable items shall be kept in a sealed plastic bag after feces is disposed of through the sewage.

(k) Disposable non-absorbent paper sheets shall be disposed of immediately after diapering is completed.

(1) Soiled disposable diapers shall be disposed outside the building daily. Soiled non-disposable diapers shall be kept in a sealed plastic bag and washed regularly.

(m) Staff shall ensure that diapers and clothing are checked at a frequency that ensures prompt changing of diapers and clothing.

(n) No child shall be left unattended while being diapered.

(o) If seat adapters are used for toilet training, they shall be cleaned and sanitized after each use.

(p) Toilet training equipment shall be provided to children who are being toilet trained.

(q) Toilets, toilet seat adapters, sinks and restrooms shall be cleaned at least daily and shall be in good repair.

(6) Furniture, toys and recreational equipment shall:

(a) Be clean and free from hazards such as broken or loose parts, rust or peeling paint, pinch or crush points, unstable bases, sharp edges, exposed bolts, and openings that could cause head or limb entrapment;

(b) Meet the standards of the US Consumer Products Safety Commission (CPSC), if applicable. Recalled products listed by the CPSC shall not be accessible to children;

(c) Be developmentally and size appropriate, accommodating the maximum number of children involved in an activity at any one time;

(d) All arts and crafts and play materials shall be nontoxic;

(e) The height of play equipment shall be developmentally and size appropriate;

(f) Sand in a sand box shall be securely covered when not in use and, if outdoors, constructed to provide for drainage;

(g) Indoor recreational equipment and furnishings shall be cleaned and disinfected when they are soiled or at least once weekly and shall be of safe construction and free of sharp edges and loose or rusty points.

(h) Mobile walkers are not permitted.

(i) The facility shall provide eating utensils and cups, infant seats, high chairs, car seats, strollers, rocking chairs, tables and seating and other furnishings and equipment appropriate for size and developmental level and the needs of children under 6 years of age.

(7) Infant and Toddler Indoor Space and Conditions.

(a) Indoor space shall be protected from general walkways where crawling children may be on the floor.

(b) Protective gates shall be of the type that do not block emergency entrances and exits and that prevent finger pinching and head or limb entrapment.

(c) Children shall not have access to a door that swings open to a descending stairwell or outside steps, unless there is a landing that is at least as wide as the doorway at the top of the stairs.

(d) Interior stairs that are not enclosed shall have a barrier to prevent falls.

(e) Electrical outlets shall be securely covered with childproof covers or safety plugs when not in use in all areas accessible to children.

(f) No electrical device accessible to children shall be located so that it could be plugged into the outlet while in contact with a water source, such as sinks, tubs, shower areas, or swimming/wading pools, unless ground fault devices are utilized.

(g) Infants and toddlers shall not be left unattended in a bathtub or shower.

(h) The following items shall be secured or inaccessible to children for whom they are not age appropriate:

(i) Items that may cause strangulation such as blind cords, plastic bags, necklaces, and drawstrings on clothing and string;

(ii) Items that may cause suffocation such as sand, beanbag chairs, pillows, soft bedding, and stuffed animals; and

(iii) Items that may cause choking such as materials smaller than 1 <sup>1</sup>/<sub>4</sub> inch in diameter, items with removable parts smaller than 1 <sup>1</sup>/<sub>4</sub> inch in diameter, Styrofoam objects and latex balloons.

D. Requirements for a Qualified Residential Treatment Program that Serves Children with Serious Emotional or Behavioral Disorders or Disturbances.

(1) A Qualified Residential Treatment Program (QRTP) must be a child care institution that:

(a) Has a trauma-informed treatment model that is designed to address the needs, including clinical needs as appropriate, of children with serious emotional or behavioral disorders or disturbances and are able to implement the treatment identified for the child in the required 30 day assessment of the appropriateness of the QRTP placement.

(b) To the extent appropriate, and in accordance with the child's best interest, facilitates participation of family members in the child's treatment program.

(c) Facilitates outreach to the family members of the child, including siblings, documents information for any known biological family and fictive kin of the child.

(d) Documents how family members are integrated into the treatment process for the child, including post-discharge planning and family-based aftercare support for at least six months post-discharge.

(e) Is licensed by the state in accordance with title IV-E requirements and is accredited by any of the following independent, not-for-profit organizations: The Commission on Accreditation of Rehabilitation Facilities (CARF), the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), the Council on Accreditation (COA), the Teaching Family Association (TFA), the Educational Assessment Guidelines Leading Toward Excellence (EAGLE), or any other independent, not-for-profit accrediting organization approved by the Agency.

(f) Has registered or licensed nursing staff and other licensed clinical staff who provide care within the scope of their practice as defined by state law, are on-site according to the treatment model, and are available 24 hours a day and 7 days a week.

(i) This requirement shall not be construed as requiring a QRTP to acquire nursing and behavioral staff solely through means of a direct employer to employee relationship.

(2) A QRTP shall not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent.

E. Requirements for Child Care Institutions Serving At-Risk and Confirmed Victims of Child Sex Trafficking

(1) The facility shall accommodate victims of child sex trafficking safely in a separate section or wing from youth who are not victims of child sex trafficking.

(a) Youth at risk of being victims of trafficking must be placed in a separate section to avoid the possibility of recruitment.

(b) There shall be no more than twelve individuals in a separate wing or unit.

(c) There shall be no more than two females (or males) sharing the same room.

(d) Youth of similar ages must be housed together.

(2) The facility must offer blended educational opportunities for students. This could take place in a traditional school setting or through monitored online education. Instruction make take place with:

(a) A teacher who is available in person for assistance and offers a traditional classroom.

(b) Online educational materials, which should be monitored by the teacher and staff.

(c) In person learning at a traditional school facility. This should occur only if the child is not at risk of elopement or recruitment.

(3) The facility must have a policy that clearly states that a youth will not be discriminated against based on their religious preferences. Services must not be contingent upon their engagement in religious activities. Mandated religious activities are prohibited.

(a) Religious and spiritual issues must be addressed as part of the comprehensive case management process and agencies must follow the youth's lead in determining appropriate engagement or participation. If federally funded, religious programming must be conducted outside of the funded program.

(4) Staff must have the necessary background and experience to do the specific work for which they are hired. The program must be clear as to the staff roles that will engage with clients, and in what ways, versus the staff roles that are strictly public awareness and training.

(a) For all staff, training must include human trafficking facts and information; trauma-informed practice and victim centered approach; trauma-informed interviewing and screening, cultural awareness and diversity; boundaries, confidentiality, and privacy; safety planning; and other training deemed appropriate by SCDSS or other certification bodies.

(b) For staff working directly with youth, staff should receive Human Trafficking Victim Service Provider (VSP) certification.

(5) Each provider must develop a formal written safety plan that strategically addresses steps to prevent and reduce the risk of harm as well as response procedures. This safety plan will be written by the provider for their child sex trafficking population and details:

(a) A secured identified safe room with emergency communication equipment capable of calling 911 in the event of an intruder;

(b) A formal safety plan that addresses:

- (i) Medical emergencies
- (ii) Elopement

(iii) Evacuation plan for a natural disaster

(6) Twenty-four hour supervision shall be provided at all times. This means someone will be on duty and awake during the hours of 10 pm until 7 am, or the staff change over.

(7) The facility must always maintain staff secured doors either via video monitoring, door alarms or visual sight.

(8) The facility must maintain audible window and door alarms.

(9) The facility must maintain audible interior motion sensors for nighttime monitoring.

(10) The facility must have cameras in all open area rooms capable of recorded video and playback and review. Cameras shall be monitored for the safety of the youth. Written documentation must be maintained to include when the cameras are reviewed, who reviewed them, the time reviewed, and any notable observations.

(11) The facility must maintain exterior cameras and floodlights to enhance security on the property.

(12) The facility must have child protection policy outlining gender specific restrictions (e.g., no male staff or visitor/female client one-on-one interactions), no staff or visitor use of social media or geo-tagging devices, and no use of cell phones by visitors of the facility.

(13) The Facility must monitor all visitors and phone contacts between client and visitor.

(14) All cell phones and electronic devices will be confiscated upon youth entering the facility and stored in a secure place.

(15) Memorandum of Understanding (MOU) with local, county and state law enforcement including appropriate responses in the case of an emergency and steps to prevent and reduce harm. Treatment

(16) Length of stay is based on individual youth's progression that should be reviewed by the treatment team on a quarterly basis. The team should anticipate that a youth may need services for an estimated 12-24 months to enhance likelihood of comprehensive restorative care.

(a) A shorter stay can occur, but there should be flexibility to extend if needed.

(i) At risk youth should have some flexibility in their length of stay.

(ii) At risk youth should receive psycho education on at risk behaviors that lead to trafficking and discussions on completing a safety plan.

(b) This time frame will allow for rapport to be established, therapy to be effective and a treatment plan to be implemented.

(c) The program must maintain a highly structured schedule for its youth.

(17) A qualified program staff member should review any DSS assessments, and DSS Form 1544, (Child Sex Trafficking Tool), to carefully determine the appropriateness of a referral to ensure that potential Youth are victims of CSEC and a match for the program.

(18) The facility must clearly outline how the program addresses the needs of the youth, including behavioral health, physical and dental health, education, vocational training, employment, legal services, life skills, and facilitated reconnections with family, as appropriate.

(19) Clinical mental health services and other counseling must be provided by a licensed professional counselor and there must be clear quality assurance mechanisms to ensure treatment models adhere to evidence-based model efficacy.

(a) The facility must have access to mental health services that offer counseling in Spanish or should be able to request a counselor that is bilingual.

(20) The facility shall use evidence-based, evidence informed, and best practices treatment models, specific to the population being served, that are clearly delineated in the policy and procedure manual. Examples include:

(a) Trauma-focused Cognitive Behavioral Therapy (TF-CBT)

- (b) Risk Reduction through Family Therapy (RRFT), if family is not the perpetrator.
- (c) Dialectal Behavior Therapy (DBT)

(21) The facility shall have clinical staff or a representative present at all Multi-Disciplinary Team (MDT) when a client's safety, well-being and permanency is being discussed.

(22) Discharge requirements should be documented in the policies and procedures manual.

(a) Discharge planning should be carefully coordinated and begin 90 days prior to anticipated discharge date.

(b) The process should include the safety of the transitional placement and supplemental supports that may be needed in the next placement setting.

(c) Facility staff or a representative must participate in an MDT staffing prior to a client being discharged. All parties of the MDT team must agree to the plan.

114-595. Licensing and Enforcement.

A. License.

(1) The terms of the license and the number, age and gender of children to be served will be stated on the license issued.

(2) The license shall be displayed at the facility at all times.

(3) The facility shall not deviate from the provisions specified in the license issued.

(4) The license is not transferable, is specific to the location, owner, and existing buildings at the time of licensure. However, when there is a change in ownership, in determining whether the new owner meets the requirements for issuance of a standard license, the department may accept current findings and conclusions that support issuing a standard license when the findings and conclusions were made within one year of the change in ownership.

(5) Standard License.

(a) A standard license will be issued when a facility meets all applicable regulations. A Standard License is effective for two years from the date of issuance.

(6) Standard with Temporary Waiver License.

(a) A Standard with Temporary Waiver License may be granted at the discretion of the State Director of the Agency when a facility temporarily lacks a requirement that does not affect the health and safety of children.

(b) To change the status of the license to a Standard License, the facility shall submit to the Agency written notification and evidence that the deficiency has been corrected. This documentation is subject to verification at the discretion of the Agency.

B. Inquiries.

(1) Requests for information regarding an application for a license shall be sent to the Agency. The Agency will then send a copy of the rules and regulations governing the license. Consultation will be available upon request.

C. Procedures for Application and Initial Licensing.

(1) Prior to licensure the applicant shall submit a complete initial licensure packet to the Agency. Licensure will be based on a review of this material and a visit(s) by a representative of the Agency to tour the facility, review the program, and interview staff as appropriate. The material to be submitted includes the following:

- (a) A completed application form, including all forms assuring compliance with Federal and State laws;
- (b) Contact information, including contact names, phone numbers and electronic mail addresses

(c) A detailed description of why there is a need for this particular facility and any facts that support the applicant's assertion for that need.

(d) Letters of support documenting a need for the facility's services from at least three community partners, including referral sources

- (e) A copy of the charter or law establishing the facility.
- (f) A copy of the constitution or bylaws.
- (g) A copy of a map for the entire campus;
- (h) A copy of the floor plan for each building used for sleeping;

(i) A statement of the purpose, scope of services to be provided, intake policy specifying age, sex, type of children to be accepted for care, and the geographical area from which children are accepted.

(j) A current list of governing board members, including names, positions, addresses and phone numbers for each, and committees;

(k) Documentation of reserve funds equal to the operating costs of the first six (6) months.

(1) A current budget showing anticipated income (broken down by category, e.g.: private donations, government grants, community fundraisers, etc.) and expenditures.

- (m) A copy of the current policy and procedural manual.
- (n) Disaster plan, including plan for transportation of children;
- (o) The number of buildings and a statement regarding the general condition of the facility.
- (p) Verification of local building and zoning compliance.
- (q) A current fire inspection report.
- (r) A current safety and sanitation inspection report.
- (s) An activity plan including three months of proposed activities.
- (t) Menu encompassing four weeks that has been approved by a licensed dietician
- (u) Job descriptions, including education and work experience requirements for staff and volunteer staff;

(v) Names and job titles of staff and volunteer staff, and proof of education and work experience as evidenced by completed applications or resumes;

- (w) Medical examination reports for all caregivers and volunteer staff;
- (x) Memorandum of Agreement on Criminal Record Checks;
- (y) A fingerprint review for all group care staff and all volunteer staff.

(z) State Law Enforcement Division (SLED) criminal records checks for all group care staff and volunteer staff.

(aa) State Central Registry of Child Abuse and Neglect checks for all group care staff and volunteer staff using the approved Agency form;

(bb) The equivalent Central Registry of Child Abuse and Neglect system check for each state in which any group care staff person or volunteer staff has resided in the previous five years;

(cc) The National Sex Offender Registry for all group care staff or volunteer staff;

(dd) The state sex offender registry check for all group care staff and volunteer staff;

(ee) Documentation of orientation and training completed by each caregiver and volunteer staff;

(ff) Documentation of current nationally accredited restraint training certification for all caregivers who may restrain children; and

(gg) Documentation of current first aid and cardiopulmonary resuscitation certification for at least one staff member per working shift.

(2) As soon as possible after the receipt of the complete licensure packet, a representative of the Agency will visit the facility and will secure information upon which to evaluate the program in relation to licensing standards.

(3) Any deficiencies or citations noted shall be corrected prior to the issuance of the license.

(4) The Agency shall issue an initial license within 120 days of receipt of a complete licensure packet.

(5) If the facility wishes to operate a foster home or adoptive home program in addition to caring for children in residential group care; it will be necessary to submit additional information as required for a license to operate a Child Placing Agency.

D. ANNUAL Review and Relicensing.

(1) Annually, the licensed facility shall submit the material listed below to the Agency. Continued licensing will be based on a review of this material and a visit(s) by a representative of the Agency to tour the facility, review the program, audit children's records, and interview staff and/or children as appropriate. The material to be submitted includes the following:

(a) A completed application form;

(b) An annual population report;

(c) Updated contact information, including contact names, phone numbers and electronic mail addresses;

(d) A report of any major changes in program or the physical facility planned for the coming year.

(e) A current list of governing board members, including names, positions, addresses and phone numbers for each, and committees;

(f) The most recent annual financial review by a certified public accountant, including the balance sheet;

(g) A current budget showing anticipated income (broken down by category, e.g.: private donations, government grants, community fundraisers, etc.) and expenditures;

(h) A current copy of the policy and procedural manual, if updated;

(i) Behavior intervention plan, if revised during the licensing period;

(j) Disaster plan, including plan for transportation of children;

(k) A current fire inspection report that was completed within the licensing period;

(1) Record of monthly fire drills for fire and emergency evacuation that were held at different times during the licensing period;

(m) A current safety and sanitation inspection report that was completed within the licensing period;

(n) An updated menu encompassing four weeks that has been approved by a licensed dietician, if USDA recommendations have been revised;

(o) Activity plans encompassing at least three consecutive months during the licensing period;

(p) Names and job titles of staff and volunteer staff, and proof of education and work experience as evidenced by completed applications or resumes (including staff and volunteer staff who separated during the licensing period);

(q) Medical examination reports for all caregivers and volunteer staff hired during the licensing period, including caregivers and volunteer staff who separated during the licensing period;

(r) Memorandum of Agreement on Criminal Record Checks, if there is a change in executive leadership;

(s) A fingerprint review for all group care staff and all volunteer staff, including caregivers and volunteer staff who separated during the licensing period;

(t) State Law Enforcement Division (SLED) criminal records checks completed during the licensing period for all group care staff and volunteer staff, including caregivers and volunteer staff who separated during the licensing period;

(u) State Central Registry of Child Abuse and Neglect checks completed during the licensing period for all group care staff and volunteer staff using the approved Agency form, including caregivers and volunteer staff who separated during the licensing period;

(v) The current equivalent Central Registry of Child Abuse and Neglect system check for each state in which any group care staff person or volunteer staff has resided in the previous five years, including caregivers and volunteer staff who separated during the licensing period;

(w) The National Sex Offender Registry completed during the licensing period for all group care staff or volunteer staff, including caregivers and volunteer staff who separated during the licensing period;

(x) The state sex offender registry check completed during the licensing period for all group care staff and volunteer staff, including caregivers and volunteer staff who separated during the licensing period;

(y) Documentation of orientation and training completed during the licensing period by each caregiver and volunteer staff, including caregivers and volunteer staff who separated during the licensing period;

(z) Documentation of current nationally accredited restraint training certification for all caregivers who may restrain children;

(aa) Documentation of current first aid and cardiopulmonary resuscitation certification for at least one staff member per working shift;

(bb) Documentation from a county building inspector may be required if the Agency suspects a new or existing building or structure poses a risk of harm to children;

(cc) Any deficiencies or required corrective actions previously cited shall be cleared prior to the renewal of the license unless otherwise approved by the Agency.

E. Agency Requests for Information.

(1) During an inspection, a facility shall provide all of the following:

(a) Any documentation of facility administration and operations requested by the Agency;

(b) Any child records requested by the Agency.

(2) A facility shall promptly respond to requests for information from the Agency, a placing agency, or any other governmental agency.

(3) A facility shall ensure that information that the facility or facility staff submits or shares with the Agency, a placing agency, or any other governmental agency is current and accurate.

F. Authorized Actions by the Agency.

(1) Licensing staff from the Agency may visit and inspect a facility without prior notice and shall be given unrestricted access to the premises to ascertain continued compliance with these requirements.

(2) The Agency shall investigate complaints to determine if the facility is meeting licensing requirements and shall take appropriate and necessary actions based on its findings.

(3) The Agency shall inform the director of the facility of any deficiencies or corrective action plans that have been implemented.

(4) If the director is the subject of the complaint, the chairman of the board or executive management, as appropriate, will be notified.

G. Denial or Revocation of a License.

(1) The Agency may refuse to issue or revoke a license to a facility/applicant who:

(a) Fails to comply with residential group care licensing regulations;

(b) Violates state or federal laws;

(c) Abuses or neglects children as defined in Section 63-7-20, S.C;

(d) Knowingly employs a person with a past or current history of child abuse or is on the South Carolina Central Registry of Child Abuse and Neglect or fails to terminate the employment once the record is known;

(e) Makes a false statement or a misrepresentation to the Agency that adversely impacts the care and safety of children;

(f) Refuses to submit licensing or child specific information or reports to the Agency as it relates to care and safety of children;

- (g) Fails to cooperate, withholds information, or impedes an investigation of child abuse or neglect;
- (h) Fails to provide, maintain, equip, and keep safe and sanitary the facility to care for children;
- (i) Fails to provide adequate financial resources to maintain the facility;

(j) Fails to notify the Agency of any planned construction or major structural changes to the facility less than thirty (30) days prior to action.

(2) The Agency is empowered to seek an injunction against the continuing operation of a facility as provided in Section 63-7-1210(C):

(a) When a facility is operating without a license;

(b) When the Agency determines threat of harm to children in the facility.

(3) Written notice shall be given to an applicant or facility by certified mail or hand delivered by an Agency representative, if the license is revoked or denied.

(4) Upon receipt of a notice of revocation of the facility license and during any revocation proceedings that may result, the facility may not admit a child as a resident.

(5) Any facility whose application has been denied or revoked, may request a hearing within thirty (30) days of receipt of notification of the Agency's decision. Requests for appeals shall be forwarded to the Agency, Office of Administrative Appeals.

H. Termination of License.

(1) A Standard License expires automatically at the end of twelve months from the date of the issuance of the license unless renewed prior to that date.

(2) Standard License with Waivers may be granted for non-safety related items.

I. Effective Date.

This Regulation shall become effective on September 12, 2021.

## **Fiscal Impact Statement:**

The Department of Social Services estimates the costs incurred by the State in complying with the proposed regulation will be approximately \$ 0.00.

## **Statement of Rationale:**

Regulation 114-590 (Licensing of Residential Group Care Organizations for Children) is being amended and updated to, among other improvements, reinforce requirements found in the Family First Prevention Services Act of 2018 (Public Law 115-123) and Regulation 114-595 (Standards for Supervised Independent Living) is being deleted to eliminate confusion and because it is no longer necessary.