SOUTH CAROLINA STATE REGISTER DISCLAIMER

SOUTH CAROLINA STATE REGISTER

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

SOUTH CAROLINA STATE REGISTER

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

STYLE AND FORMAT

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

Notices are documents considered by the agency to have general public interest.
Notices of Drafting Regulations give interested persons the opportunity to comment during the initial drafting period before regulations are submitted as proposed.
Proposed Regulations are those regulations pending permanent adoption by an agency.
Pending Regulations Submitted to the General Assembly are regulations adopted by the agency pending approval by the General Assembly.
Final Regulations have been permanently adopted by the agency and approved by the General Assembly.
Emergency Regulations have been adopted on an emergency basis by the agency.
Executive Orders are actions issued and taken by the Governor.

2003 PUBLICATION SCHEDULE

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

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

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

REPRODUCING OFFICIAL DOCUMENTS

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PUBLIC INSPECTION OF DOCUMENTS

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

ADOPTION, AMENDMENT AND REPEAL OF REGULATIONS

To adopt, amend or repeal a regulation, an agency must publish in the *State Register* a Notice of Drafting; a Notice of the Proposed Regulation that contains an estimate of the proposed action's economic impact; and, a notice that gives the public an opportunity to comment on the proposal. If requested by twenty-five persons, a public hearing must be held at least thirty days after the date of publication of the notice in the *State Register*.

After the date of hearing, the regulation must be submitted to the General Assembly for approval. The General Assembly has one hundred twenty days to consider the regulation. If no legislation is introduced to disapprove or enacted to approve before the expiration of the one-hundred-twenty-day review period, the regulation is approved on the one hundred twentieth day and is effective upon publication in the *State Register*.

EMERGENCY REGULATIONS

An emergency regulation may be promulgated by an agency if the agency finds imminent peril to public health, safety or welfare. Emergency regulations are effective upon filing for a ninety-day period. If the original filing began and expired during the legislative interim, the regulation can be renewed once.

REGULATIONS PROMULGATED TO COMPLY WITH FEDERAL LAW

Regulations promulgated to comply with federal law are exempt from General Assembly review. Following the notice of proposed regulation and hearing, regulations are submitted to the *State Register* and are effective upon publication.

EFFECTIVE DATE OF REGULATIONS

Final Regulations take effect on the date of publication in the *State Register* unless otherwise noted within the text of the regulation.
Emergency Regulations take effect upon filing with the Legislative Council and remain effective for ninety days. If the original ninety-day period begins and expires during legislative interim, the regulation may be refiled for one additional ninety-day period.

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2822	3-26-03	General-Food Stamp Program	6-26-03 Department Social Services

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WITHDRAWN:

DOC No.	DATE	SUBJECT	AGENCY
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2003-15

WHEREAS, the economic health of this State is a top priority for our citizens; and

WHEREAS, as chief executive of the State, I am charged with improving the way our state government does business; and

WHEREAS, it is necessary to determine ways in which government systems and services can be made more productive, more efficient and less costly, while providing an emphasis on customer satisfaction and productivity; and

WHEREAS, other states and the federal government have successfully undertaken similar efforts and identified sound management practices while enhancing accountability and performance, thereby serving the best interests of their citizens.

NOW, THEREFORE, I do hereby establish the Governor's Commission on Management, Accountability, and Performance (the "Commission").

1. The Commission shall analyze government systems and services in South Carolina in an effort to propose changes which will reduce costs, increase accountability, improve service, consolidate similar functions, return functions to the private sector, and help South Carolina be more competitive in a world economy.

2. The Commission shall be comprised of fourteen members appointed by the governor, one of whom shall serve as chair, and the Lieutenant Governor and Comptroller General as *ex officio* members.

3. The Commission shall be authorized in the furtherance of its mission to hold public hearings, conduct site visits of government agencies, and take such other actions as it deems necessary and advisable.

4. The Commission will release its final report by September 30, 2003.

5. The Governor's Office and the Office of the Executive Director, Budget and Control Board, shall provide staff support as necessary to assist the Commission in carrying out the directives of this Executive Order.

This Order shall take effect immediately.

GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA, THIS 10th DAY OF JUNE, 2003

MARK SANFORD
Governor

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

NOTICE OF PROPOSED AMENDMENT TO THE *SOUTH CAROLINA AIR QUALITY IMPLEMENTATION PLAN*

CHAPTER 61

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

TRANSPORTATION CONFORMITY

Synopsis:

Upon publication in the *State Register* on September 27, 1996, the South Carolina State Implementation Plan (SIP) was revised to incorporate the applicable provisions of the transportation conformity review process in accordance with the requirements of the Federal Clean Air Act Amendments as promulgated by the United States Environmental Protection Agency (USEPA) on November 24, 1993 (58 FR 62188) in 40 CFR Part 51 Subpart T. Under those authorities, no department, agency, or instrumentality of the Federal government shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity that does not conform to the SIP. The transportation conformity rule requires Federal agencies to determine, prior to taking any action on transportation plans, programs, and projects, that such action will conform to the SIP to maintain the National Ambient Air Quality Standards (NAAQS). The transportation conformity regulation applies only to areas that are designated nonattainment or maintenance for any of the criteria pollutants (ozone, carbon monoxide, small particulate matter, sulfur dioxide, nitrogen dioxide, or lead).

On August 15, 1997 (62 FR 43780), April 10, 2000 (65 FR 18911), and August 6, 2002 (67 FR 50808), the USEPA promulgated amendments to the transportation conformity rule to streamline and clarify the criteria and procedures for determining the conformity of transportation plans, programs, and projects. The State is required by 40 CFR Part 51 Subpart T § 51.390 to amend the SIP by specifically removing any previously applicable implementation plan transportation conformity requirements and submitting a revision to the SIP meeting the requirements of 40 CFR Part 93 Subpart A. The South Carolina Department of Health and Environmental Control (Department) proposes to adopt the applicable provisions of the Federal regulation as promulgated, and to incorporate a revised Memorandum of Agreement that implements the "South Carolina Criteria and Interagency Consultation Procedures for the Determination of the Conformity of Transportation Plans, Programs, and Projects."

Public Hearing:

Staff of the Department will conduct a public hearing on July 28, 2003 to receive comments on the proposed amendments to the SIP. The public hearing will commence at 10:00 a.m. in room 2280 at the South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC. Interested members of the public are invited to attend the public hearing and to present comments on the proposed amendments. Comments may also be submitted in writing to Dennis Camit at the South Carolina Department of Health and Environmental Control, Division of Air Planning, Development, and Outreach, 2600 Bull Street, Columbia, SC 29201. To be considered, comments must be received by July 28, 2003, the close of the comment period.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

In accordance with Section 44-7-200(C), Code of Laws of South Carolina, the public is hereby notified that a Certificate of Need application has been accepted for filing and publication June 27, 2003, for the following project(s). After the application is deemed complete, affected persons will be notified that the review cycle has begun. For further information, please contact Mr. Albert N. Whiteside, Director, Division of Planning and Certification of Need, 2600 Bull St., Columbia, SC 29201 at (803) 545-4200.

Affecting Allendale, Bamberg, Barnwell and Hampton Counties

Provision of mobile Magnetic Resonance Imaging (MRI) services to Allendale County Hospital, Bamberg County Memorial Hospital, Barnwell County Hospital, and Hampton Regional Medical Center.
Low Country Health Care Network
Bamberg, South Carolina
Project Cost: $869,723

Affecting Beaufort County

Conversion of two (2) special procedure rooms to two (2) endoscopy procedure rooms (ORs) restricted to gastroenterology procedures, for a total of two (2) operating rooms and two (2) endoscopy procedure rooms (ORs).
Hilton Head Medical Center and Clinics Ambulatory Surgery d/b/a
Bluffton-Okatie Outpatient Center
Okatie, South Carolina
Project Cost: $210,538

Affecting Darlington and Florence County

Relocation of 23 psychiatric beds from McLeod Regional Medical Center to Wilson Medical Center and construction of a 23 bed psychiatric facility for a total of 49 acute care beds and 23 psychiatric beds at Wilson Medical Center; conversion of 12 psychiatric beds to acute care beds for a total of 348 acute care beds at McLeod Medical Center.
McLeod Regional Medical Center of the Pee Dee, Inc.
Florence, South Carolina
Project Cost: $4,947,500

Affecting Greenville County

Relocation and expansion of the existing nursing home by adding 88 additional nursing home beds that do not participate in the Medicaid (Title XIX) Program for a total of 176 nursing home beds.
Roger Huntington Nursing Center
Greer, South Carolina
Project Cost: $21,027,737

Affecting Greenville County

Relocation of the existing Ambulatory Surgery Center which includes two (2) licensed operating suites (ORs) with no change in services.
Patewood Surgery Center, LLC
Greenville, South Carolina
Project Cost: $2,886,317

Affecting Greenwood County

Construction to replace the existing ambulatory surgery center to include the addition of two (2) licensed endoscopy procedure rooms (ORs) resulting in a total of four (4) licensed endoscopy procedure rooms (ORs) in the new facility, which is restricted to gastroenterology procedures only.
Greenwood Endoscopy Center, Inc.
Greenwood, South Carolina
Project Cost: $1,270,000

Affecting Laurens County

Conversion of 37 institutional nursing home beds to community nursing home beds for a total of 7 institutional and 81 community nursing home beds.
Martha Franks Baptist retirement Center
Laurens, South Carolina
Project Cost: $-0-

Affecting Orangeburg County

Purchase of Edisto Convalescent Center by Laurel Baye Properties of Orangeburg, LLC with subsequent lease to Laurel Baye Healthcare Center of Orangeburg, LLC with no change in the licensed 113 nursing home beds.
Laurel Baye Healthcare of Orangeburg, LLC
Orangeburg, South Carolina
Project Cost: $2,994,500

Affecting York County

Replacement of equipment in the two (2) existing cardiac catheterization laboratories and the addition of a third cardiac catheterization laboratory.
Piedmont Medical Center
Rock Hill, South Carolina
Project Cost: $7,550,890

In accordance with S.C. DHEC Regulation 61-15, the public and affected persons are hereby notified that the review cycle has begun for the following project(s) and a proposed decision will be made within 60 days beginning June 27, 2003. "Affected persons" have 30 days from the above date to submit comments or requests for a public hearing to Mr. Albert N. Whiteside, Director, Division of Planning and Certification of Need, 2600 Bull Street, Columbia, S.C. 29201. For further information call (803) 545-4200.

Affecting Calhoun and Orangeburg Counties

Provision of mobile Positron Emission Tomography (PET) services for two days a week.
The Regional Medical Center of Orangeburg & Calhoun Counties
Orangeburg, South Carolina
Project Cost: $680,833

Affecting Florence County

Replacement of current single slice Computed Tomography (CT) scanner with a multi-slice scanner.
Carolinas Hospital System
Florence, South Carolina
Project Cost: $1,329,675

Affecting Greenwood County

Construction to replace the existing ambulatory surgery center to include the addition of two (2) licensed endoscopy procedure rooms (ORs) resulting in a total of four (4) licensed endoscopy procedure rooms (ORs) in the new facility which is restricted to gastroenterology procedures only.
Greenwood Endoscopy Center, Inc.
Greenwood, South Carolina

Project Cost: $1,270,000

Affecting Spartanburg County

Development of an Ambulatory Surgery Center with two (2) operating rooms.
Eastside Eye Center West
Spartanburg, South Carolina
Project Cost: $1,246,029

Copies of the proposed SIP amendment, for public notice and comment, may be obtained by contacting Dennis Camit at the address provided above or by calling (803) 898-4284.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

PUBLIC NOTICE

Pursuant to SC Code §49-21-40 and R. 121-12.7, the South Carolina Department of Health and Environmental Control gives notice that the Lake Marion Regional Water Authority (LMRWA) has filed a Class I Interbasin Transfer Application to transfer water from the Lower Santee River basin to the Black, the Edisto and the Combahee-Coosawhatchie River basins. Raw water is withdrawn from Lake Marion in the Lower Santee basin and will be treated at the proposed Lake Marion Regional Water Treatment Plant. Treated water will be distributed to the LMRWA service area which initially includes the Towns of Elloree, Eutawville, Harleyville, Holly Hill, Manning, Pinewood, St. George, Santee, Summerton, and Ridgeville. Future LMRWA service area includes Calhoun, Colleton, Clarendon, Dorchester, Orangeburg and Sumter Counties. The requested duration of the permit is for twenty (20) years to withdraw a daily average of 20 million gallons of water a day.

Any person may request a copy of the application by submitting a statement to the address below specifying how you will be affected. Any person may submit comments on the application; to be considered, comments must be received by the Department by the close of business on October 24, 2003. Any person wishing to receive notification of the permit decision should submit a request for such notification (which may be included with your comments) to the address below.

Comments should be directed to:
Tricia H. Kilgore
SCDHEC
2600 Bull Street
Columbia, SC 29201

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

PUBLIC NOTICE

Section IV of R.61-98, the State Underground Petroleum Environmental Response Bank (SUPERB) Site Rehabilitation and Fund Access Regulation, requires that the Department of Health and Environmental Control evaluate and certify site rehabilitation contractors to perform site rehabilitation of releases from underground storage tanks under the State Underground Petroleum Environmental Response Bank (SUPERB) Act. Pursuant to Section IV.B.1., the Department is required to place a list of those contractors requesting certification on public notice and accept comments from the public for a period of thirty (30) days. If you wish to provide comments regarding the companies and individuals listed below, please submit your comments in writing, no later than July 28, 2003 to:

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

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

Class I	Class II
OPES, Inc.	J. N. Pease Environmental Group, LLC

DEPARTMENT OF HEALTH AND HUMAN SERVICES

PUBLIC NOTICE

The Department of Health and Human Services (DHHS) hereby gives notice of the availability of the "FFY-2004 Social Services Block Grant (SSBG) Pre-Expenditure Report" to the citizens of South Carolina for review and comment. The report reflects plans of the DHHS/State of South Carolina to expend SSBG funds for the 2004 fiscal year, October 1, 2003 through September 30, 2004.

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

Written comments about the FFY-2004 Pre-Expenditure Report may be submitted to the Bureau of Community Services, Department of Health and Human Services, Post Office Box 8206, Columbia, South Carolina 29202-8206. Any written comments submitted may be reviewed by the public at the Department of Health and Human Services, Division of Program Development, 8th floor – room 810, 1801 Main Street, Columbia, South Carolina, Monday through Friday between the hours of 9:00 A.M. and 5:00 P.M.

A copy of the final and complete FFY-2004 SSBG application and post-expenditure report for FFY-2002 may be obtained through written request to the DHHS address listed above or may be accessed through the DHHS Internet site on the World Wide Web at http://www.dhhs.state.sc.us later this year. Final Versions of the full report will also be on file in the state's public libraries.

Department of Health and Human Services
FY 2004 Pre-Expenditure Report

SERVICE NAME	ADULTS	CHILDREN	TOTAL FUNDS
Adoption Services		$153,250	$153,250
Case Management*	$48,181	$89,479	$137,660
Counseling Services	$113,625	211,019	$324,644
Day Care Adults	$255,705		$255,705
Day Care Children		$7,564,055	$7,564,055
Education/Training Services	$397,345		$397,345
Foster Care Services - Children		$1,487,211	$1,487,217
Home Based Services	$2,311,285	$1,300,097	$3,611,382
Home Delivered Meals	$997,791		$997,791
Prevention/Intervention		1,347,923	$1,347,923
Protective Services Adults	$4,396,787		$4,396,787
Protective Services Children		$761,329	$761,329
Special Services for the Disabled	$78,425		$78,425
Other Services	$138,992	$492,789	$631,781
TOTAL SERVICE DOLLARS	$8,738,136	$13,407,152	$22,145,288
DHHS Administration			$1,932,308
TOTAL OTHER EXPENDITURES			$1,932,308
GRAND TOTAL**			$24,077,596

Note: The SSBG program does not pay more than 8% indirect cost rate for purchase of services and training.
*For purchased services case management from providers other than SCDSS.
** SC DHHS anticipates TANF transfers of $9,996,782 to Protective Services for Children, Protective Services for Adults, and for Home Based Services.

SERVICES FUNDED IN TOTAL OR IN PART BY SSBG

Adoption Preservation Services are provided to maintain, support and strengthen a family created through adoption. (Listed in the SSBG Plan under federal definition Adoption Services)

Adult Protective Services are available to protect incapacitated adults from abuse, neglect and exploitation, and if possible, to help them resume their role as primary protector of themselves. (Listed in the SSBG Plan under federal definition Protective Services Adults)

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

Child Protective Services are provided to families whose children have been abused or neglected and also includes temporary emergency placement of children as a service component. (Listed in the SSBG Plan under federal service definition Protective Services Children)

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

Family Management Counseling includes an array of services to enhance self-sufficiency, knowledge, skills and coping mechanisms provided to individuals or families at risk of entry into a more restrictive living environment or service system. (Listed in the SSBG Plan under federal service definition Counseling Services)

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

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

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

Prevention/Intervention Services are those services or activities designed to provide early identification and/or timely intervention to support families and prevent or ameliorate the consequences of, abuse, neglect, or family violence. Component services and activities include time-limited clinical interventions designed to defuse crises that threaten a child's stability within the home environment**,** case management, and developmental and parenting skills training.

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

Special Services for Handicapped and Disabled Adults provide habilitative and rehabilitative services to assist individuals in attaining the highest possible level of functioning and independence. (Listed in the SSBG Plan under federal service definition Services for the Disabled)

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

Training includes the DHHS Training Fund and supports training of SCDSS caseworkers. The DHHS Training Fund is designed to promote quality service provision to individuals and families by making funds for training and conferences available to all SSBG providers. (Listed in the SSBG Plan under federal service definition Education/Training Services)

CLEMSON UNIVERSITY
STATE LIVESTOCK-POULTRY HEALTH COMMISSION
CHAPTER 27
Statutory Authority: 1976 Code Section 47-4-30 and 47-17-130

Notice of Drafting:

The Livestock-Poultry Health Commission is considering modernizing, clarifying and updating existing regulations which govern, to the extent authorized by S. C. Code, Title 47, Chapter 4, the inspection or meat and meat food products produced for intrastate commerce.

Interested parties should submit written comments to Dr. Daniel E. Lafontaine, Director, State Meat Inspection Department, P. O. Box 102406, Columbia, S. C. 29224-2406. To be considered comments should be received no later than July 27, 2003, the close of the drafting comment period.

Synopsis:

This regulation is being promulgated to comply with the Federal Meat Inspection Act (21 USDA 661, Section 301) which establishes Federal-State Cooperative Meat Inspection Programs. This is a grant program with equal federal-state funding. A cooperating state is required to adopt regulations at least as stringent as those adopted by the United States Government. This regulation will, in effect, adopt the current Federal Meat Inspection Regulations with some minor exceptions for some state specific requirements, such as utilizing state marks of inspection, designating use of state holidays and other similar requirements.

This regulation will not require legislative action.

CLEMSON UNIVERSITY
STATE LIVESTOCK-POULTRY HEALTH COMMISSION
CHAPTER 27
Statutory Authority: 1976 Code Sections 47-4-30, 47-19-30, and 47-19-170

Notice of Drafting:

The Livestock-Poultry Health Commission is considering modernizing, clarifying and updating existing regulations which govern, to the extent authorized by S.C. Code, Title 47, Chapter 4, the inspection of poultry products produced for intrastate commerce.

Interested parties should submit written comments to Dr. Daniel E. Lafontaine, Director, State Meat Inspection Department, P. O. Box 102406, Columbia, S.C. 29224-2406. To be considered comments should be received no later than July 27, 2003, the close of the drafting comment period.

Synopsis:

This regulation is being promulgated to comply with the Poultry Products Inspection Act (21 USCA 454, Section 5) which establishes Federal-State Cooperative Poultry Inspection Programs. This is a grant program with equal federal-state funding. A cooperating state is required to adopt regulations at least as stringent as those adopted by the United States Government. This regulation will, in effect, adopt the current Federal Poultry Products Inspection Regulations with some minor exceptions for some state specific requirements, such as utilizing state marks of inspection, designating use of state holidays, and other similar requirements.

This regulation will not require legislative action.

STATE BOARD OF EDUCATION

CHAPTER 43

Statutory Authority: S.C. Code Ann. Section(s) 59-5-60(1990), 59-1-445(1990), 59-18-310(Supp. 2002), 59-18-320(Supp. 2002) 59-18-330(Supp. 2002), 59-18-340(Supp. 2002), 59-20-60(4)(Supp. 2002), 59-30-10(Supp. 2002), and No Child Left Behind Act of 2001, 20 U.S.C. 7912

Notice of Drafting:

The State Department of Education proposes to draft amendments to Regulation 43-262, Assessment Program, to meet the requirements of the South Carolina Education Accountability Act of 1998, and the requirements of the federal law No Child Left Behind Act of 2001, 20 USC 7912. Interested persons may submit comments to Teri Siskind, Office of Assessment, 1429 Senate Street, Columbia, South Carolina 29201, or by e-mail to tsiskind@sde.state,sc.us. To be considered, comments must be received no later than 5:00 p.m. on July 28, 2003, the close of the drafting comment period.

Synopsis:

The proposed amendments to R 43-262 are intended to update the regulation to make it consistent with the requirements of current state and federal legislation. Section A defines the statewide assessment program to make it consistent with the provisions of the Education Accountability Act of 1998 (EAA) and defines the responsibilities of the State Department of Education and local school boards in implementing the program. Section B updates the requirements relative to the high school assessment program. Section C addresses first and second grade readiness tests, and ensures that provisions is consistent with the EAA. Section D addresses the norm-referenced testing program. In particular, amendments are proposed for the Section B to address the change from the Basic Skills Assessment Program (BSAP) to the High School Assessment Program (HSAP).

Legislative review of this proposal will be required.

STATE BOARD OF EDUCATION

CHAPTER 43

Statutory Authority: S.C. Code Ann. Section 59-29-170(Supp. 2002)

Notice of Drafting:

The State Department of Education proposes to draft amendments to Regulation 43–220, Gifted and Talented. Interested persons may submit comments to Mr. Wayne Lord, Office of Curriculum and Standards, 1429 Senate Street, Columbia, South Carolina 29201, or by e-mail to wlord@sde.state,sc.us. To be considered, comments must be received no later than 5:00 p.m. on July 28, 2003, the close of the drafting comment period.

Synopsis:

Regulation 43–220, Gifted and Talented, establishes the criteria for student eligibility in gifted and talented programs and sets forth the program service and curriculum requirements. Academic and artistic gifted programs are addressed in this regulation. The provisions of this regulation include, but are not limited to, program, identification of population to be served, staff, reporting, funding, and expenditures and accounting procedures. The State Board of Education will review these provisions and will determine those areas in which amendments to the existing regulation are needed. In particular, changes in the teacher/pupil ratio, changes in the qualifying scores for Dimension A and Dimension B, and changes in the use of Performance Tasks for Dimension C, as well

as the use of grade point average are under study. A thorough review of the artistic guidelines is being conducted, as this section of the regulation has never been updated to reflect changes in practice.

Legislative review of this proposal will be required.

STATE BOARD OF EDUCATION
CHAPTER 43

Statutory Authority: S.C. Code Ann. Sections 59-5-65 (Supp. 2002), 59-65-90 (1990), No Child Left Behind, 20 U.S.C. 7912, and Juvenile Justice and Delinquency Prevention Act (JJDP) Act of 1974 (Pub. L. 93-415, 42 U.S.C. 5601 et seq.)

Notice of Drafting

The State Department of Education proposes to draft amendments to Regulation 43-274, Student Attendance, to meet the requirements of the federal law No Child Left Behind Act of 2001, 20 U.S.C. 7912 and the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974 (Pub. L. 93-415, 42 U.S.C. 5601 et seq.) and subsequent amendments. Interested persons may submit comments to Ms. Lynne Rogers, Director of the Office of Safe Schools and Youth Services, 1429 Senate Street, Columbia, South Carolina 29201. To be considered, comments must be received no later than 5:00 P.M. on July 28, 2003, the close of the drafting comment period.

Synopsis:

In an effort to create a uniform measurement and monitoring system to track truancy rates in South Carolina, the South Carolina State Department of Education is proposing amendments to Regulation 43-274 to include a definition of truancy, and more definitive wording and guidance in developing and implementing appropriate intervention plans to improve student attendance and referrals to Family Court.

STATE BOARD OF EDUCATION
CHAPTER 43

Statutory Authority: S.C. Code Ann. § 59-5-60 (1990), S.C. Code Ann. § 59-5-65 (1990 and Supp. 2002*),* S.C. Code Ann. § 59-18-320(B) (Supp. 2002), S.C. Code Ann. § 59-21-510 *et seq.* (1990 & Supp. 2002), S.C. Code Ann. § 59-30-15 (1990 & Supp. 2002), S.C. Code Ann. § 59-33-10 *et seq*. (1990 & Supp. 2002), S.C. Code Ann. § 59-36-10 *et seq*. (Supp. 2002), S.C. Code Ann. § 59-40-140(C) (Supp. 2002), 20 U.S.C. Section 1232(g) *et seq*. (2001), 20 U.S.C. Section 1400 *et seq*. (1997)

Notice of Drafting:

The South Carolina State Board of Education proposes to draft substantial amendments and additional regulations governing the education of students with disabilities. Interested persons may submit their comments in writing to Dr. Sandra Lindsay, Deputy Superintendent, Division of Curriculum Services and Assessment, 805 Rutledge Building, 1429 Senate Street, Columbia, South Carolina 29201. To be considered, all comments must be received no later than 5:00 p.m. on July 28, 2003, the close of the drafting comment period.

Synopsis:

The reauthorization of the Individuals with Disabilities Education Act (IDEA) and other changes create the need for amending the State's requirements regarding the provision of a free and appropriate education to students with disabilities.

Legislative review of this proposal will not be required.

STATE BOARD OF EDUCATION

CHAPTER 43

Statutory Authority: S. C. Code Ann. Section(s) 59-5-60(1)(2002), 59-26-10, et seq. (Supp. 2002), and No Child Left Behind Act of 2001, 20 USC 7912

Notice of Drafting:

The State Department of Education proposes to repeal and amend regulations governing Teacher Quality. Interested persons may submit their comments in writing to Dr. Janice Poda, Director, Division of Teacher Quality, 3700 Forest Drive, Suite 500, Columbia, South Carolina 29204. To be considered, all comments must be received no later than 5:00 p.m. on July 28, 2003, the close of the drafting comment period.

Synopsis:

The enactment of the Elementary and Secondary Education Act of 2001, Public Law 107-110, also known as No Child Left Behind Act (NCLB), and the South Carolina Education Accountability Act (EAA), creates the need for restructuring the state system for training, certifying and evaluating teachers. Some areas that will be addressed are add-on certification, paraprofessionals, and the definition of highly qualified teachers.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

CHAPTER 61

Statutory Authority: S.C. Code Sections 39-37-120, 44-1-140

Notice of Drafting:

The Department of Health and Environmental Control proposes to substantially amend R.61-36, Manufacture, Distribution, and Sale of Frozen Dairy Foods and Frozen Desserts. Interested persons should submit comments to Joe Neely, Division of Food Protection (Dairy Foods and Soft Drink Protection Program), Bureau of Environmental Health, S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201-1708. All comments must be received by 5:00 p.m. on July 28, 2003, the close of the drafting comment period.

Synopsis:

R.61-36 ensures that consumers are receiving safe, high quality frozen dairy foods and frozen desserts. The Regulation was amended last prior to 1968. The proposed amendments will bring the Regulation in compliance with the latest Frozen Dessert guidelines of the United States Public Health Service, Food and Drug Administration and assure consumers that the latest sanitation requirements are being met by the dairy industry.

This amendment will require legislative review.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61

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

Notice of Drafting:

The Department of Health and Environmental Control (Department) is proposing to amend *Regulation 61-62.63, National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*. The purpose of this notice is to extend the drafting comment period previously established by Notices of Drafting published in the *State Register* on November 23, 2001, and on August 23, 2002. All previous comments regarding R. 61-62.63, as well as any additional comments received after this publishing, will be considered. In this notice, the Department is also proposing to add a new *Regulation 61-62.61, National Emission Standards for Hazardous Air Pollutants (NESHAP).* Interested persons are invited to present their views in writing to Dennis Camit; Division of Air Planning, Development and Outreach; Bureau of Air Quality; 2600 Bull Street; Columbia, SC 29201. To be considered, written comments must be received no later than 5:00 p.m. on Monday, July 28, 2003, the close of the drafting comment period.

Synopsis:

A Notice of Drafting was published in the *State Register* on November 23, 2001, proposing several amendments to *Regulation 61-62, Air Pollution Control Regulations and Standards.* A Notice of Proposed Regulation was published in the *State Register* on April 26, 2002, as Document No. 2736. The proposed regulation anticipated amendments to the Code of Federal Regulations (CFR) Title 40 Part 63, subpart B, Section 63.50 through Section 63.56 based on a proposed rule published in the *Federal Register* on March 23, 2001 [66 FR 16317]. These sections of the CFR implement section 112(j) of the Clean Air Act (CAA), which is commonly referred to as the "MACT Hammer." The CAA requires the United States Environmental Protection Agency (EPA) to promulgate regulations establishing emissions standards for each category of major sources and area sources of hazardous air pollutants. Section 112(j) of the CAA requires the State to do case-by-case Maximum Achievable Control Technology (MACT) determinations for each source in each source category for which the EPA fails to promulgate a MACT standard by May 15, 2002.

Subsequent to the publication of a final rule in the *Federal Register* on April 5, 2002 [67 FR 16581], a lawsuit was filed to order EPA to withdraw the language promulgated in 40 CFR Part 63, subpart B. In light of this lawsuit, the Department elected to separate the amendments to R.61-62.63, subpart B, Section 63.50 through Section 63.56 from the other amendments to *Regulation 61-62, Air Pollution Control Regulations and Standards* promulgated in *State Register* Document No. 2736 on August 23, 2002. The lawsuit resulted in a settlement agreement in which EPA agreed to finalize the "MACT Hammer" requirements by April 27, 2003. A Notice of Drafting specific to this proposed amendment to R. 61-62.63 was published in the *State Register* on August 23, 2002. The final "MACT Hammer" implementation rule was published in the *Federal Register* on May 30, 2003 [68 FR 32586]. The Department proposes to incorporate the new Federal Part 63, Subpart B, Section 63.50 through Section 63.56 requirements, along with amendments to 40 CFR Part 63, subpart A, into R. 61-62.63.

The Department is also proposing to add a new *Regulation 61-62.61, National Emission Standards for Hazardous Air Pollutants (NESHAP).* Prior to the promulgation of MACT standards for source categories, EPA promulgated emission standards for specific hazardous air pollutants in 40 CFR Part 61 NESHAP. The Department proposes to incorporate by reference into this new regulation, R.61-62.61, the general requirements and emission standards that have been promulgated in 40 CFR Part 61 for which the Department requested and received delegation of authority to implement and enforce. This action will not require legislative review.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
Statutory Authority: S.C. Code Section 44-1-140

Notice of Drafting:

The Department of Health and Environmental Control proposes to amend R.61-32, Soft Drink Bottling Plants. Interested persons should submit comments to Chris Saul, Division of Food Protection (Dairy Foods and Soft Drink Program), Bureau of Environmental Health, S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201-1708. All comments must be received by 5:00 p.m. on July 28, 2003, the close of the drafting comment period.

Synopsis:

R.61-32 ensures that consumers are receiving safe, high quality bottled water products. The proposed amendments will bring the Regulation into compliance with the latest requirements set forth by the United States Food and Drug Administration (FDA) regarding bottled water manufacturing sanitation practices. These latest requirements have already been implemented by the Department under the authority of the FDA; these amendments will incorporate these requirements into South Carolina's regulation.

This amendment will require legislative review.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
Statutory Authority: 1976 Code Section 44-55-10 et seq.

Notice of Drafting:

The Department of Health and Environmental Control proposes to amend R.61-58, State Primary Drinking Water Regulations. Interested persons may submit their views in writing to Mr. Glenn E. Trofatter, Compliance Assurance Division, Bureau of Water, S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201. To be considered, written comments must be received no later than 5:00 p.m. on July 28, 2003, the close of the drafting period.

Synopsis:

The Department proposes to revise the State Primary Drinking Water Regulations that address cross connection control and backflow prevention. The revisions will clarify existing requirements for cross connection control and will take into consideration recommendations of the Lawn Irrigation Backflow Taskforce. The proposed revisions will require legislative review.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

CHAPTER 61

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

Notice of Drafting:

The Department of Health and Environmental Control proposes to revise Regulation 61-9, Water Pollution Control Permits. Interested persons may submit their comments in writing to Mr. Andrew Yasinsac, Jr., Senior Technical Advisor, Industrial, Agricultural, and Stormwater Permitting Division, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201. To be considered, all comments must be received no later than July 31, 2003, the close of the drafting period.

Synopsis:

The Department intends to make changes to South Carolina Regulation 61-9, Water Pollution Control Permits, to modify existing sections and requirements for federal compliance with existing regulations promulgated in the Federal Register. The Department proposes revisions to the regulations including:

1. Changing NPDES regulations to revise Concentrated Animal Feeding Operations (CAFO) requirements in accordance with federal revisions published in 68 Federal Register 7175, February 12, 2003;

2. Any other federal regulation requirements since the July 27, 2001, State Register amendment of R.61-9 that may require appropriate changes, modifications, additions, or deletions to this regulation; and

3. Miscellaneous administrative changes such as renumbering, relocation, or revision of the existing regulation to reflect the changes resulting from the appropriate federal requirements.

Proposed revisions will not require legislative review. Neither a preliminary impact report nor a fiscal impact statement is required.

Document No. 2842
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
Statutory Authority: 1976 Code Sections 44-55-10 et seq.

61-58. State Primary Drinking Water Regulations.

Preamble:

The Department of Health and Environmental Control proposes to amend R.61-58, State Primary Drinking Water Regulations.

Proposed revisions will include requirements promulgated under the National Primary Drinking Water Regulations: Minor Revisions of the Public Notification Rule and Consumer Confidence Report Rule; and, clarification of the National Primary Drinking Water Regulation for Arsenic. These revisions will make minor corrections to Appendix A to R.61-58.6: Violations and Other Situations requiring Public Notice; Appendix B to R.61-58.6: Standard Health Effects Language for Public Notification; and Appendix D to R.61-58.12: Consumer Confidence Reports: Regulated Contaminants. These changes include: correcting drinking water source information listed for copper, changing the placement of regulatory and health effects information for disinfection by-products (i.e., bromate, chloramines, chlorite, chlorine, and chlorine dioxide). The Department is also amending the listing for three contaminants (i.e., bromate, chlorite, and total trihalomethanes) to correct source information given in Appendix D. In addition, the drinking water standard for Arsenic will be expressed as 0.010 mg/L, instead of 0.01 mg/L. These actions are mandated by the 1996 amendments to the Federal Safe Drinking Water Act (SDWA). Proposed regulations will comply with 40 CFR Parts 141 and 142. The final rule for the National Primary Drinking Water Regulations: Minor Revisions to Public Notification Rule and the Consumer Confidence Report Rule was published in the November 27, 2002, *Federal Register*, with an effective date of December 27, 2002. The clarification to the Arsenic Rule was published in the March 25, 2003, *Federal Register*, with an effective date of April 24, 2003. These revisions are to align the State Primary Drinking Water Regulations with federal regulations.

The proposed regulations will comply with federal law, conform R.61-58 to the federal regulations, and are exempt from legislative review. Neither a preliminary assessment report nor a fiscal impact statement is required. A Notice of Drafting for the proposed amendments was published in the *State Register* on February 28, 2003 and April 25, 2003. See Statement of Need and Reasonableness herein.

Section-by-Section Discussion:

See below a Tabular Summary of the proposed revisions to the State Primary Drinking Water Regulations. The 'Item' column is a short description of the proposed changes to the existing regulation. Reference should be made to the appropriate Section for complete changes:

Section	Item
61-58.5(B)(2)	Revises MCL for Arsenic
Appendix A to R.61-58.6	Revisions under the heading "Microbiological Contaminants" for the Filter Backwash Recycling Rule
Appendix B to R.61-58.6	Revises Standard Health Effects Language for Di(2-ethylhexyl)adipate and Di(2-ethlhexl)phthalate Revises MCL for Arsenic
Appendix D to R.61-58.12	Additions under the heading "Inorganic Contaminants" for Bromate, Chloramines, Chlorine, Chlorine dioxide and Chlorite. Revisions under

the heading "Inorganic Contaminants" for Arsenic and Copper. Revisions under the heading "Synthetic Organic Contaminants Including Pesticides and Herbicides" for Di(2-ethylhexyl)adipate and Di(2-ethlhexl)phthalate. Deletions under the heading "Volatile Organic Contaminants" for Bromate, Chloramines, Chlorine, Chlorite and Chloride dioxide. Revisions under the heading "Volatile Organic Contaminants" for TTHMs (Total Trihalomethanes).

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

Interested members of the public and regulated community are invited to make oral or written comments on the proposed amendment at a public hearing to be conducted by the Board of Health and Environmental Control at its regularly-scheduled meeting on August 14, 2003. The public hearing will be held in the Board Room of the Commissioner's Suite, Third Floor, Aycock Building of the Department of Health and Environmental Control at 2600 Bull Street, Columbia, SC. The Board meeting commences at 10:00 a.m. at which time the Board will consider items on its agenda in the order presented. Persons desiring to make oral comments at the hearing are asked to limit their statements to five minutes and, as a courtesy, are asked to provide written comments of their presentations for the record.

Interested persons are also provided an opportunity to submit written comments on the proposed amendment by writing to Valerie A. Betterton at the Bureau of Water, S.C. DHEC, 2600 Bull Street, Columbia, SC 29201. Written comments must be received no later than 4:00 p.m. on July 28, 2003. Comments received by the deadline date shall be considered by staff in formulating the final proposed amendment for public hearing on August 14, 2003, as noticed above. Comments received by the deadline date shall be submitted in a Summary of Public Comments and Department Responses for the Board's consideration at the public hearing.

Copies of the final proposed amendment for public hearing before the DHEC Board may be obtained by contacting Valerie A. Betterton at the Bureau of Water, S.C. DHEC, 2600 Bull Street, Columbia, SC 29201.

Statement of Need and Reasonableness:

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

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

Purpose: The Department proposes to amend R.61-58 to adopt revisions made to the federal regulations commonly referred to as the Public Notification Rule, the Consumer Confidence Report Rule and the Arsenic Rule. Proposed revisions will comply with federal law and will maintain conformity with federal regulations pursuant to 40 CFR Parts 141 and 142 through 2002. See Preamble and Discussion above and Statement of Need and Reasonableness below.

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

Plan for Implementation: The proposed amendments will be incorporated within R.61-58 upon approval by the Department's Board. The proposed amendments will be implemented in the same manner in which the existing regulations are implemented.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS: The adoption of these regulations will allow the Department to continue being the primacy agency for the implementation of the Safe Drinking Water Act and the National Primary Drinking Water Regulations in the state. This action is mandated by the 1996 amendments to the Federal Safe Drinking Water Act. The proposed regulations will comply with 40 CFR Parts 141 and 142 and are necessary to maintain conformity with federal regulations.

DETERMINATION OF COSTS AND BENEFITS:

The proposed amendments are exempt from the requirements of a preliminary fiscal impact statement because each change is necessary to maintain conformity with federal regulations. In amending the federal regulations for public water systems, there will be no change in the estimated costs of complying with the Public Notification Rule, the Consumer Confidence Reporting Rule or the Arsenic Rule. These revisions do not change either the frequency of reports or the regulatory burden of public notification.

UNCERTAINTIES OF ESTIMATES: Unknown.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH: Minimal.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED: There will be no adverse effect on the environment if the amendments are not implemented by the Department. However, failure of the Department to adopt the federal regulations could result in the Department losing primacy to enforce the Safe Drinking Water Act and the National Primary Drinking Water Regulations.

Text:

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

Document No. 2843
DEPARTMENT OF HEALTH AND HUMAN SERVICES
CHAPTER 126
Statutory Authority: 1976 Code Section 44-6-90

126-425. Recipient Utilization.

Preamble:

The South Carolina Department of Health and Human Services proposes to amend 126-425 Recipient Utilization by redefining the terms and policies for recipient restriction. The proposed change is made primarily for the Dept. of Health & Human Services to assume the responsibility from the Department of Social Services.

Notice of Drafting for the proposed amendment was published in the State Register on April 25, 2003.

Notice of Public Hearing and Opportunity for Public Comment:

Should a hearing be requested pursuant to Section 1-23-110(A)(3) of the 1976 Code, as amended, such hearing will be held at the Administrative Law Judge Division, Edgar A. Brown Building, Suite 224, 1205 Pendleton Street, Columbia, SC 29201, on August 14, 2003 at 10:00 a.m. Should no such request be made by 4:30 p.m. on July 28, 2003, such hearing will be cancelled without further notice. Hearing requests and written comments may

be directed to Ms. Julie Jones, Program Integrity Manager, Post Office Box 8206, Columbia, South Carolina 29202-8206, no later than July 28, 2003.

Preliminary Fiscal Impact Statement:

The Department of Health and Human Services estimates that no additional costs will be incurred as a result of the promulgation of these regulations, and no additional state funding is requested.

Statement of Need and Reasonableness:

The Department of Health and Human Services, Program Integrity Unit is mandated to identify, investigate, and prosecute recipient fraud and misrepresentation, throughout the state of South Carolina. It is believed that a percentage of recipients engage in fraudulent activity, which denies care to individuals in need. Since this function was previously contracted to a third party, it is necessary to provide regulation to the new infrastructure that currently being developed. Effective July 1, 2002, the Department was tasked with the responsibility of developing a process of restricting recipients who have proven patterns of wasteful and abusive practices of their Medicaid benefits. The Department of Recipient Utilization will receive, evaluate and investigate allegations of misrepresentation, waste, fraud and abuse.

Statement of Rationale:

For information contact Mr. George Burnett, Esq. Department of Health and Human Services, P.O. Box 8206, Columbia, South Carolina 29202-8206.

Text:

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

Document No. 2844
COMMISSION ON HIGHER EDUCATION
CHAPTER 62
Statutory Authority: 1976 Code Sections 59-112-10 through 59-112-100

62-600. DETERMINATION OF RATES OF TUITION AND FEES

Preamble:

The Commission on Higher Education proposes to amend and replace in its entirety R.62-600 of the Determination of Rates of Tuition and Fees Regulation. The proposed amendment will clarify the following:

(1) The proposed amendment will acknowledge the role that residency plays in the eligibility criteria of the State's tuition assistance/scholarship programs;
(2) The proposed amendment will address the residency implications of the non-traditional family;
(3) The proposed amendment will replace time-line references that were open to interpretation with activity-based criteria; and
(4) The proposed amendment will clarify other criteria to add more specificity.

A Notice of Drafting for the proposed amendment was published in the *State Register* on April 25, 2003. No comments were received by the Commission on Higher Education as a result of this Notice.

Section-by-Section Discussion

The following definitions were added or modified to address areas questioned by students and parents.

62-602.E "Family's Domicile in this State is Terminated" has been defined as a work-related transfer rather than a voluntary relocation.

62-602.F "Full-Time Employment" has been modified to allow for compliance when a person meets the eligibility requirements of the Americans with Disabilities Act and cannot work the requisite thirty-seven and one-half hours per week.

62-602.G "Guardian" was redefined to agree with current tax law that provides for eligibility of dependency of the minor child if 5 dependency tests can be passed. This definition provides an opportunity for students raised by grandparents, brother, sisters, uncles, aunts, etc. to meet the dependency criteria of the regulation and to have their residency established based on the person(s) upon whom they are truly dependent.

62-602.H "Immediately prior" (to enrollment) has been defined as "the period of time between the offer of admission and the first day of class of the term for which the offer was made, not to exceed one calendar year." This definition provides a finite point in time from which to measure the action and no longer calls on the judgment of the residency officer to determine what "immediately" means on his/her campus.

62-602.I Specified that a "loan" used to support a claim of financial independence had to be a "commercial loan" rather than a personal loan that may have come from a family member.

62-602.L "Parent" has been amended to include "Stepfather" and "Stepmother".

62-602.O "Spouse" has been defined as the husband or wife of a married person in accordance with the South Carolina Code of Laws.

62-602.R "United States Armed Forces" has been amended to include the Coast Guard**.**

62-603.C Acknowledged the establishment of "joint custody" for divorced parents.

Other modifications included:

62-603.C Inserted the language from 59-112-10(G)(2) to recognize the eligibility of a student if there were court ordered payments of the "cost of (the student's) college education" by an independent person qualifying as a resident of this state and defined the "cost of his education" to be at least the cost of (the student's) tuition and fees.

62-604.A Revised the regulation relative to a dependent non-resident alien to be consistent with the remainder of the regulation in that the residency of the dependent is based upon the residency of the person upon whom they are dependent. This revision addresses the potential post 9/11 delays in the processing of permanent resident status and the potential for the parents receiving their "green card" prior to the student.

62-604.A Specified that non-citizens who may be eligible for the payment of in-state tuition and fees as a result of the holding of certain visa classifications were not and could not become eligible for state sponsored tuition assistance and scholarships.

62-604.C4 Acknowledged state guidelines in the timelines required to possess a state drivers license and vehicle registration as evidence of the intent to establish state residency. And,

62-607.A Acknowledged that transfer between the state's colleges and universities of a student seeking a certificate, diploma, associate, baccalaureate, or graduate level degree did not constitute a break in enrollment and, as such, would not cause the student to be considered a resident at one school and not at the school to which the student transferred or progressed.

Notice of Public Hearing and Opportunity for Public Comment:

Interested members of the public and regulated community are invited to make oral or written comments on the proposed regulation at a public hearing to be conducted by the South Carolina Commission on Higher Education on September 4, 2003 to be held in the Large Conference Room of the S.C. Commission on Higher Education, located in the Washington Mutual Building, 1333 Main Street, Suite 200, Columbia, SC. The meeting will commence at 10:30 a.m. at which time the Commission will consider items on its agenda in the order presented. The order of presentation for public hearings will be noted in the agenda to be published by the Commission ten days in advance of the meeting. Persons desiring to make oral comments at the hearing are asked to limit their statements to five minutes or less, and as a courtesy are asked to provide written copies of their presentation for the record.

Interested persons are also provided an opportunity to submit written comments on the proposed regulation by writing to Dr. Karen Woodfaulk, Director of Student Services, South Carolina Commission on Higher Education, 1333 Main Street, Suite 200, Columbia, SC 29201. Comments must be received no later than 5:00 p.m. on July 28, 2003. Comments received shall be considered by the staff in formulating the final proposed regulation for public hearing on September 4, 2003, as noticed above. Comments received by the deadline shall be submitted to the Commission in a summary of public comments for consideration at the public hearing.

Preliminary Fiscal Impact Statement:

There will be no additional cost to the State or to the public or private colleges and universities of South Carolina associated with administering this revised regulation.

Statement of Need and Reasonableness:

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

DESCRIPTION OF REGULATION: 62-600–612. Determination of Rates of Tuition and Fees.

Purpose: Regulation 62-600-612 is being amended and replaced in its entirety. The proposed amendments will assist residency officials at all public and private colleges and universities throughout South Carolina by improving the consistency of their application of the criteria for awarding residency and thus providing eligible students with the benefits derived by in-state residency status.

Legal Authority: The legal authority for R.62.600-612 is Section 59-112-10 through 59-112-100, S.C. Code of Laws.

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

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS: The proposed regulation will define the criteria used by all administrative entities for determining residency eligibility and allowing students who meet the residency

criteria to pay in-state tuition and fees and, if academic or other criteria are met, to qualify for state supported tuition assistance or scholarships.

DETERMINATION OF COSTS AND BENEFITS: The proposed regulation will promote consistency among the institutions by providing improved definitions used to determine SC residency for in-state tuition and fee purposes. Dependent students will be treated consistently and will be deemed eligible for in-state status if they meet the Internal Revenue Service criteria for dependency and are dependents of an eligible South Carolina resident. The regulation will also allow students to progress from one school or academic program to another as they pursue their higher education goals/objectives while maintaining their residency status.

UNCERTANTIES OF ESTIMATES: None

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH: Not applicable

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

Statement of Rationale:

This regulation is being promulgated to provide procedures for the institutions in determining who meets the eligibility criteria to pay in-state tuition and fees and eligibility for state-supported tuition assistance or scholarships.

Text:

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

Document No. 2790
CLEMSON UNIVERSITY
STATE CROP PEST COMMISSION
CHAPTER 27
Statutory Authority: Chapter 9, Title 46, 1976 Code

27- 135. Designation of Plant Pests

Synopsis: This amendment to an existing regulation provides for the listing of "*Potyvirus plum pox virus,*" a debilitating disease of stone fruit as a plant pest.

Instructions: Amend Regulation 27-135 of the Code of Regulations, by inserting "*Potyvirus plum pox virus*" in the list of Plant Pests in section 2 under the Scientific Heading column and by inserting the term "Sharka" in the Common Name listing, opposite the scientific name.

Statement of Rationale: *Potyvirus plum pox* virus has been designated by the federal government as a Federal Quarantine Pest. It has been discovered in Pennsylvania and quarantined by the Pennsylvania Department of Agriculture. This pest is subject to federal quarantine whenever and wherever discovered. This designation grants authority to the commission to take the necessary steps to protect and safeguard the stone fruit industry of South Carolina. For detailed information contact Dr. H. B. Jackson, Department of Plant Industry, 511 Westinghouse Road, Pendleton, SC 29670.

Text:

Designation of Plant Pests
Section 1 (No change)

Section 2. The following is added to the list of plant pests:

Scientific Name	Common Name
Potyvirus plum pox virus	Sharka

Fiscal Impact Statement:

Staff anticipate no additional financial impacts upon local governments. Additional costs to State government (the Commission) are not anticipated beyond the staff currently authorized.

Document No. 2791
CLEMSON UNIVERSITY
STATE CROP PEST COMMISSION
CHAPTER 27
Statutory Authority: Chapter 9, Title 46, 1976 Code

27-70. Plum Pox Virus Quarantine

Synopsis: This new regulation provides for procedures to deter the introduction of "*Potyvirus plum pox virus,*" a debilitating disease of stone fruit, into South Carolina and to provide for quarantine procedures should such disease be detected.

Instructions: Add new regulation 27-70 to the Code of Regulations, in its proper numerical order.

Statement of Rationale: *Potyvirus plum pox* virus has been designated by the federal government as a Federal Quarantine Pest. It has been discovered in Pennsylvania and quarantined by the Pennsylvania Department of

Agriculture. This pest is subject to federal quarantine whenever and wherever discovered. This designation grants authority to the commission to take the necessary steps to protect and safeguard the stone fruit industry of South Carolina. For detailed information contact Dr. H. B. Jackson, Department of Plant Industry, 511 Westinghouse Road, Pendleton, SC 29670.

Text:

Article 6
Plum Pox Virus Quarantine

27-70. Plum Pox Virus Quarantine

70.1 Definitions: For the purpose of this regulation, the following shall be construed respectively to mean:

A. Commission: The State Crop Pest Commission, or any officer or any employee of the commission to whom authority to act in its stead has been or hereafter may be delegated.

B. Pest: A virus known as Plum Pox Virus (*Potyvirus plum pox virus*).

C. Person: Any individual, corporation, company, society, association or other business entity.

D. Move: To ship, offer for shipment, receive for transportation, carry or otherwise transport, move or allow to be moved.

E. Regulated article: Any article of any character as described in the regulation carrying or capable of carrying the plant pest against which the regulation is directed.

F. Regulated area: Quarantined area in which efforts are designed to prevent further movement and spread of the plant pest.

G. Certificate: A document issued or authorized by the Commission (or by the duly authorized regulatory agency of another state or of the United States or of a foreign nation) indicating that a regulated article is apparently free of a plant pest.

H. Director: The Director, Division of Regulatory and Public Service Programs, Public Service Activities, Clemson University.

I. Division: The Division of Regulatory and Public Service Programs, Public Service Activities, Clemson University.

J. Department: The Department of Plant Industry, Division of Regulatory and Public Service Programs.

K. USDA-APHIS-PPQ: United States Department of Agriculture - Animal and Plant Health Inspection Service - Plant Protection and Quarantine.

L. Compliance Agreement: A document signed by any person engaged in purchasing, assembling, exchanging, handling or moving regulated articles that stipulates he/she will maintain such safeguards against the establishment and spread of infection and comply with such conditions as to the maintenance of identity, handling, and subsequent movement of such articles as specified by the appropriate regulatory agency.

M. *Prunus:* All varieties of peach, plum, apricots, almond, nectarines, and cherry trees.

N. Appropriate Regulatory Agency: Means the regulatory agency of a state, or of the United States, or of a foreign country, which is charged with the responsibility of plant health, including but not limited to inspection, certification and quarantine.

O. Infested Area: Any county or geographic unit in which the presence of PPV has been reported by the appropriate regulatory agency.

70.2 Regulated Articles

A. Any species susceptible to the Plum Pox Virus. See Appendix I for PPV-susceptible species list.

B. All propagative and non-propagative material of PPV-susceptible *Prunus* species, including seed, budwood, fruit, leaves, twigs and blossoms.

70.3 Conditions Governing the Movement of Regulated Articles into South Carolina

A. Certificate is required (described in Section 70.3.C below). A valid inspection certificate (nursery certificate tag, phytosanitary certificate, certificate of quarantine compliance, etc.) bearing the name and address of the consignor must accompany the movement of regulated articles into or through South Carolina. Articles without a certificate will be either returned to the point of origin or confiscated and destroyed.

B. Attachment of certificate. When certificates are required, they shall be securely attached to the outside of the container in which the articles are moved except where the certificate is attached to the shipping document and the regulated articles are adequately described on the shipping document or on the certificate.

C. Issuance of certificates. Certificates shall be issued on the following conditions only:

1. All *Prunus* nursery stock, excluding species recognized as non-fruit bearing ornamental plants, originating from outside of any quarantined areas are subject to the following requirements:

a. Records Required: Propagators, exporters and importers, as appropriate, must keep detailed records of the following required information: species, variety, source of budwood and rootstock, year of propagation, where distributed and records of PPV tests for a minimum of 10 years. Propagators, exporters and importers are required to produce records to agents of the commission upon request; **AND**

b. All *Prunus* nursery stock must either:

i. be tested or originate from motherwood stock that has been tested according to protocol recognized by the appropriate regulatory agency for PPV and has been found negative; OR

ii. originate from an area where survey data for PPV susceptible *Prunus* material in a 0.5 mile radius of the nursery is negative based on testing protocol approved by the appropriate regulatory agency OR no PPV susceptible *Prunus* species were grown within a 1 mile radius based on an official survey.

2. If PPV is found in a continental U.S. state outside of Pennsylvania but not in a southeastern state, then all *Prunus* material, to include ornamental stock, will be subjected to the guidelines as stated in Section 70.3.C.1.

3. If plum pox virus is found in any southeastern state, including but not limited to, Alabama, Georgia, North Carolina, South Carolina and Tennessee, then all *Prunus* stock must be tested at a level and protocol approved by the appropriate regulatory agency and certified PPV free before entering South Carolina.

4. No *Prunus* stock or *Prunus* related items such as seed, fruit, twigs, leaves, budwood, fruit blossoms, or bare root seedlings originating inside a quarantined area will be allowed entry into South Carolina.

D. The Department may enter into a compliance agreement with any person to allow shipment of regulated articles following "70.3 - Conditions Governing the Movement of Regulated Articles."

70.4 Additional Conditions in South Carolina

A. No regulated article may be moved out of any quarantined area.

B. Movement of *Prunus* species, *Prunus* budwood, *Prunus* twigs, or leaves within the quarantine area is prohibited.

C. Upon confirmation of PPV on property, the Department shall notify the landowner (and the tenant, if applicable) of the presence of Plum Pox Virus and shall provide the landowner/tenant with procedures for control/eradication in consultation with the USDA-APHIS-PPQ. The landowner/tenant must allow access and physical sampling for *Prunus* stock and maintain the land in a condition that will allow the Department to conduct adequate periodic surveys and other necessary and appropriate actions. This requirement extends to fallow land, land temporarily out of production, rangeland and any other land under the control of the landowner/tenant on which *Prunus* species are grown.

D. Open dumping of *Prunus* waste material is prohibited in any quarantined areas. All waste materials must be protected against exposure to potential vectors.

E. Upon confirmation of PPV, a Stop Sale/Seizure Order may be issued for regulated articles found on the premises as outlined by Section 46-9-60 S. C. Code.

70.5 Planting of PPV-susceptible *Prunus* Species in South Carolina

A. Planting of *Prunus* trees or *Prunus* ornamentals in any area under a PPV quarantine is prohibited for one year after eradication. This applies to fruit bearing and ornamental plants.

70.6 Movement for Scientific Purposes in South Carolina

A. Regulated articles may be moved for experimental or scientific purposes in accordance with specified conditions, provided a scientific permit is securely attached to the container of such articles or to the article itself. Permit must be issued by a state or federal regulatory official.

70.7 Addition/deletion of lands from Regulation in South Carolina

A. Deletion. When satisfactory evidence and data is available that no PPV has been found for a minimum of three consecutive years, said quarantined areas may be re-designated at the discretion of the Director, in accordance with Section 46-9-60.

B. Additions will be made in accordance with Section 46-9-60.

C. In addition to the requirements of Section 46-9-60, future additions or deletions of areas under quarantine will be published in the *State Register*.

70.8 Penalties

A. Penalties will be pursuant to Section 46-9-60.

70.9 Regulated Areas

A. In South Carolina

i. None at present.

B. Other States

i. All infested areas or counties in the state of Pennsylvania.

C. Other Countries

i. All infested areas within the following countries including but not limited to: Albania, Austria, Belgium, Bulgaria, Canada, Chile, Cyprus, Czechoslovakia, Egypt, England, France, Germany, Greece, Hungary, India, Italy, Macedonia, Portugal, Romania, Russia, Spain, Switzerland, Syria, The Netherlands, Turkey, and Yugoslavia.

70.10 Director's Exemption

A. Any propagator, importer or exporter may petition the Director for exemption from these regulations, as written, on a case-by-case basis.

APPENDIX I. PPV SUSCEPTIBLE SPECIES

(NOTE: This is not intended to be a comprehensive list. Some species listed may be resistant. Some species may be susceptible that are not listed.)

Subgenus Prunus (Peach, Plum, Apricot)

P. alleghaniensis
P. Americana
P. angustifolia
P. armeniaca
P. blireana
P. bokhariensis
P. brigantina

Subgenus Amygdalus (Almond, Nectarine)

P. amygdalo-persica
P. arabica
P. argentea
P. arnoldiana
P. baldschuanica
P. bucharica
P. davidiana

P. cerasifera (includes P. myrobalana and its cultivars)
P. cocomilia
P. consociiflora
P. curdica
P. dasycarpa
P. domestica
P. dunbarii
P. gigantean
P. gracilis
P. gravesii
P. gymnodonta
P. hortulana
P. institia
P. mandshurica
P. maritime
P. mexicana
P. monticola
P. mume
P. munsoniana
P. nigra
P. orthosepala
P. psuedoarmeniaca
P. reverchonii
P. salicina
P. sibirica
P. simonii
P. spinosa
P. subcordata
P. umbellate
P. ursine
P. ussuriensis
P. dulcis
P. fasciculata
P. fenzliana
P. kansuensis
P. mira
P. mongolica
P. pedunculata
P. persica
P. petunnikowii
P. pilosa
P. skinneri
P. spinosissima
P. sweginzowii
P. tangutica
P. tenella
P. triloba
P. vavilovii
P. webbii

Subgenus Lithocerasus (Cherry)
P. besseyi
P. bifrons
P. cistena
P. glandulosa
P. humilis
P. incana
P. jacquemontii
P. japonica
P. microcarpa
P. prostrata
P. pumila
P. tomentosa
P. utahensis

Fiscal Impact Statement: There will be no increased costs to the State or its political subdivisions.

Document No. 2814
CLEMSON UNIVERSITY
STATE CROP PEST COMMISSION
CHAPTER 27
Statutory Authority: Chapter 9, Title 46, 1976 Code

27-50. Regulated Areas

Synopsis: These amendments remove the witchweed quarantine from certain farms in the regulated area and impose the quarantine on certain other farms in the regulated areas.

Instructions: Delete regulation 27-50 and replace with this material.

Statement of Rationale: This is a minor change to an existing regulation, based on state and federal property surveys. For further information, contact Dr. H. B. Jackson, Department of Plant Industry, 511 Westinghouse Road, Pendleton, SC 29670.

Text:

27-50. Regulated Areas

A. Generally infested areas. None.

B. Suppressive Areas

1. Horry County

a. That area bounded by a line beginning at a point where U.S. Highway 9 intersects the Horry-Marion County line, then east along U.S. Highway 9 to Sate Secondary Highway 19, then southeast along State Secondary Highway 19 to Lake Swamp, then southwest along Lake Swamp to State Secondary Highway 99, then south and southwest along State Secondary Highway 99 to U.S. Highway 501, then west along U.S. Highway 501 to the Little Pee Dee River, then north along the Little Pee Dee River to the Lumber River, then north along the Lumber River to U.S. Highway 9, where it intersects the Horry-Marion County line to the point of beginning.

b. Jenerette, Miriam farm located on eastside of Secondary Road 23, and 3.4 miles south of intersection State Highway 917 and Secondary Road 23.

c. Stanley, Andrew farm located on the east side of State Highway 90 and 0.2 miles east of its junction on unpaved road known as Andrew Road.

d. Livingston, Donnie farm located on the east side of State Highway 90 and 0.5 miles southeast of its junction on state secondary road known as Bombing Range Road and 0.6 miles southeast of its junction on unpaved road known as Dewitt Road and 0.2 miles west of its junction on unpaved road known as Sand Hill Lane.

e. Lewis, Lula farm located on the west side of State Highway 90 and 0.4 miles west of its junction on unpaved road known as Livingston Lane and 0.1 miles east of its junction on unpaved road known as Beecher Lane.

f. Chestnut, Alberta farm located on the west side of State Highway 90 and 0.3 miles west of its junction on state secondary road known as Pint Circle.

g. Adams, Lena J. farm located on the west side of State Highway 90 and 1.2 miles west of its junction on state secondary road known as Pint Circle.

h. James, Norman farm located west of State Highway 90 and 0.4 miles west of its junction on unpaved road known as Thompson Road.

i. Todd, Don farm located west of State Highway 90 and 0.4 miles west of its junction on unpaved road known as Tilley Swamp Road.

j. Livingston, Pittman farm located on the east side of State Highway 90 and 2.2 miles north of junction with State Highway 22 and State Highway 90.

k. Vereen, Rufus C. farm located east of State Highway 90 and 0.4 miles east on state secondary road known as Old Chesterfield Road.

l. Permenter, Lucille farm located on east and west side of Hwy 57 at Worthar Cutoff junction, 0.5 miles south of North Carolina and South Carolina state line.

m. Montgomery, Harry farm located on the northwest side of state highway 76 in the Causey community, and 2.2 miles northwest of its junction on state secondary road know as Sand Trap Road and 3.7 miles northeast of its junction on unpaved road known as Causey Road and 0.1 mile northwest of its junction on unpaved road known as Griffins Landing and 0.15 miles northeast of its junction on unpaved road known as Flat River Road.

2. Marion County

a. Brown, Lewis farm located on the south side of State Highway 76 and 1.4 miles south of its junction with State Secondary Road 201.

b. Rowell, Molite farm located on the west side of State Secondary Road 9 and 0.2 miles west of its junction on unpaved road known as Molite Road.

c. Taw Caw Plantation farm located on the south side of State Highway 76 and 1.3 miles south of its junction on unpaved road known as Bubba Road.

d. Fowler, Est. Herbert farm located east of State Highway 501 and 1.4 miles northeast of its junction on unpaved road known as Bowling Green Road and 0.1 miles north of its junction on unpaved road known as Salem Road.

Document No. 2774
STATE BOARD OF EDUCATION
CHAPTER 43
Statutory Authority: S.C. Code Ann. Sections 59-5-60 (1990) and 59-25-110 (1990)

43-52. Application for Teaching Credential–Required Documentation.

Synopsis:

The State Department of Education recommends that the State Board of Education promulgate amendments to Regulation 43-52, Application for Teaching Credential–Required Documentation, to clarify certification application requirements and align South Carolina's regulation on certification application requirements with Regulation 43-51 and the new federal No Child Left Behind Act of 2001 (Pub. L. 107–110).

1. The proposed amendments indicate the specific documents required for South Carolina certification.
2. The proposed amendments clarify the effective date of the credential.

The Notice of Drafting was published in the *State Register* on June 28, 2002.

Section-by-Section Discussion

1.	Section I(A)(B)	The text is revised to reflect the current name of the required application form and a separate statement is added regarding the college recommendation form.
2.	Section I(D)	The text is revised to clarify the area and pedagogy test requirements to comply with the new federal No Child Left Behind Act of 2001.
3.	Section I(F)	The text is revised to align this section's FBI requirements to those in other regulations and clarify that FBI reports must be within the eighteen months prior to certification.

4.	Section II	The text is revised to move application and evaluation fee to a separate section.
5.	Section III(A)(B)(C)	The text is revised to clarify the effective date of a credential as well as to clarify changes to the regulation to comply with the new federal No Child Left Behind Act of 2001.

Instructions: Amend R43-52, Application for Teaching Credential, to Chapter 43 regulations. This regulation replaces 52.1. The title of this regulation is being changed from Application for Teaching Credential–Required Documentation to Application for Teaching Credential.

Text:

52.1 is being repealed

R 43-52. Application for Teaching Credential

I. Required Documentation

The Office of Teacher Certification requires the following forms of documentation from applicants for teacher certification:

A. Application Form. The applicant must submit the completed State Department of Education application form.

B. Recommendation Form. The applicant must include a completed "Verification of College Preparation: Recommendation for Teacher Certificate" form, signed by the dean or a designated college official.

C. College Transcripts. The applicant must submit complete and official transcript(s). Each transcript must bear the official seal of the institution, the signature of the designated official, the type of degree earned, if any, and the date awarded. Only official transcripts will be accepted for certification purposes. Electronically transmitted transcripts from the individual college will be accepted as the technology becomes available in the State Department of Education.

D. Examination Scores. The applicant must submit the required teaching area examination score(s) as adopted by the State Board of Education for purposes of certification. Effective July 1, 2006, the required score on the examination of general professional knowledge (pedagogy) as adopted by the State Board of Education for purposes of certification will be required for initial certification. Until that date, the general professional knowledge (pedagogy) exam will be required only for professional certification. Only official score reports will be accepted.

E. Experience Verification. The applicant must submit appropriate verification of previous teaching experience.

F. FBI Fingerprint Card and Background Check. The applicant must submit an FBI fingerprint card and must undergo a criminal records check by the South Carolina Law Enforcement Division and a national criminal records check supported by fingerprints conducted by the 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 State Board of Education and be approved before a certificate can be issued to them. Background checks from other states or agencies are not transferable to South Carolina.

II. Application and Evaluation Fee

The applicant must submit to the Office of Teacher Certification a nonrefundable fee for the evaluation and processing of each of his or her applications.

III. Effective Date of Credential

A. The effective date of the credential will be based upon the date of receipt of the complete certification application by the Office of Teacher Certification and/or request for additional area(s) of certification, certification renewal, or certificate advancement. An incomplete application will be considered active for a period of twelve months. If after twelve months the applicant has not submitted all required documentation, the application will be archived.

B. If the applicant becomes eligible for an initial certificate, certificate advancement, or certification renewal, requests received by the Office of Teacher Certification on or before November 1 will become effective July 1 of the current school year. For requests from November 2 through April 30, changes become effective when the requirements are met, provided that full documentation, including the request, is received by the Office of Teacher Certification within forty-five days after the applicant has fulfilled all requirement(s). Requests received forty-five days or more after eligibility will be effective the date the request is received. Requests received after April 30 are effective on the following July 1.

C. If an applicant holding a graded certificate or warrant qualifies for a professional certificate as the result of attaining the minimum qualifying score on the required certification examination, the upgraded credential will become effective the semester following the date of examination As a result of the authorization of the federal No Child Left Behind Act of 2001 (Pub. L. 107-110), graded certificates and warrants will become invalid at the end of the 2005–06 school year.

Fiscal Impact Statement: There will be no increased costs to the state or its political subdivisions.

Document No. 2831
STATE BOARD OF EDUCATION
Chapter 43
No Child Left Behind Act of 2001, 20 USC 7912

R 43-307. Alignment of Assessment and Accountability with the No Child Left Behind Act

Synopsis:

The Elementary and Secondary Education Act of 2001, Public Law 107-110, also known as No Child Left Behind Act, requires each state, in order to be eligible to receive federal funds, to prepare and submit an approved plan for assessment and accountability to the United States Secretary of Education by May 1, 2003. A peer review team examined the plan and the United States Department of Education (USDE) may require changes to it.

The Consolidated State Application Accountability Workbook establishes the state plan for compliance with the requirements of the No Child Left Behind Act that include adequate yearly progress (AYP), and the alignment of South Carolina's assessment, state and district report cards, and accountability with the federal law.

This plan must be approved by the USDE for South Carolina to receive federal Title I funds. The State Board of Education authorizes the South Carolina Department of Education to negotiate and finalize the plan as required by the USDE for plan approval.

Section-by-Section Discussion

Section I. outlines the steps taken to align the elements of the Education Accountability Act of 1998 with those of the No Child Left Behind Act (EAA).

Section I., Subsection A (1) requires that the assessment system apply to all public schools and districts.

Section I., Subsection A (2) requires that the state report cards include all the data required by the No Child Left Behind Act.

Section I., Subsection B (1) provides that the Adequate Yearly Progress measure be calculated as specified in the Accountability Workbook and that it be reported on the EAA mandated report cards.

Section I., Subsection B (2) identifies the subgroups identified for measuring the progress on adequate yearly progress.

Section I., Subsection B (3) outlines the other indicators of performance.

Section II. outlines the criteria for schools to move into needs improvement status and for Title I schools to progress through the Title I mandated consequences.

Section III. authorizes the Department of Education to amend the plan as necessary to meet USDE approval.

Instructions: Add new R 43-307, Alignment of Assessment and Accountability with the No Child Left Behind Act, to Chapter 43 regulations.

STATEMENT OF RATIONALE: NA

Text:

R43-307, Alignment of Assessment and Accountability Elements with the No Child Left Behind Act

I. The reauthorization of the Elementary and Secondary Education Act of 2001, Public Law 107-110, also known as the No Child Left Behind Act, requires each state to align its assessment and accountability elements with the measures mandated by federal law. The following steps are taken to align the elements of the Education Accountability Act of 1998 with those of the No Child Left Behind Act.

A. Assessment System

1. The assessment system, as mandated by the Education Accountability Act and further specified in the State Accountability Workbook, required by the No Child Left Behind Act, applies to all public schools and districts in the state and holds all students to the same academic achievement criteria and performance standards.

2. The annual school, district, and state report cards, as mandated by the Education Accountability Act and as further specified in the State Accountability Workbook, will include the data required by the No Child Left Behind Act.

B. Accountability System

1. Adequate Yearly Progress. This measure is calculated as specified in the State Accountability Workbook and is included as a measure of accountability and progress of the public schools. Adequate yearly progress will be reported on the front of the Education Accountability Act mandated report card.

2. Subgroups for Accountability. The subgroups identified for measuring the progress on adequate yearly progress are: economically disadvantaged students, major racial and ethnic groups, students with disabilities, and students with limited English proficiency. All students in the school are considered to be an additional subgroup. The definitions of the subgroups are specified in the South Carolina Department of Education Test Administration Manual and the No Child Left Behind Act.

3. Other Indicators of Performance. Attendance is the additional required indicator for elementary and middle schools. This indicator's threshold and adequate yearly progress criteria are specified in the State Accountability Workbook. For high school, the additional indicator is required to be graduation rate. This indicator's threshold and adequate yearly progress criteria are specified in the State Accountability Workbook.

II. The Elementary and Secondary Education Act of 2001, Public Law 107-110, also known as the No Child Left Behind Act, requires schools and districts not meeting adequate yearly progress for two consecutive years to move into needs improvement status and for Title I schools missing adequate yearly progress more than two consecutive years to progress through the levels of consequences specified in federal law.

III. The State Board of Education authorizes the South Carolina Department of Education to develop and amend the State Accountability Workbook as necessary to meet USDE approval.

Fiscal Impact Statement: Costs cannot be determined at this time.

Document No. 2749
STATE BOARD OF EDUCATION
CHAPTER 43
Statutory Authority: S. C. Code Ann. Sections 59-5-60 (1990), 59-5-65 (1990 and Supp. 2001), and 59-30-10, *et seq.* (1990 and Supp. 2001)

43-262.6. Basic Skills Assessment Program—Writing test: Minimum Standards of student achievement; Scoring Criteria

Synopsis:

Not all standards of student achievement are codified in regulation. The Department proposes that standards of student achievement be a matter of public record through information and policy rather than through regulation.

Instructions:

Repeal R 43-262.6, Basic Skills Assessment Program—Writing test: Minimum Standards of student achievement; Scoring Criteria, to Chapter 43 regulations.

Text:

43-262.6. Basic Skills Assessment Program--Writing test: Minimum Standards of Student Achievement; Scoring Criteria.

The State Board of Education policy pertaining to the writing tests required by the 1978 Act No. 631 (Basic Skills Assessment Program) is that the following criteria shall be applied in the scoring of those tests and the minimum standard of student achievement shall be not less than three points as defined below.

Modified Holistic Scale

4 point = A more than adequate response

The composition is related to the assigned topic. It has a focus and is unified; and it has a beginning, a middle, and an end. The composition is developed and flows smoothly from idea to idea.

Errors in sentence formation, word usage, and mechanics, may be present; but they do not detract from the overall impression of the composition.

3 points = An adequate response

The composition is related to the assigned topic. It has a focus and is unified; and it has a beginning, a middle, and an end. The composition does not present major obstacles for the reader in moving from idea to idea.

Errors in sentence formation, word usage, and mechanics may be present; but they do not substantially detract from the overall impression of the composition.

2 point = A less than adequate response

The composition is related to the assigned topic. It is somewhat focused and unified; and it may lack a beginning, a middle, or an end. The composition may present obstacles for the reader in moving from idea to idea.

Errors in sentence formation, word usage, and mechanics are frequent enough to detract from the overall impression of the composition.

1 point = A very inadequate response

The composition is related to the assigned topic. It lacks focus and is disorganized. The composition is very difficult to follow.

Errors in sentence formation, word usage, and mechanics are frequent and serious enough to detract substantially from the overall impression of the composition.

Responses That Cannot Be Evaluated

UR The composition is illegible or unreadable.
OT The composition is totally unrelated to the topic (off topic).
IS The composition contains an insufficient amount of writing to evaluate.
B The paper is assigned a B (Blank) if the response is missing.

The State Board of Education policy pertaining to an alternate assessment mechanism for the Exit Examination writing test as required by 1993 Act No. 153 for students with documented disabilities and students with English as a second language is that the written portion of the Exit Examination may be scored using the Alternative Holistic Scoring Scale which places emphasis on the conveyance of meaning, that a student eligible to have the written portion of the Exit Examination scored utilizing the Alternative Holistic Scoring Scale will be determined by each school district using eligibility criteria established by the State Superintendent of Education, that tests scored with the Alternative Holistic Scoring Scale will be identified on all score reports containing a student's individual score, and that the following criteria shall be applied in the scoring of those tests and the minimum student achievement shall be not less than three points as immediately defined below this paragraph. Students with documented disabilities may also use additional special accommodations which are normally used during the student's daily instructional program and are stated in the student's Individualized Education Program or 504 Accommodations Plan.

Alternative Holistic Score Scale for ESL Students and Students with Disabilities to Comply with 1993 Act 153

Exit Examination

4 point = A more than adequate response

The composition is related to the assigned topic. It has a focus and is unified; and it has a beginning, a middle, and an end. The composition is developed and flows smoothly from idea to idea.

Errors in sentence formation, word usage, and mechanics may be present; but they do not detract from the overall impression of the composition.

3 point = An adequate response

The composition is related to the assigned topic. It has a focus and is unified; and it has a beginning, a middle, and an end. The composition does not present major obstacles for the reader in moving from idea to idea.

Sentence formation, word usage, and mechanics are adequate to convey meaning.

2 point = A less than adequate response

The composition is related to the assigned topic. It is somewhat focused and unified; and it may lack a beginning, a middle, or an end. The composition may present obstacles for the reader in moving from idea to idea.

Sentence formation, word usage, and mechanics hinder the conveyance of meaning.

1 point = A very inadequate response
The composition is related to the assigned topic. It lacks focus and is disorganized. The composition is very difficult to follow.

Sentence formation, word usage, and mechanics are inadequate to convey meaning.

Responses That Cannot Be Evaluated

UR = The composition is illegible or unreadable.
OT = The composition is totally unrelated to the topic (off topic).
IS = The composition contains an insufficient amount of writing to evaluate.
B = The paper is assigned a B (Blank) if the response is missing.

Compositions which receive scores of 1, 1.5, and 2 shall be scored analytically to identify specific objectives (mechanics, word usage, sentence formation, and/or composition) in which the student exhibited deficiencies.

Mechanics Word Usage

The composition contains the following The composition contains the following \

errors: errors:
capitalization word meaning
punctuation pronoun usage
spelling verb usage
adjective/adverb usage
omission of words

Sentence Formation Composition

The composition contains the following The composition contains the following

errors: errors:
sentence fragments lacks focus
run-on sentences lacks unity
misplaced modifiers lacks a beginning, middle or an end
dangling modifiers lacks smooth flow from idea to idea
faulty parallel structure

Preliminary Fiscal Impact Statement: There will be no increase costs to the State or its political subdivisions.

Resubmitted April 9, 2003

Document No. 2798
STATE BOARD OF EDUCATION
CHAPTER 43
Statutory Authority: S.C. Code Ann. Sections 59-5-60 (1990) and 59-40-10, et seq. (Supp. 2001)

R 43-601. Procedures and Standards for Review of Charter School Applications

Preamble:

The regulation will establish procedures and standards for review of charter school applications. The amended Charter Schools Act gives the State Board of Education the responsibility and authority to "promulgate regulations and develop guidelines . . . including standards which the Charter School Advisory Committee shall use to determine compliance with this chapter." The regulation also defines adverse impact, as stipulated in the Act as a condition under which a local board can deny a charter school application, consistent with recent amendments to S.C. Code Ann. § 59-40-10, *et seq.* (to be codified at Supp. 2002).

Section-by-Section Discussion

Section I establishes the authority of the Charter School Advisory Committee to review applications.

Section II establishes the standards that the Advisory Committee will use to determine compliance with the application components as set forth in S.C. Code Ann. § 59-40-60 (F) (to be codified at Supp. 2002).

Section III establishes the authority of a local board of trustees to grant a conditional charter to a charter school before the school has secured space, equipment, facilities, and personnel.

Section IV establishes a definition for adverse impact.

Instructions:

Add new R 43-601, Procedures and Standards for Review of Charter School Applications, to Chapter 43 regulations.

Text:

R 43-601. Procedures and Standards for Review of Charter School Applications

I. APPLICATIONS TO BE CONSIDERED BY THE CHARTER SCHOOL ADVISORY COMMITTEE

(A) Review of Applications

All charter school applications must be reviewed by the Charter School Advisory Committee to determine compliance with the standards established below. The applications submitted to the Advisory Committee must demonstrate compliance with each standard.

(B) Proposed Contract

The charter school application will be a proposed contract.

(C) Requests for Additional Information

If the Advisory Committee determines that an application does not meet one or more of the standards, it may request clarification or additional information from the applicant or the district. The Advisory Committee has the authority to incorporate this additional information into the application.

II. CHARTER SCHOOL APPLICATION STANDARDS

(A) Mission Statement

The charter school application must include a mission statement that must be clear and must support the intent of the Charter Schools Act:

(1) The purpose of the charter school must be clearly stated.

(2) The purpose of the charter school must be consistent with the intent of the Charter Schools Act:

(a) S.C. Code Ann. § 59-40-20 (Supp. 2001):

This chapter is enacted to:

(i) improve student learning;
(ii) increase learning opportunities for students;
(iii) encourage the use of a variety of productive teaching methods;
(iv) establish new forms of accountability for schools;
(v) create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site; and
(vi) assist South Carolina in reaching academic excellence.

(b) S.C. Code Ann. § 59-40-30 (Supp. 2001):

The purpose of the Charter Schools Act is to create a legitimate avenue for parents, teachers, and community members to take responsible risks and create new, innovative, and more flexible ways of educating all children within the public school system.

(B) Admissions Policies and Procedures

The application must include a description of the charter school's admission policies and procedures:

(1) The admission policies and procedures must reflect compliance with all federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, gender, national origin, religion, ancestry, or need for special education services.

(2) The admission policies and procedures must provide that, subject to space limitations, the charter school admits all children who are eligible to attend public school in the school district where the charter school is operating. If the number of applications exceeds the capacity of a program, class, grade level, or building, students must be accepted by lot, as specified in federal or state guidance. There is no appeal to the local school board of trustees.

(3) The policies and procedures must not limit or deny admission or show preference to any individual group; however, priority may be given to

(a) a sibling of a pupil already enrolled,

(b) children of charter school employees, and

(c) children of the charter school committee, provided enrollment does not exceed twenty percent of the enrollment of the charter school.

(4) Admission priority must be given to all students enrolled in a school undergoing a conversion.

(5) The policies and procedures must include provisions to grant or deny permission for students to attend the charter school if they reside in a school district other than the one where the charter school is located.

(a) In-district students will be given priority.

(b) Out-of-district student enrollment must not exceed 20 percent of the total enrollment of the charter school without the approval of the receiving district board of trustees. The sending district must be notified immediately of the transferring students. Out-of-district students must be considered on the basis of the order in which their applications are received.

(c) If the 20 percent of the out-of-district students are from one school district, then the sending district must concur with any additional students' transferring from that district to attend the charter school.

(6) If a charter school denies admission to a student for reasons other than the results of a lottery, the student may appeal the denial to the local school board of trustees. The decision will be binding on the student and the charter school.

(C) Support for Formation of a Charter School

The application must include evidence that an adequate number of parents, teachers, pupils, or any combination of them support the formation of the charter school:

(1) The charter committee must include at least one teacher.

(2) The application must include documentation of support of parents, teachers, pupils, or any combination of them that demonstrates that the school would likely meet enrollment expectations. A list of prospective or tentatively enrolled students or prospective employees is not required. The application must set forth the anticipated enrollment for the school at each grade level.

(3) Evidence of the interest level of parents, teachers, pupils, or any combination of them must be provided in the application and may include, but not be limited to, documentation of attendance and support at community meetings and survey results.

(4) If the social situation of the proposed school's targeted population precludes establishing parental support, evidence should demonstrate support from community groups and agencies, including letters from these entities that specify the level of their commitment to the school.

(5) In the case of a proposal to convert a school, the application must also include evidence that two-thirds of the faculty and instructional staff voted to support the filing of the application and evidence that two-thirds of the voting parents or legal guardians voted to support the filing of the application. Parents or guardians shall have one vote for each of their children enrolled in the school (i.e., each student may be represented by only one vote). All parents or legal guardians of students enrolled in the school must be given the opportunity to vote.

(D) Educational Program, Goals, Objectives, Pupil Achievement Standards, and Curriculum

The charter school's educational program, goals, objectives, pupil achievement standards, and curriculum must be clearly described in the application and must meet or exceed any student academic standards adopted by the school district in which the charter school is located. The application must demonstrate that the educational program is designed to enable each student to achieve these standards.

(1) The goals and objectives must be clearly stated and must provide enough detail to indicate specific outcomes.

(2) The student population must be identified by grade level, unique educational needs, and projected enrollment. A converted charter school must offer the same grades, or nongraded education appropriate for the same ages and education levels of pupils, as offered by the school immediately before conversions and may also provide additional grades and further educational offerings.

(3) The educational goals must reflect the school's mission statement.

(4) Strategies to accomplish the educational goals must be included.

(5) The school calendar must be at least 180 instructional days.

(6) Academic standards must identify what students will achieve at each grade level and must meet or exceed the South Carolina curriculum standards, as adopted by the State Board of Education. A correlation or other documentation must be included or process identified to ensure that the school will provide an instructional program that meets or exceeds the academic standards.

(7) If the charter school plans to offer the South Carolina State High School Diploma, the application must set forth the method for meeting the state requirements for the High School Diploma, including, but not limited to, course unit requirements, seat time for Carnegie Units, and passage of the required examination.

(8) Provisions must be included for determining if all students are achieving or attaining the standards, including the methods by which student performance information will be gathered and monitored.

(9) The application must include an explanation as to how the school will comply with the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act.

(E) Student Assessment

The application must include a description of the charter school's plan for evaluating pupil achievement and progress toward accomplishment of the school's achievement standards. The school's evaluation plan must include state-mandated assessments and other assessments as well as the timeline for meeting these standards and the procedures to be taken if pupil achievement falls below the standards.

(1) Methods for evaluating pupil achievement at each grade level must be specified. These methods must include but should not be limited to the state assessments.

(2) The timeline must identify the expected yearly progress toward meeting the school's long-term performance goals. The expected yearly progress must meet or exceed the expectation of adequate yearly progress as established in the No Child Left Behind Act.

(3) Provisions must be included to address the needs of students who do not perform at acceptable levels of proficiency in the statewide assessment program.

(F) Budget and Accounting System

The application must include a plan for the charter school that is economically sound and in compliance with state and federal requirements, including a proposed budget for the term of the charter, and must describe the manner in which an annual audit will be conducted:

(1) A budget for each year of the term of the charter must be included. The charter school must use the same budget codes as are required of school districts. The budget must be based on documented State Department of Education estimated revenues in accordance with the allocations in S.C. Code Ann. § 59-40-140(A)–(C). If the budget includes funds acquired through grants, the application must present evidence that the funds, including federal public charter school start-up grants, are likely to be received, and the terms of the projected grants must be explained. Anticipated expenditures must include all costs associated with initial implementation and continued operation, including but not limited to instructional and support costs for

(a) salaries,
(b) employee benefits,
(c) purchased services (includes insurance and transportation),
(d) supplies and materials (includes noncapital equipment), and
(e) capital outlay.

(2) The application must include a description of the annual audit of the financial and administrative operations of the charter school, including evidence that the charter school will adhere to the accounting, auditing, and reporting procedures and requirements that are applied to public schools operating in South Carolina. Accounting, auditing, and reporting requirements must be in compliance with the principles set forth in the following publications, published annually by the Office of District Auditing and Field Services:

(a) *Single Audit Guide*,
(b) *Financial Accounting Handbook*, and
(c) *Funding Manual.*

(3) The application must include documentation regarding the pupil accounting system, including evidence that the charter school will adhere to the procedures and regulations that are applied to public schools operating in South Carolina. Pupil accounting and reporting requirements must be in compliance with the *S.C. Pupil Accounting Manual* and the *S.C. Student Accountability Manual*, published by the State Department of Education.

(4) The application must include documentation of any negotiated services provided by the school district, including but not limited to financial accounting, payroll services, food services, custodial services, maintenance, curriculum, library and media services, and warehousing.

(G) Governance and Operation

The application must include a description of the governance and operation of the charter school:

(1) The charter school must be organized as a South Carolina non-profit corporation and the application must include a copy of the non-profit corporation's articles of incorporation and bylaws.

(2) The governing board must be elected annually by employees of the charter school and all parents or guardians of enrolled students.

(3) The governing board must assume the following responsibilities:

(a) employing and contracting with teachers and nonteaching employees;

(b) ensuring that teachers, whether certified or noncertified, undergo the background checks and other investigations required for certified teachers, as provided by law, before they may teach in the charter school;

(c) contracting for other services;

(d) developing pay scales, performance criteria, and discharging policies for its employees;

(e) deciding all other matters related to the operation of the charter school, including budgeting, curriculum, and operating procedures; and

(f) ensuring that the charter school will adhere to the same health, safety, civil rights, and disability rights requirements as are applied to all public schools operating in the same school district.

(4) The application must include a description of the administrative structure of the charter school, including the roles and responsibilities of each administrative staff member.

(5) Evidence of the nature and extent of parental, community, and professional educator involvement in the governance and operation of the school must be provided.

(6) Evidence must be provided that the charter school and its governing body will comply with the Freedom of Information Act. Such evidence may include the bylaws of the nonprofit corporation, which must be established prior to application.

(H) Administrative and Teaching Staff

The charter school must employ administrators and teachers in a manner consistent with the Charter Schools Act:

(1) At least one member of the administrative staff must hold current South Carolina certification in administration or have at least one year of experience in the field of school-based administration. The application must provide evidence that the qualifications of at least one administrator will meet this requirement.

(2) A newly created charter school may hire noncertified teachers not to exceed 25 percent of its faculty.

(3) A converted charter school may hire noncertified teachers not to exceed of 10 percent of its faculty.

(4) A teacher of a core academic area (English/language arts, mathematics, science, or social studies) must be certified in that area or must hold a baccalaureate or graduate degree in that subject. Teachers with elementary certification may teach in any academic area and in any grades allowable by the status of their certification.

(5) Part-time noncertified teachers must be considered pro rata in calculating staff percentages based on the hours which they are expected to teach.

(6) A noncertified teacher must be appropriately qualified for the subject matter taught, must have completed at least one year of study at an accredited college or university, and must meet the qualifications outlined in S.C. Code Ann. § 59-25-115.

(7) A certified teacher must hold current certification by the State of South Carolina to teach in a public elementary, middle, or secondary school.

(I) Racial Composition

The application must describe how the charter school intends to ensure that the enrollment of the school is similar to the racial composition of the school district or to the targeted student population the charter school proposes to serve and must also provide assurance that the school complies with any school district desegregation plan or order in effect:

(1) The application must demonstrate timely, fair, and realistic policies and procedures for recruiting, registering, and admitting students that reflect the racial composition of the school district or the targeted school population.

(2) The proposed procedures and policies must reflect an understanding of the racial composition of the district and the targeted student population.

(3) To ensure compliance with a desegregation plan or order, the charter school applicant should take the following steps and provide documentation that these steps were taken in its application:

(a) request and receive a letter from the district indicating whether the school will be subject to any desegregation plan or order;

(b) secure a copy of the desegregation plan or order if the school is subject to such;

(c) determine and demonstrate that the charter school's policies and procedures are in compliance with the desegregation plan or order;

(d) request and receive a letter from the district that indicates whether the charter school's proposed policies and procedures are in compliance with any desegregation plan or order in effect in the district or whether clarification must be received from the Office for Civil Rights.

(J) Transportation

The application must include a description of how the charter school intends to meet the transportation needs of its pupils:

(1) If the charter school will provide transportation by school bus, the application must include a plan that complies with the state requirements for drivers and training and the state safety requirements for school buses.

(2) If the lack of transportation is preventing a child from attending school, the charter school must provide or facilitate transportation for that student.

(3) If the charter school intends to contract with the district or a third party for transportation services, a description of those services and a proposed contract must be provided in the application.

(4) A charter school is not required to provide or facilitate transportation for out-of-district students.

(K) Facilities and Equipment

The application must include a description of the building, facilities, and equipment and an explanation as to how they will be obtained:

(1) Facilities Identified in Application

(a) If a facility suitable for use by the charter school is identified at the time of application, the application must provide the following information with regard to the facility that the charter school intends to occupy:

(i) the address of the facility;
(ii) a description of the facility;
(iii) a floor plan of the facility, including a notation of its size in square footage;
(iv) the name and address of the owner of the facility; and
(v) a copy of the proposed lease or rental agreement if the facility will be leased or rented.

(b) If the facility that the charter school will occupy is being used as a public school at the time of application, the application must specify the name and location of that school and must include documentation setting forth the specific days and times during which the charter school is authorized to use that facility.

(c) The application must either demonstrate that the proposed facility is in compliance with applicable building codes, laws, and regulations for school occupancy or must provide a description of that facility and must demonstrate that it will meet the requirements:

(i) A certificate of occupancy or a letter from the Office of School Facilities stating that the facility meets the appropriate codes is adequate to show compliance with this standard with regard to school facilities.

(ii) If a certificate of occupancy is not issued or cannot be obtained at the time of application, the application must provide evidence that the charter school committee is working with an architect and/or the Office of School Facilities to correct any deficiencies in the facility.

(2) Facilities Not Identified in Application

If the charter school has not identified a suitable facility, the application must specify a plan for obtaining such a facility and must include

(a) a description of the facility needs,

(b) a statement as to whether an existing facility will be remodeled or a new facility will be built, and

(c) a schedule for completing or obtaining a suitable facility and, if applicable, a description of and timeline for any plan to raise funds for completing or obtaining the facility.

(3) The application must include a description of the equipment that will be used to support the proposed curriculum and an explanation as to how the equipment will be obtained.

(L) Employee Relations

The application must explain the relationship that will exist between the charter school and its employees, including evaluation procedures:

(1) The application must include a description of the process that will be used to advertise for, select, and employ instructional staff and other employees.

(2) The procedure for the evaluation of teachers of the charter school must be outlined in the application.

(a) The charter school may choose to use the ADEPT (Assisting, Developing, and Evaluating Professional Teaching) program. If ADEPT is to be used, the school must meet all requirements of the program.

(b) If the charter school selects another method of evaluation, that method must be explained with adequate detail.

(3) The application must explain how the terms and conditions of employment will be addressed with affected employees.

(M) Grievance and Termination Procedures

The charter school must have a reasonable grievance and termination procedure for its employees:

(1) The charter school may, with agreement from the sponsor, adopt the procedures for the employment and dismissal of teachers outlined in S.C. Code Ann. § 59-25-410 *et seq.* (1990).

(2) If the charter school does not adopt procedures for the employment and dismissal of teachers outlined in S.C. Code Ann. § 59-25-410 *et seq.* (1990), the charter school must establish employment and termination procedures that provide for notice and a right to a hearing before the governing board.

(3) The charter school application must include grievance or termination procedures for paraprofessionals and other staff.

(4) Teachers and other staff members who are employed at a public school that converts and who desire to continue to teach or work at the converted school may do so but will remain employees of the local school district with the same compensation and benefits including any future increases.

(N) Student Conduct, Rights, and Responsibilities

The charter school application must include a policy governing student conduct, student rights and responsibilities, and student discipline standards and procedures:

(1) The charter school may adopt the district's policy on student conduct and discipline.

(2) If the charter school does not adopt the district's policy on student conduct and discipline, the charter school application must include a policy that sets forth clear expectations for student conduct.

(3) The policy must set forth disciplinary actions to be taken by the administration for breaches of the student conduct policy.

(4) The application must set forth an appeal process for students recommended for expulsion that includes a right to appeal a decision to the charter school board.

(5) The application must set forth an assurance that the charter school will comply with S.C. Code Ann. § 59-63-235 (Supp. 2001), which provides for the expulsion of any student who brings a firearm to school.

(6) The application must include an assurance that the charter school will comply with the Family Education Rights and Privacy Act (20 U.S.C. § 1232).

(7) The application must contain the explanation of the policies with regard to student conduct, rights, and responsibilities that will be given to parents and students at the beginning of the school year.

(O) Indemnification

The charter school must assume the liability for the activities of the charter school and must agree to indemnify and hold harmless the school district, its servants, agents, and employees from any and all liability, damage, expense, causes of action, suits, claims, or judgments arising from injury to persons or property or otherwise that arises out of the act, failure to act, or negligence of the charter school, its agents and employees, in connection with or arising out of the activity of the charter school.

(P) Insurance

The application must include a description of the types and amounts of insurance coverage to be obtained by the charter school. The application must address, but is not limited to, the following types of insurance: worker's compensation, liability, property, indemnity, and automotive.

(1) The application must include a description of worker's compensation insurance and amounts and a statement from a South Carolina licensed insurance company or the state insurance reserve fund setting out the charter school applicant's ability to secure the insurance and an estimate of the cost of the insurance.

(2) The application must include a description of liability insurance and the amounts to be obtained by the charter school and a statement from a South Carolina licensed insurance company or the state insurance reserve fund setting out the charter school applicant's ability to secure the insurance and an estimate of the cost of the insurance. The minimum policy must cover the limits of the South Carolina Tort Claims Act (S.C. Code Ann. § 15-78-120 (Supp. 2001)).

(3) The application must include a description of the insurance to cover loss to the school building and contents for fire and theft and a statement from a South Carolina licensed insurance company or the state insurance reserve fund setting out the charter school applicant's ability to secure the insurance and an estimate of the cost of the insurance.

(4) The application must include a description of indemnity insurance against civil and criminal liability for the charter school to protect the sponsor, the members of the board of the sponsor, and the employees of a sponsor acting in their official capacity with respect to all activities related to the charter school. A statement from a South Carolina licensed insurance company or the state insurance reserve fund setting out the charter school applicant's ability to secure the insurance and an estimate of the cost of the insurance must also be included.

(5) The application must include a description of automobile insurance, both property and liability insurance and a statement from a South Carolina licensed insurance company or the state insurance reserve fund setting out the charter school applicant's ability to secure the insurance and an estimate of the cost of the insurance.

III. CONDITIONAL CHARTERS

The local school board may grant a conditional charter, instead of a full charter, to an applicant whose application meets the standards as determined by the Advisory Committee if a charter school has not yet secured its space and been issued a certificate of occupancy by the Office of School Facilities, secured its equipment, facilities, and/or personnel.

IV. ADVERSE IMPACT ON STUDENTS

A local school board of trustees may deny an application if the charter school would adversely affect the other students in the district.

(A) The local school board of trustees must demonstrate adverse impact on students. The impact must be specific and must have a negative affect on students. If the local school board of trustees finds that the charter school would adversely affect other students of the district, the written explanation of the reasons for denial required by § 59-40-70(C) must describe detrimental effects upon other students of the district.

(B) If the district is claiming an adverse impact based upon the redirection of funding to the charter school, the district must demonstrate that the funds being redirected to the charter school will have a direct negative impact on students.

(1) The district must show options it has considered in an effort to reduce the adverse financial impact of the charter school.

(2) The district has considered the net fiscal impact of the charter school, including the fiscal benefits that the charter school may bring to the district.

V GUIDELINES

The State Department of Education may issue guidelines to assist charter schools in complying with federal legislation, including, but not limited to, No Child Left Behind and the Individuals with Disabilities Education Act.

Resubmitted April 9, 2003

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STATE BOARD OF EDUCATION
CHAPTER 43
Statutory Authority: S.C. Code Ann. Sections 59-5-60 (1990) and 59-40-10, et seq. (Supp. 2001)

43-600. Charter Schools Regulations

Synopsis: The State Department of Education recommends that the State Board of Education promulgate amendments to R 43-600, Charter Schools Regulation, and change title to of regulation to Charter School Appeals, as indicated in the drafting notice that was published in the *State Register* on June 28, 2002. The amendments remove the right to remand a case to the local board of trustees by the State Board of Education and establishes a process of appeal from the Charter School Advisory Committee to the State Board of Education, consistent with recent amendments to S.C. Code Ann. § 59-40-10, *et seq.* (to be codified at Supp. 2002).

Section-by-Section Discussion

Title is changed to Charter School Appeals.

Section I(B) is amended by removing the reference to the South Carolina Code of Laws.

Section I(E) is amended by removing the language that would allow the State Board of Education to remand a case to the local school district. The statute was amended removing remand as an option.

Section II is added to provide the procedures for an appeal from the Charter School Advisory Committee to the State Board of Education.

Section III(A) is amended by removing the reference to the South Carolina Code of Laws.

Instructions: Replace R 43-600, Charter School Regulation, in its entirety with the following amended text. Under Article 26, Charter Schools, change title of regulation from Charter Schools Regulation to Charter School Appeals

Text:

R 43-600. Charter School Appeals

I. APPEALS FROM A DECISION OF LOCAL BOARD OF TRUSTEES.

(A) Right to Appeal:

A charter school applicant may appeal an adverse decision of the local school board of trustees to the State Board of Education.

(B) Notice of Appeal:

The charter school applicant must provide the State Board of Education and the local school board of trustees with a written notice of appeal within ten (10) days after receiving the written explanation of the local school board of trustees. The notice of appeal is to be filed with the Chair of the State Board of Education at the Office of the State Superintendent of Education and with the Chair of the local school board of trustees. The notice of appeal must clearly identify the issues on appeal.

(C) Record on Appeal:

The Record on Appeal must include the written explanation of the decision of the local school board of trustees and evidence, submitted by either party that was considered by the local school board of trustees and that is relevant to the issue(s) on appeal. Matters not relevant or not previously presented to the local school board of trustees may not be included in the record and will not be considered by the State Board of Education. A party that submits materials to be included in the record on appeal must file twenty (20) copies of the materials with the Chair of the State Board of Education at the Office of the State Superintendent of Education and one copy with the Chair of the local school board of trustees within fifteen (15) days after the notice of appeal is filed.

(D) Scope of Review:

The State Board of Education's review will be limited to the record on appeal. The State Board of Education will not consider any fact that does not appear in the Record on Appeal.

(E) Standard of Review:

The State Board of Education may affirm or reverse the decision of the local school board of trustees if it determines that the local school board of trustees decision~~:~~

(1) violated constitutional or statutory provisions,
(2) exceeded the authority of the local school board of trustees,
(3) was based upon an error of law~~;~~,
(4) is clearly erroneous in view of the substantial evidence on the record, or
(5) was arbitrary or capricious.

(F) Written Memorandum:

Each party may submit a written memorandum explaining its position with respect to the issue(s) on appeal within fifteen (15) days after the notice of appeal is filed. If a party submits a memorandum, twenty (20) copies must be provided to the Chair of the State Board of Education at the Office of the State Superintendent of Education and one (1) copy to the opposing party.

(G) Hearing of Appeals:

The State Board of Education, within thirty (30) days after receipt of the notice of appeal and after reasonable public notice will conduct a public hearing to consider the appeal.

Each party will be allowed to make an oral argument addressing the issues on appeal. The length of time allotted for oral argument will be determined by the State Board of Education. The State Board of Education, at its discretion, may allow public comments addressing the issues on appeal at the public hearing. The Chair of the State Board of Education will notify the parties of the time allotted for oral argument.

The State Board of Education will issue a final written order within twenty (20) days of the public hearing.

II. APPEALS FROM THE CHARTER SCHOOL ADVISORY COMMITTEE

(A) Right to Appeal:

A charter school applicant may appeal a determination of noncompliance by the Charter School Advisory Committee to the State Board of Education.

(B) Notice of Appeal:

The charter school applicant must provide the State Board of Education, the Charter School Advisory Committee, and the local school board of trustees with a written notice of appeal within ten (10) days after receiving the determination from the Charter School Advisory Committee. The notice of appeal is to be filed with the Chair of the State Board of Education at the Office of the State Superintendent of Education, the Chair of the Charter School Advisory Committee, and the Chair of the local school board of trustees. The notice of appeal must clearly identify the issues on appeal.

(C) Record on Appeal:

The Record on Appeal must include the written determination by the Charter School Advisory Committee and the charter school application.

(D)Scope of Review:

The State Board of Education's review will be limited to the consideration of the Charter School Advisory Committee's application of the Charter School Standards in making its recommendation.

(E) Standard of Review:

The State Board of Education may affirm or reverse the recommendation of the Charter School Advisory Committee if it determines that the Charter School Standards were not applied in the decision making or if the State Board determines that the Charter School Advisory Committee's decision

(1) violated constitutional or statutory provisions,
(2) exceeded its authority,
(3) was based upon an error of law,
(4) is clearly erroneous in view of the substantial evidence on the record, or
(5) was arbitrary or capricious.

(F) Written Memorandum:

The charter school applicant may submit a written memorandum explaining its position with respect to the issue(s) on appeal within ten (10) days after the notice of appeal is filed. If the charter school applicant submits a memorandum, twenty (20) copies must be provided to the Chair of the State Board of Education at the Office of the State Superintendent of Education and one (1) copy to the Advisory Committee and one (1) copy to the Chair of the local school board of trustees.

(G) Hearing of Appeals:

The State Board of Education will consider the written record and memorandum only. Oral arguments and testimony will not be permitted.

The State Board of Education shall issue a final written order within forty-five (45) days of receiving the notice of appeal.

(H) Final Decision:

The decision of the State Board will be final. There is no further appeal of its decision.

III. STATE BOARD OF EDUCATION MOTION TO REVIEW A DECISION OF A LOCAL SCHOOL BOARD OF TRUSTEES CONCERNING A CHARTER SCHOOL APPLICATION

(A) Right to Move:

The State Board of Education may, on its own motion, review a decision of any local school board of trustees concerning charter schools.

(B) Notice of Motion:

The Chair of the State Board of Education will notify, by certified mail, the Chair of the local school board of trustees and the charter school applicant of its motion to review the decision of the local school board of trustees and the reasons for the motion.

(C) Written Documents and Memorandums:

Each party may submit a written memorandum and supporting documents addressing the reasons of the State Board of Education for the motion to review the decision of the local school board of trustees within twenty (20) days after the party receives notice of the motion to review.

(D) Hearing:

Within thirty (30) days of the motion to review by the State Board of Education and after reasonable notice, the State Board of Education will conduct a public hearing to consider its motion to review.

Each party will be allowed to make an oral argument addressing the issue(s) on review. The length of time allotted for oral argument will be determined by the State Board of Education. The State Board of Education, at its discretion, may allow public comment(s) addressing the issue(s) on review at the public hearing. The Chair of the State Board of Education will notify the parties of the time allotted for oral argument.

The local school board of trustees and the charter school applicant must provide all information relevant to the motion to review requested by the State Board of Education within five (5) days of the request. If either party refuses to provide the information, the State Board will issue a subpoena on its behalf. The State Board of Education will have the power to administer oaths and to examine witnesses and such documents and records as relate to the issue or issues on review.

The State Board of Education shall issue a final written order within twenty (20) days of the public hearing.

Fiscal Impact Statement: None

Resubmitted April 9, 2003

Document No. 2776
STATE BOARD OF EDUCATION
CHAPTER 43
Statutory Authority: Code Ann. Sections 59-5-60 (1990), 59-25-110 (1990)

43-53. Credential Classification

Synopsis:

The State Department of Education recommends that the State Board of Education promulgate amendments to R 43-53, Credential Classification, to clarify the types of levels of credential classifications and align South Carolina's regulation on credentials with the new federal No Child Left Behind Act of 2001 (Pub. L. 107–110).

The proposed amendments clarify the types of credential classifications including initial, professional, alternative route, temporary, graded, warrants, and special subject.
The proposed amendments clarify the levels of credential classifications including bachelor's degree, bachelor's degree plus eighteen hours, master's degree, master's degree plus thirty hours, and doctorate degree.
The proposed amendments clarify the requirements for credential advancement.

The Notice of Drafting was published in the *State Register* on June 28, 2002.

Section-by-Section Discussion

The entire regulation has been reorganized to separate the types and levels of credential classification from the requirements for credential advancement.

Section I(A)	The text is revised to further explain the initial credential and the requirements to receive it.
Section I(B)	The text is revised to clarify the process for achieving a professional certificate. This includes accepting a valid National Board Teaching Certification to fulfill the requirements for a professional certificate.
Section I(C)	The text is revised to update the information on alternative route certification and adds the qualifications necessary to advance to a professional certificate.
Section I(D)	The text is revised to properly categorize the types of temporary certificates including out-of-state temporary certificates, transitional certificates, out-of-field permits, school psychologist, and speech-language therapist. For each, it clarifies the validity period and the process for renewal, if available. It also includes statements to comply with the new federal No Child Left Behind Act of 2001.
Section I(E)	The text is revised to clarify the process for maintaining warrants and graded certificates. It also includes statements to comply with the new federal No Child Left Behind Act of 2001.
Section I(F)	The text is revised to comply with the new federal No Child Left Behind Act of 2001.
Section II	The text is revised to clarify the levels of credential classification.
Section III	The text is revised to clarify the requirements for credential advancement including the dates of advancement based on completion of the requirements.

Instructions: Amend R-43-53, Credential Classification, to Chapter 43 regulations.

Text:

43-53. Credential Classification

The classification of an educator's credential is determined by a combination of factors, including his or her formal education, performance, professional development, and teaching experience.

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 provisional or annual contract level, as defined in S.C. Code Ann. Section 59-26-40, may have their certificates renewed annually at the request of the employing school district.

Teachers who hold initial certificates and are employed in a non-public school educational setting may have their certificates renewed annually for an indefinite period at the request of the educational entity, provided that certificate renewal requirements, as specified in R 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, or from an institution that has programs approved for teacher education by the National Council for Accreditation of Teacher Education (NCATE). Professional education credit must be earned through an institution that has a teacher education program approved for initial certification.

2. Submit the required teaching area examination score(s) as adopted by the State Board of Education for purposes of certification. Effective July 1, 2006, the required score on the examination of general professional knowledge (pedagogy) as adopted by the State Board of Education for purposes of certification will be required for initial certification. Until that date, the general professional knowledge (pedagogy) exam will be required only for professional certification.

3. Undergo a criminal records check by the South Carolina Law Enforcement Division and a national criminal records check supported by fingerprints conducted by the Federal Bureau of Investigation. 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 State Board of Education 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. To qualify for each successive level of professional certification (bachelor's degree, bachelor's degree plus 18 hours, master's degree, master's degree plus 30 hours, and doctorate), an applicant must

1. meet all criteria for initial area of certification and have earned a bachelor's degree that meets State Board of Education regulations for teacher certification and program approval and successfully complete the induction program, the ancillary requirements (including any additional testing requirements approved by the State Board of Education), and the formal evaluation approved by the State Board of Education

OR

2. successfully complete the requirements for reciprocity according to Interstate Agreement on Qualifications of Educational Personnel

OR

3. hold a valid National Board teaching certification.

C. Alternative Route Certificate

An alternative route certificate will be issued to those individuals who qualify under the Program for Alternative Certification for Educators (PACE) guidelines as adopted by the State Board of Education. Alternative certificates can be renewed twice on the basis of successful completion of annual program requirements as approved by the State Board of Education.

The teacher shall be eligible for a professional certificate upon his or her successful completion of all program requirements within the three-year program period, including additional testing requirements approved by the State Board of Education and the formal evaluation approved by the State Board of Education.

D. Temporary Certificate

A temporary certificate is valid for a period of one year. Full certification (initial or professional) may be obtained when the educator submits verification of the required course work, required practicum, and/or required test scores. Due to the requirements for highly qualified teachers mandated by the No Child Left Behind Act of 2001 (Pub. L. 107-110), all temporary certificates will be phased out by June 30, 2006. Until that date, the following types of temporary certificates may be issued to individuals in the following circumstances:

1. Temporary Certificate for Out-of-State Certified Teacher

Any individual who holds a valid teaching certificate from another state but does not meet one or more of South Carolina's certification requirements is eligible for a temporary certificate for up to one year. Temporary certificates issued to out-of-state certified teachers are issued only for the academic year in which they are requested and expire June 30.

2. Transitional Certificate

Any individual who has completed a teacher preparation program but has not submitted a passing score on the required test(s) will be eligible for a transitional certificate for up to one year. Transitional certificates are issued only at the request of the employing school district. The employing district must apply for a transitional certificate no later than thirty days after the date of assignment. Transitional certificates are issued only for the academic year in which they are requested and expire June 30.

3. Out-of-Field Permit

(A) Any individual who holds a valid South Carolina temporary, professional, initial, alternative, graded, or warrant certificate and is assigned teaching duties for any amount of time in an area for which he or she is not appropriately certified is eligible to receive a permit to teach out-of-field. However, permits are not issued for school psychologists, speech-language therapists, and special subject educators. Out-of-field permits are issued only under the following conditions:

(1) The school district must request the out-of-field permit for its employee. The employing district must apply for a permit no later than thirty days after the date of assignment. Out-of-field permits are issued only for the academic year in which they are requested and expire June 30.

(2) The individual for whom the permit is requested must hold a valid South Carolina teaching credential and have 12 semester hours of credit toward full certification in the area of preparation for which the permit is requested.

(B) Out-of-field permits may be renewed upon presentation of 6 semester hours of credit in the area for which the permit is issued. Once the teacher meets all the certification requirements, including the required test score(s), he or she may apply for a certificate in the new area.

4. Temporary Certificate for a School Psychologist

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 is eligible for a temporary certificate.

The applicant for the temporary certification 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 a State Board of Education approved training program. The temporary 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.

5. Temporary Certificate for a Speech-Language Therapist

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 State Board of Education required examination will be issued a temporary certificate upon verification of an employment offer by a South Carolina public school district. The temporary certificate will be effective for one academic year and will be converted to the professional certificate upon a successful evaluation of the individual's performance of his or her duties during the initial year of employment.

An individual who qualifies and who has served satisfactorily for at least two years as a full-time speech-language therapist in a K–12 setting may be issued the professional certificate initially. An employment offer is not required for the professional certificate.

E. Graded Certificate and Warrant

The State Board of Education discontinued the issuance of graded certificates on July 1, 1971, and the issuance of warrants in November 1976. Due to the requirements of the No Child Left Behind Act of 2001 (Pub. L. 107-110) for highly qualified teachers, all graded certificates with less than a grade of A and all warrants will be phased out by June 30, 2006, and will not qualify an individual to teach in South Carolina beyond that date.

1. Graded Certificate. To qualify for the professional certificate, an individual who currently holds a grade B, C, or D certificate must fulfill one of the following requirements:

a. achieve the minimum required score on the required specialty area examination(s)

OR

b. add an area of certification to the initial graded certificate by meeting all requirements of the State Board of Education for that additional area, including a minimum qualifying score on the required specialty area examination(s) and verification of at least three years of teaching experience in the additional area.

2. Warrant. Current warrant certification cannot be advanced beyond the bachelor's degree level or beyond four years of experience. Only a bachelor's degree–level certification may be added to a warrant certification. To qualify for a professional certificate or to maintain a warrant certification (until June 30, 2006), the individual must

a. earn the required 6 semester hours or the equivalent every five years, as stipulated in certificate renewal requirements, and

b. remove all certification shortages (specialty area examination(s) and/or course requirements) by meeting current certification requirements.

F. Special Subject Certificate

Upon a request by the school district, the State Board of Education may grant approval for the issuance of a special subject certificate to any individual who qualifies under the guidelines established by the Board for such a certificate. By July 1, 2006, a special subject certificate holder must submit a passing score on the specialty area examination(s) in order to maintain the certificate.

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 State Board of Education 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 State Board of Education 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 either 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 or specialist's degree that meets State Board of Education regulations for teacher certification and program approval.

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

III. Requirements for Credential Advancement

To advance his or her credential from one classification to another, the applicant must submit to the Office of Teacher Certification the following:

A. A written request to have the certificate advanced on the designated Office of Teacher Certification Action form.

B. Documentation, including transcripts, that State Board of Education requirements have been met for certificate advancement.

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

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

A. If the applicant becomes eligible for a revised level of credential between November 1 and April 30, the credential will become valid either from the date the teacher submits the completed application with all the necessary documentation or from the date on which the teacher completes the requirements for the credential, provided that the teacher files his or her application in the Office of Teacher Certification within forty-five calendar days after the date on which he or she completes the requirements.

B. If the applicant becomes eligible for a revised level of credential after April 30, the credential will become valid on July 1 of the calendar year in which he or she completes the existing requirements, provided that the completed application is submitted on or before November 1.

Fiscal Impact Statement: There will be no increased costs to the state or its political subdivisions.

Document No. 2795
STATE BOARD OF EDUCATION
CHAPTER 43
Statutory Authority: S.C. Code Ann. Sections 59-5-60 (1, 3, and 6) (1990), 59-30-10(F) (1990), and 59-39-100 (Supp. 2001)

R 43-259. Graduation Requirements

Synopsis:

A revised version of the Tests of General Educational Development (GED) was put into service on January 1, 2002, by the American Council on Education's GED Testing Service. With this new version a revised scoring scale was put into place. Amendments will need to be made to Sections (B)(1)(b)(2), (B)(1)(c)(5), (B)(2)(c)&(d), and (B)(3)(a)(4)(a)&(b) to reflect the new scoring scale.

Section-by-Section Discussion

Section (B)(1)(b)(2) Currently, all GED examinees under nineteen years-of-age must obtain a letter from the principal of the last school they attended, indicating the last date of attendance at that school. In order to standardize the system, a Verification of School Withdrawal form was developed and sent to all high schools and adult education programs. In order to make it easier for the examinee to have this verification of withdrawal form completed, either the principal or the school attendance supervisor may sign it.

Section (B)(1)(c)(5) With the implementation of GED 2002, the scoring scale was revised. In the past, juvenile examinees must score a minimum of 220 on the official GED practice test. The new scoring scale simply adds a zero to the 220 to make it 2200.

Section (B)(2)(a)(b)(c)&(d) (a)(b)(c) The tense of this passage was changed from present tense to past tense. (d) This statement was added to reflect the passing score requirements on the new GED examination.

Section (B(4)(a)(b) (a)(b)These statements were amended to reflect the new scoring system from 215 to 2150.

Section (B)(3)(a)(3) Language correction
Section B(3)(a)(5)&(6)
Section B(3)(b)
Section B(4)(d)

Instructions:

Replace Section B in its entirety with the following amended text, in Chapter 43 Regulations.

Text:

43-259. Graduation Requirements

B. The State High School Equivalency Diploma

The State Board of Education recognizes the high school–level General Educational Development (GED) Test battery and will issue a state high school equivalency diploma to eligible candidates who successfully complete the tests. The State Board of Education authorizes the administration of the GED Tests by the State Department of Education under policies established by the State Board of Education and the Commission on

Educational Credit and Credentials (American Council on Education) and procedures established by the GED Testing Service, Washington, DC.

1. Eligibility Requirements for Equivalency Diploma Candidates

a. Service Personnel and Veterans

To be eligible for a state high school equivalency diploma, the candidate must be

(1) either a resident of South Carolina or a former resident whose most recent elementary or secondary school attendance was in South Carolina, and

(2) seventeen years of age or older.

b. General Adult Population

To be eligible for a state high school equivalency diploma, the candidate must be

(1) either a resident of South Carolina or a former resident whose most recent elementary or secondary school attendance was in South Carolina, and

(2) seventeen years of age or older and not enrolled in high school.

A person seventeen or eighteen years of age and any person over eighteen years of age who was enrolled in school during the current school year must submit a Verification of School Withdrawal form completed by either the school principal or attendance supervisor of the last school he or she attended or from the district superintendent over the school. This form must verify the candidate's date of birth and the date of his or her last attendance at the school. In the event that the last school attended was outside South Carolina, a person seventeen or eighteen years of age may submit a letter from an adult education coordinator or director verifying his or her date of birth and the date of last attendance in school. Verification by the adult education coordinator or director in this instance will be based upon inspection of transcript records. Verification letters are to be forwarded to the Chief Examiner, GED Testing Office, Office of Adult and Community Education, State Department of Education, Rutledge Building, Columbia, South Carolina 29201.

c. Special-Needs Exception for Sixteen-Year-Old Juvenile Offenders, State Department of Juvenile Justice

(1) The juvenile must be at least sixteen years of age.

(2) The juvenile must be under the jurisdiction of the Family Court based on an adjudication of delinquent behavior and must be committed to a juvenile correctional institution or committed to participate in community-based alternative programs under the jurisdiction of the Department of Juvenile Justice.

(3) The Family Court must certify that it is in the best interest of the juvenile to be exempted from the public school compulsory attendance law.

(4) The student's attendance in public school or completion of community-based alternative program is not feasible upon release from a juvenile correctional institution due either to the necessity of immediate employment or to his or her immediate enrollment in postsecondary education.

(5) Prior to taking the GED Tests, the juvenile must be tested using the official GED practice tests and must score a minimum of 2200.

2. Passing Score Requirements

a. Eligible candidates who were initial examinees before July 1, 1991, were awarded a state high school equivalency certificate if the candidates attained an average standard score of 45 or above for the five tests in the GED battery. The South Carolina high school equivalency certificate was not awarded after July 1, 1995.

b. Eligible candidates who were examinees after July 1, 1991, were awarded a state high school equivalency diploma if they attained a minimum-standard score of 35 on each of the five tests in the GED battery and an average standard score of 45 or above for the five tests.

c. Eligible candidates who were examinees after January 1, 1997, will be awarded a state high school equivalency diploma if they attained a minimum-standard score of 40 on each of the five tests in the GED battery and an average standard score of 45 or above for the five tests.

d. Eligible candidates who are examinees after January 1, 2002, will be awarded a state high school equivalency diploma if they attain a minimum-standard score of 410 on each of the five tests in the GED battery and an average standard score of 450 or above for the five tests.

3. Testing and Credential Application Procedures

a. GED Testing in South Carolina

(1) The GED Tests may be scheduled and administered at adult education centers, technical education centers, and other locations approved by the Director, Office of Adult and Community Education, State Department of Education.

(2) Eligible candidates to be tested in South Carolina must submit an application to the GED Testing Office, State Department of Education, or its designee, and pay the required fee set by the State Department of Education for the testing service and credential.

(3) Score reports will be provided to initial examinees only after their completion of all five tests in the GED Test battery.

(4) Retesting of examinees who do not pass the GED Tests will be conducted as follows:

(a) Candidates who attain a total combined score below 2150 on prior administrations must retake the full battery of five tests.

(b) Candidates who attain a total combined score of 2150 or higher on prior administrations may be permitted a partial administration of one or more tests.

(c) No more than three testing sessions (either initial or retesting sessions) may be scheduled for a candidate within any twelve-month period.

(d) Before an application for a second or subsequent retesting session is approved, either a waiting period of six months from the last retesting must elapse or the application must be accompanied by a letter of recommendation from an adult education coordinator or director certifying that the GED candidate has completed a course of instruction since his or her last retesting and has demonstrated readiness on the GED pretest.

(5) Nonresident individuals who are living temporarily in South Carolina may be permitted to take the GED Tests in South Carolina if they meet minimum age requirements and are not enrolled in high school. Nonresident individuals will not be awarded a state high school equivalency diploma unless their most recent elementary or secondary school of attendance was in South Carolina. Nonresidents must submit an application for testing services to the GED Testing Office, State Department of Education, and pay the required fee set by the State Department of Education to cover the full costs of the testing and the score report.

(6) The Department of Education offers the Spanish version of the GED Tests. A score report will be issued upon the student's completion of the five subtests. The South Carolina high school equivalency diploma will not be issued based on the Spanish version of the GED Tests.

b. GED Testing Outside South Carolina

Eligible candidates tested outside South Carolina must submit a diploma application to the GED Testing Office, State Department of Education and pay the required fee to cover the costs of the diploma. Applicants must arrange for transcripts (score reports) to be sent directly to the Chief Examiner, GED Testing Office, State Department of Education. Transcripts will be accepted as official only when reported directly to the Department of Education by (a) official GED Testing Centers, (b) the Transcript Service of the Defense Activity for Nontraditional Education Support (DANTES), or (c) the GED Testing Service, Washington, DC. Eligible candidates who are tested outside of South Carolina must meet the State's passing score requirements in order to receive a state high school equivalency diploma.

Fiscal Impact Statement: None

Resubmitted March 12, 2003

Document No. 2796
STATE BOARD OF EDUCATION
CHAPTER 43
Statutory Authority: S. C. Code Ann. Sections 59-5-60(1990), 59-5-65 (1990 and Supp. 2001), 59-20-40(7) (1990) and 59-63-20(6) (Supp. 2001)

43-264.1. Half-Day Child Development Programs

Synopsis:

There needs to be a change in the language of 24 S.C. Code Ann. Regulation 43-264.1(V)(A)(1) (Supp. 2001), Half-Day Child Development Programs. The funding allocation for Half-Day Child Development Programs has been dependent upon the previous three years' average for the number of students tested as "not ready" on the CSAB as the determiner of the amount of funding that districts would receive for Half-Day Child Development Programs. Cognitive Skills Assessment Battery (CSAB) is an outdated assessment of young children; having been given since 1979 and is no longer used. The change in the regulation should provide that the determination of funding would be based on the number of children in kindergarten who are eligible for free and reduced price lunch. The purpose of half-day child development programs is to provide services for children most at risk of school failure.

Section-by-Section

Section (V)(A)(1) Deletes language stating that the State Department of Education will annually calculate each district's allocation based on the number of students scoring "not ready" as determined by most recent first grades readiness data and total funding available for half-day child development programs.

Adds language stating that the State Department of Education will annually calculate each district's allocation based on the number of kindergarten children who are eligible for free and reduced lunch. No district shall receive less than 90 percent of the amount received in the prior fiscal year.
Section (V)(A)(1) Deleting sentence stating that "No district shall receive less than 90 percent of the amount received in the prior fiscal year."

Instructions: Amend R 43-264.1, Half-Day Child Development Programs, by replacing Section (V)(A)(1) with the following language, in Chapter 43 regulations.

Text:

43-264.1(V)(A)(1) Half-Day Child Development Programs.

V. Funding

Child development funds will be allocated on an annual basis effective July 1 through June 30. Unobligated funds which become available during the fiscal year will be redistributed to serve additional eligible children.

A. District Allocation and Distribution of Funds

1. District Allocation

The State Department of Education will annually calculate each district allocation based on the number of kindergarten children who are eligible for free and reduced lunch.

2. Distribution of Funds

School districts will be authorized to expend allocated funds on students meeting the eligibility criteria and being served in approved programs.

B. Extended Day

Any extension of the child development program beyond 2 1/2 hours using funds from other sources such as Chapter 1, Social Services Block Grant funds shall be in compliance with regulations and guidelines governing the half-day program. Before or after school services may be provided by other state or federal programs designed for three-and-four-year-olds if consistent with federal regulations for eligibility.

C. Subcontracting

School districts may contract with appropriate groups and/or agencies to provide part or all of the program. In such cases, the school district is charged with the responsibility of maintaining compliance with the regulations governing this program. An exception to the regulation governing indirect costs may be made when state or federal regulations require the subcontractor to utilize an indirect cost rate. Subcontracting may be based on a fixed cost rate.

D. Fees

Eligible children may not be charged fees for the 2 1/2 -hour instructional program outlined in these regulations.

Fiscal Impact Statement:

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

Document No. 2797
STATE BOARD OF EDUCATION
CHAPTER 43
Statutory Authority: S.C. Code Ann. Sections 59-21-540(11)(1990), 59-33-20(c)(1990), and 59-33-30(1990)

43-241. Homebound Instruction

Synopsis:

The amendments will
1. utilize the term "medical homebound instruction" to clarify its purpose to stakeholders;
2. provide clarification to districts of the requirement to make individualized decisions about the appropriate amount of services for medical homebound students;
3. clarify that if districts fail to provide medical homebound instruction to eligible students, district must make up the missed instructional periods even if the regular school year has ended;
4. clarify eligibility issues; and
5. delete the current guidelines for homebound instruction.

The Office of Exceptional Children will develop a guidance document for parents and districts.

The Notice of Drafting was published in the *State Register* on June 28, 2002.

Section-by-Section Discussion

1.	Title	New text (medical) is added to title of regulation to clarify purpose to stakeholders.
2.	Section I	New text (public, medical) is added to clarify eligibility and purpose to stakeholders.
3.	Section I(B	New text (medical, or) is added to clarify purpose to stakeholders.
4.	Section I(E)	Text has been deleted to avoid confusion.
5.	Section II	Text has been deleted and rewording of statement(s) to clarify purpose to stakeholders.
6.	Section III	New text (medical) is added to clarify purpose to stakeholders.
7.	Section III(A)	Statement has been deleted to clarify individualized service considerations. New statement is added to clarify district responsibility.
8.	Section III(C)	Text has been deleted to clarify district responsibility.
9.	Section IV	Rewording of statement to clarify district responsibility.
10.	Section IV(A)	New text (medical) is added to clarify purpose to stakeholders.
11.	Section IV(B)	New statement is added to clarify district responsibility.
12.	Section V(A)(B)	New text (medical) is added to clarify purpose to stakeholders.
13.	Guidelines	Guidelines have been deleted to remove them from the regulation.

Instructions: Replace R 43-241, Homebound Instruction, in its entirety with the following amended text, in Chapter 43 regulations. Under Article 19, Instructional Program, change title of Regulation to Medical Homebound Instruction

Text:

43-241. Homebound Instruction

Medical Homebound Instruction

I. Students who cannot attend public school because of illness, accident, or pregnancy, even with the aid of transportation, are eligible for medical homebound or hospitalized instruction.

(A) A physician must certify that the student is unable to attend school but may profit from instruction given in the home or hospital.

(B) Any student participating in a program of medical homebound instruction or hospitalized instruction must be approved by the district superintendent or his or her designee on standardized forms provided by the State Department of Education.

(C) A South Carolina school district may count in membership a pupil who is compelled to reside outside the State to receive medical services provided the teacher is certificated by the Department of Education in the state where services are rendered.

(D) All approved forms must be maintained by the district for documentation.

II. A student is eligible for medical homebound instruction (1) on the day following his or her last day of school attendance or (2) on the first day of the regular nine-month academic year of the school in which he or she is enrolled and would otherwise be in attendance. The student remains eligible (1) until the day before he or she returns to school or (2) until the last day of the regular academic year in the school year he or she would normally be enrolled, whichever occurs first.

III. The State Department of Education shall fund a maximum of five periods per week of medical homebound instruction pursuant to the Education Finance Act (EFA).

(A) A day of instruction must be based on the student's individual need but may be no less than fifty minutes to qualify for state funding.

(B) There is no limit to the amount of instruction that may be provided with funds other than state funds.

(C) If more instruction is needed, the school district must provide the additional funds.

IV. Should an approved student not be provided the medical homebound instruction that he or she is entitled to receive, the student is eligible to have the medical homebound instruction made up by the district.

(A) This make up may occur during the student's remaining eligibility for medical homebound instruction or may occur after the student returns to school provided the make-up periods are not during the regular school day.

(B) State funding for medical homebound instruction is available until the last day of the regular school year. If the school district delays the start of services for any reason, the student is still entitled to the instructional services, and the school district must make up the missed instructional periods even if the regular school year has ended and services are provided without the benefit of state funding.

V. All teachers providing medical homebound instruction to students domiciled in South Carolina must hold a valid South Carolina teacher's certificate.

(A) The teacher shall teach the medical homebound student or students in a room especially set aside for the period of instruction.

(B) Medical homebound teachers are required to keep a weekly record of teaching services provided.

Fiscal Impact Statement:

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

Document No. 2748
STATE BOARD OF EDUCATION
CHAPTER 43
Statutory Authority: S. C. Code Ann. Sections 59-5-60 (1990), 59-5-65 (1990 and Supp. 2001), and 59-30-10, *et seq.* (1990 and Supp. 2001)

43-262.5. Minimum Standards for the Determination of Readiness

Synopsis:

The CSAB was administered for the last time in fall 2001. Therefore, this regulation needs to be repealed.

Instructions:

Repeal R 43-262.5 (1991) Minimum Standards for the Determination of Readiness, to Chapter 43 regulations.

Text:

Minimum Standards for the Determination of Readiness.

Section 1(a) of Act 631 of 1978, (Basic Skills Assessment Program) states that "the State Board of Education, through the State Department of Education, shall establish statewide educational objectives in the basic skills, with minimum standards of student achievement for kindergarten through grade twelve." Additionally, Sections 1 (b) (1) and 1 (b) (2) of Act 631 of 1978 state that "the State Board of Education, through the State Department of Education, shall establish a state basic skills assessment program that shall include the administration to all public school students at the beginning of Grade One a readiness test that will be designed to measure a student's readiness to begin the formal school curriculum."

Pursuant to these legislative requirements the State Board of Education has previously adopted the Boehm/Slater: Cognitive Skills Assessment Battery, as revised by the South Carolina Department of Education, as the readiness test to be administered to public school students at the beginning of Grade One.

Based on extensive analyses of data collected in a field-test of the instrument, the expressed policy of the State Board of Education is that the minimum standard for determining readiness shall be a score of 88 of a possible 117 points on the Cognitive Skills Assessment Battery.

Section 1(b)(1) of Act 631 of 1978, requires that school districts shall provide appropriate developmental activities in the first grade for any beginning first grade student who attains a score of less than 88 on the Cognitive Skills Assessment Battery. The act further provides that the school district shall advise the parents of that student to secure a complete physical examination for that child. Such advice by the school district shall contain information about local governmental health services that are available.

Handicapped students shall be assessed with the Cognitive Skills Assessment Battery unless their Individual Education Plan (IEP), as required by P.L. 94-142, indicates that such assessment is inappropriate.

The State Superintendent of Education is authorized to take such administrative action as he may deem necessary and appropriate for the purposes of fulfilling the intent of these policies.

Preliminary Fiscal Impact Statement: There will be no increase costs to the State or its political subdivisions.

Document No. 2750
STATE BOARD OF EDUCATION
CHAPTER 43
Statutory Authority: S.C. Code Ann. Sections 59-5-60 (1990), 59-5-65 (1990 and Supp. 2001) and 59-65-250 (1990), and 59-65-270 (1990)

43-280. Creating More Effective Partnerships Among the Schools, Parents, Community and Business

Synopsis:

The State Department of Education recommends that the State Board of Education repeal R 43-280, Creating More Effective Partnerships Among the Schools, Parents, Community and Business.

The Notice of Drafting was published in the *State Register* on June 28, 2002.

Section-by-Section Discussion

Section A — Increasing the Participation of Business and Industry in the Public Schools is required by statute and is covered in the Pathways to Prosperity.

Section B — Strengthening the Involvement of Parents in Their Children's Education, is covered by S.C. Code Ann. Section 59-28-100, *et seq*. (Supp. 2001), Parental Involvement in Their Children's Education Act.

Instructions: Repeal R 43-80, Creating More Effective Partnerships Among the Schools, Parents, Community and Business, to Chapter 43 regulations

Text:

Creating More Effective Partnerships Among the Schools, Parents, Community and Business.

(Statutory Authority: 1976 Code Sections 59-5-60 and 59-5-65)

A. Increasing the Participation of Business and Industry in the Public Schools

I. State Board of Education Policy

The State Board of Education supports and encourages the participation of business and industry in the public schools. Local school districts shall adopt policies that will encourage and foster cooperation between schools and local business and industry. These policies shall include, but not be limited to, recruiting business and industry personnel to serve on local School Improvement Councils; have business and industry personnel serve as school volunteers or mentors; and promoting the adopt-a-school program to all local businesses and industries.

The State Department of Education will organize a standing committee of business and education leaders to initiate a Public Education Foundation for the purpose of funding exemplary and innovative projects which support improvement in the public schools.

II. Procedures for Implementation

1. Each school district will adopt board policies that will encourage and foster cooperation between schools and local business and industry which include those items contained in State Board of Education policies.

2. Each district superintendent will submit written documentation to the State Department of Education that board policies have been adopted and cite evidence of implementation in the District Improvement Report.

3. The State Department of Education will organize a standing committee of business and education leaders to initiate a Public Education Foundation for the purpose of funding exemplary and innovative projects which support improvements in the public schools.

Fiscal Impact Statement: There will be no increased costs to the State or its political subdivision.

Document No. 2799
STATE BOARD OF EDUCATION
CHAPTER 43
Statutory Authority: Code Ann. Sections 59-5-60 (1990), 59-5-65 (1990 and Supp. 2001) and 59-25-110 (1990)

43-55. Renewal of Credentials

Synopsis:

The State Department of Education recommends that the State Board of Education promulgate amendments to R 43-55, Renewal of Credentials, to clarify the requirements for renewal of professional certificates relative to the Certificate Renewal Plan, as developed by the Office of Teacher Certification and approved by the State Board of Education, and add the requirements for the renewal of expired certificates.

Section-by-Section Discussion

1. Section II. Subsections (A) and (B) are deleted and inserted into Section D. in order to align the requirements.

2 Section IV. (B) (1), (2), (3), (4); Section VI.; Section VII. (A), (B), (C); Section VIII. (A), (B), (C); Section IX. (A), (B), (C); and Section X. (A), (B), (C) are deleted since these renewal credit requirements have been subsumed by the Certificate Renewal Plan, as developed by the Office of Teacher Certification and approved by the State Board of Education.

3. Section IV. (A) and (B), certificate renewal requirements are clarified in terms of the employment setting of the educator.

4. Section V., language is clarified regarding certificate renewal requirements for educators who do not hold at least a master's degree.

5. Section VII., certificate renewal requirements formerly contained in Section X. are aligned with the Certificate Renewal Plan, as developed by the Office of Teacher Certification and approved by the State Board of Education.

6. Section VIII. reflects requirements formerly found in Section XI.

7. Section IX. reflects requirements formerly found in Section XII.

8. Section X., new language is inserted relative to requirements for renewal of expired certificates.

Instructions: Amend in its entirety R 43-55, Renewal of Credentials, to Chapter 43 regulations. This regulation replaces 55.2

Text:

43-55.2 is being repealed

43-55 Renewal of Credentials

I. For the purposes of this regulation an educator is defined as any person who holds a professional certificate issued by the South Carolina Department of Education.

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

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

IV. To renew a professional certificate, educators must comply with all applicable guidelines relative to certificate renewal options and criteria, renewal credits, and verification requirements, in accordance with the current Certificate Renewal Plan, as developed by the Office of Teacher Certification and approved by the State Board of Education, as follows:

(A) An applicant who is employed in a position that requires educator certification must maintain verification of having earned a minimum of 120 renewal credits during the certificate's five-year validity period. Renewal credits may be earned through professional activities that directly relate to the educator's professional growth and development plan, support the goals of the employing educational entity, and promote student achievement, as required by Regulation 43-205.1, Assisting, Developing, and Evaluating Professional Teaching (ADEPT), and Regulation 43-165.1, Program for Assisting, Developing, and Evaluating Principal Performance (ADEPP).

(B) An applicant who is not employed in a position that requires educator certification but who chooses to maintain a current certificate must submit verification of having earned a minimum of 120 renewal credits during the certificate's five-year validity period. Renewal credits may be earned through professional activities that directly relate to the educator's current area(s) of certification or to a formal program of study (master's, specialist, or doctorate) in a certification area in which the educator is officially enrolled.

V. Educators who do not hold a master's degree must earn a minimum of sixty renewal credits of the 120 credits required during each five-year validity period by completing at least three semester hours of college credit at the graduate level. These credits must be earned from a national or regionally accredited college or university or through a college or university that has *graduate* programs approved for teacher education by the State Board of Education.

VI. Renewal credits earned in state-identified areas of critical needs may be applied toward certificate renewal.

VII. Applicants must comply with current State Department of Education approved Certificate Renewal Plan guidelines relative to obtaining, verifying, and submitting renewal credits. Applicants also are responsible for paying any required fee for credential renewal to the Office of Teacher Certification.

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

IX. Regulations governing effective dates of renewed certificates will be the same as those for initial and revised certificates, as specified in State Board of Education Regulation 43-52.

X. A South Carolina professional teaching credential that has been expired

(A) for less than five (5) years may be extended upon written request from the educator to the Office of Teacher Certification. This nonrenewable extension is valid for one (1) year, during which time the school district or educator must submit verification that the educator has fulfilled all current requirements for renewal of the Professional Certificate. Upon verification that all requirements have been met, the Professional Certificate will be renewed for the remainder of the validation period (i.e., four additional years).

(B) for more than five (5) years, but less than ten (10) years, may be extended for a maximum of one (1) year at the written request of the school district that intends to employ the educator. During this one-year extension, the school district or educator must submit verification that the educator has met all current requirements for renewal of the Professional Certificate. Upon verification that all requirements have been met, the Professional Certificate will be renewed for the remainder of the validation period (i.e., four additional years).

(C) for more than ten (10) years will require that the educator either reapply for initial certification under the current requirements or satisfy current interstate reciprocity requirements.

Fiscal Impact Statement: There will be no increased costs to the state or its political subdivisions.

Document No. 2768
BOARD OF EDUCATION
CHAPTER 43
Statutory Authority: S.C. Code Ann. Sections 59-5-60 (1990) and 59-25-110 (1990)

43-51. Requirements for Certification

Synopsis:

The State Department of Education recommends that the State Board of Education promulgate amendments to R 43-51, Requirements for Certification, to clarify certification requirements and align South Carolina's regulation on certification requirements with the new federal No Child Left Behind Act of 2001 (Pub. L. 107–110).

1. The proposed amendments require all teacher education programs be completed at either a state-approved program in a regionally accredited institution, or a State Board of Education approved program, or a program approved by the National Council for Accreditation of Teacher Education (NCATE).

2. The proposed amendments clarify current testing requirements for certification.

3. The proposed amendments clarify circumstances for waiving student teaching.

The Notice of Drafting was published in the State Register on June 28, 2002.

Section-by-Section Discussion

1. Section I(A) The text is revised to state that acceptable teacher education program completion must be either at a state-approved program in a regionally accredited institution, or a State Board of Education approved program, or a program approved by NCATE.
2. Section I(B) The text is revised to clarify the area and pedagogy test requirements to comply with the new federal No Child Left Behind Act of 2001.

3. Section I(D) The text is revised to align with FBI requirements in other regulations and clarifies that FBI reports must be within eighteen months prior to certification.
4. Section II(A) The text is deleted since these requirements are covered in Section I.
5. Section II(B) The text is revised to reflect the current office name.
6. Section III(A) The text is deleted since requirements are covered in Section I. The new Section III (A) and (B) clarify out–of–state score requirements in South Carolina to comply with the new federal No Child Left Behind Act of 2001.
7. Section IV The text is revised to reflect the program name change from Critical Need Certification Program to the Program of Alternative Certification for Educators.
8. Section V(B) The text is revised to clarify that student teaching can only be waived if the college verifies program completion with the exception of student teaching, that teaching experience is in the area of program completion and requested certification application, and it must have been after the completion of a bachelor's degree.
9. Section V(C) The text is revised to reflect the name change from Trade and Industrial Certification to Career and Technology Work–Based certification.
10. Section VI The text is revised to clarify the area and pedagogy test requirements to comply with the new federal No Child Left Behind Act of 2001.
11. Section VII The text is deleted since the requirements are covered in Section I. The remaining text is revised to clarify the requirements for verifying certification.

Instructions: Amend R 43-51, Requirements for Certification, to Chapter 43 regulations. This regulation replaces 43-51.1, 43-51.2, 43-51.3, 43-51.4, and 43-51.5. The title of this regulation is being changed from Requirements for Certification to new title Certification Requirements.

Text:

51.1 is being repealed
51.2 is being repealed
51.3 is being repealed
51.4 is being repealed
51.5 is being repealed

R 43-51. Certification Requirements

I. Requirements for Certification

The applicant must meet all requirements for certification that are in effect in the current application year (July 1-June 30). The responsibility for providing accurate and complete documentation of eligibility for certification is that of the applicant. To qualify for certification in South Carolina, the applicant must fulfill the following requirements:

A. 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, or from an institution that has programs approved for teacher education by the National Council for Accreditation of Teacher Education (NCATE). Professional education credit must be earned through an institution that has a teacher education program approved for initial certification.

1. Graduate degrees acceptable for certificate advancement include academic or professional degrees in the field of education or in an academic area for which a corresponding or relevant teaching area is authorized by the State Board of Education.

2. All credit at the graduate level must be earned through the graduate school of an institution that is accredited for general collegiate purposes by a regional accreditation association and that has a regular graduate division that meets regional accreditation requirements. Graduate credit can also be earned through a South Carolina institution that has graduate programs approved for teacher education by the State Board of Education or through an institution that has graduate programs approved for teacher education by the National Council for Accreditation of Teacher Education (NCATE).

B. Submit the required teacher area examination score(s) as adopted by the State Board of Education for purposes of certification. Effective July 1, 2006, the required score on the examination of general professional knowledge (pedagogy) as adopted by the State Board of Education for purposes of certification will be required for initial certification. Until that date, the general professional knowledge (pedagogy) examination will be required only for professional certification.

C. Be at least eighteen years of age.

D. Undergo a criminal records check by the South Carolina Law Enforcement Division and a national criminal records check supported by fingerprints conducted by the Federal Bureau of Investigation. 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 State Board of Education and be approved before a certificate can be issued to them. Background checks from other states are not transferable to South Carolina.

II. Acceptable Credits

A. All credits are computed by semester hours; three quarter hours are equivalent to two semester hours.

B. Duplicate credit will not be allowed for courses with the same title unless approved by the Office of Teacher Certification of the State Department of Education.

III. Out-of-State Applicants

A. To be eligible for a South Carolina teaching certificate, the out-of-state applicant must submit the teaching area examination score(s) and the score on the examination of general professional knowledge (pedagogy) that are required for certification in the state in which he or she holds a valid standard out-of-state certificate. If no tests were required for certification in the state where the individual holds a valid standard certificate, the applicant for South Carolina certification must submit the required teaching area examination score(s) as adopted by the State Board of Education for purposes of certification. If the applicant has less than twenty-seven months of successful teaching experience within the last seven years in the state in which he or she holds a valid standard certificate, he or she must also submit the required score on the examination of general professional knowledge (pedagogy) as adopted by the State Board of Education for purposes of certification.

B. Initial or advanced certification will be awarded only in the area(s) of certification held by the out-of-state applicant that most closely conform(s) to corresponding or relevant South Carolina area(s) of certification.

IV. Program of Alternative Certification for Educators (Alternative Teacher Preparation).

An individual who qualifies under the Program of Alternative Certification for Educators (PACE) guidelines as adopted by the State Board of Education may be issued an alternative route certificate. Successful completion of certification requirements as prescribed in the PACE guidelines will qualify the applicant for a professional certificate.

V. Student Teachers

A. All individuals pursuing undergraduate or graduate programs leading to initial teacher certification must complete the student teaching requirement adopted by the State Board of Education.

B. An individual who has met all requirements for certification except student teaching may request that three years teaching experience be used in lieu of student teaching for certification purposes under the following conditions:

1. The teaching experience must be at least three full years as the teacher of record and earned in an accredited public or private school in grades K–12 or at a postsecondary institution. Combinations of partial year teaching assignments may be used. Experience must be post baccalaureate to be eligible for consideration.

2. The teaching experience must be in the area of preparation and in the area in which the applicant is applying for certification.

3. The individual must submit a letter or letters of recommendation, attesting to the successful evaluation of teaching in the certification area, written by the administrative authority of the school or school district where he or she has taught for the specified period.

4. The individual must submit copies of school or school district evaluations providing evidence of his or her successful teaching.

5. The individual must submit evidence from the institution of higher education affirming that he or she has met all requirements for the approved teacher education program with the exception of student teaching.

C. Applicants for certification in work–based career and technology education are not required to complete student teaching.

VI. Required Examinations.

A. All applicants must submit the required teaching area examination score(s) as adopted by the State Board of Education for purposes of certification. Effective July 1, 2006, the required score on the examination of general professional knowledge (pedagogy) as adopted by the State Board of Education for purposes of certification will be required for initial certification. Until this date, the general professional knowledge (pedagogy) exam will be required only for professional certification.

B. An initial certificate will be issued to individuals who seek certification in areas for which no teaching area examination exists and who meet all requirements for certification in effect on the date that the Office of Teacher Certification receives all required documentation other than a certification test score. Once a test for the particular area of certification is adopted by the State Board of Education, these individuals will be required to present a passing score on the test within one year following the Board's action.

C. Certification in work–based career and technology education requires the successful completion of all sections of the basic skills examination and the trade competency examination adopted by the State Board of Education for work–based career and technology education.

VII. Verification of Eligibility

The Office of Teacher Certification of the State Department of Education may verify the eligibility of an applicant for certification by ascertaining

(a) that the applicant has verified his or her completion of a state approved teacher preparation program

OR

(b) that the applicant has a valid corresponding certificate from a state with which South Carolina has reciprocity through the Interstate Agreement on Qualifications of Educational Personnel

OR

(c) that the applicant has met the requirements for the Program of Alternative Certification for Educators (PACE) for certification.

Fiscal Impact Statement: There will be no increased costs to the state or its political subdivisions.

Document No. 2779
STATE BOARD OF EDUCATION
CHAPTER 43
Statutory Authority: S.C. Code Ann. Section 59-5-67(B) (1990)

43-201.1. Teacher Grants

Synopsis:

These amendments reflect changes in program operations in accordance with the Education Improvement Act of 1985 (EIA), S.C. Code Ann. Section 59-5-67 (B) (1990). Changes in the program have occurred over time in the following areas: submission procedures, grant period, fiscal guidelines and policies, fiscal reporting and the review process.

The Notice of Drafting was published in the *State Register* on June 28, 2002.

Section by Section Discussion

Section III.(A)(B)(C)	The existing text of items A, B, and C is being revised to reflect changes in grant submission procedures.
Sectiion IV.(A)	The last sentence of the existing text is being eliminated because the program budget is determined annually by the General Assembly and successive year funding can not be determined.
Section V.(A)(B)(D)	The existing text of items A, B, and D is being revised to reflect current fiscal guidelines and policies pertaining to grant budgets.
Section V.(E)	New text is being added to reflect the emphasis in the grant applications on innovative instructional approaches.
Section V.(F)	New text is being added to include funding of grant applications of up to $6,000 if collaboration between two or more teachers is demonstrated.
Section VIII.(A)	The existing text of item A is being revised to reflect changes in final report submission procedures.
Section IX.(A)(B)	The existing text of items A and B is being revised to conform to current program review procedures and procedures for the disposition of funding recommendations.

Instructions: R43-201.1 is amended. Replace with the following amended text.

Text:

R 43-201.1 Teacher Grants

I. Purpose of Grants

Grants funded under the Education Improvement Act of 1984 are intended to support efforts to improve classroom teaching practices and procedures.

II. Types of Grants

A. Individual teacher grants are intended to support efforts to improve classroom teaching practices and procedures.

B. Unit grants for groups of teachers are intended to support a coordinated effort to improve classroom teaching practices and procedures at a certain grade level or in a specific subject area.

III. Submission Procedures

A. Proposals must be received in the Office of Curriculum and Standards by 5:00 p.m. on the deadline date or be postmarked by the deadline date set by the State Department of Education.

B. An original and five copies of the proposal, with appropriate signatures, must be submitted.

C. Proposals must be sent to the Coordinator of the EIA Teacher Grant Program, State Department of Education, 1429 Senate Street, Columbia, South Carolina 29201.

IV. Grant Period

A. Period of the grant will be from the day of its approval, but not earlier than July 1, through the following June 30.

B. Funds may not be obligated or expended after June 30 of each grant year.

C. There are no carryover provisions.

V. Fiscal Guidelines and Policies

A. Payment of 100% of project funds will be advanced upon project approval.

B. Unused funds will be returned to the State Department of Education.

C. All grants will be submitted under the authority and jurisdiction of the district superintendent and participating school principal.

D. Respective local school districts will act as fiscal agents for approved grants. Funds may be spent only on items approved in the project budget, unless an approved amendment to the budget is granted.

E. Grants may not be used for developing curriculum guides or overall course outlines required of teachers as a part of their regular job assignment. Supplementary classroom materials may be developed.

F. Grants are limited to $2,000 maximum for an individual teacher grant and a maximum of $6,000 for a unit grant (a collaboration between two or more teachers).

VI. Allowable Costs

A. Equipment

1. Allowable costs include purchasing, renting, or leasing durable items (hardware), needed to implement the project plan, which are not available in the school.

2. No administrative equipment can be purchased.

3. Equipment is distinguishable from supplies in that it has a useful life of at least a year, costs more than $75 per unit, and is more feasible to repair than to replace.

4. All orders should be placed as soon as possible after funding.

B. Materials and Supplies

1. Allowable costs include expendable items needed to implement the project which would not normally be available to the teacher.

2. All materials and supplies should be ordered promptly after funding.

3. Equipment must not be budgeted under materials and supplies.

C. Contractual Services

1. Allowable costs include services rendered by personnel who are not on the local district payroll, as well as related expenses covered by the contract.

2. A written agreement outlining the services to be provided must be made with each individual or organization.

3. The agreement form must be attached to the application.

D. Substitutes

1. Substitutes may be employed at approved local rates for teachers who need to be away from their classrooms for project-related activities.

2. Actual need for substitutes and extent of their use must be stated and documented in the proposal.

E. Salaries

Grant funds will not be used for professional or nonprofessional salaries or stipends.

F. Travel

1. Cost of transporting students to participate in planned activities, such as field trips, is allowable.

2. Type of transportation used and payment requested should correspond to those generally used to transport students.

3. Cost of in-state travel is allowable for project personnel on trips related to project operation, according to district-approved rates.

4. Travel for project personnel will be limited to not more than 15% of the grant and must be justified in the proposal.

VII. Final Reporting

A. A final report is due in the Office of School Leadership no later than 30 days after the conclusion of the project or by June 30 of the project year.

B. The report must include:

1. a summary of the most significant results and findings over the project's duration;

2. a summary of the results and the project evaluation;

3. a discussion of the activities which had the most significant impact on the target population;

4. a description of the greatest changes in the classroom or school as a result of the project;

5. a final report on expenditures.

VIII. Audits

All expenditures of funds received under this grant must be audited by a certified public accountant as a part of the district's annual audit.

IX. Review Process

A. The project approval process includes reviews by Office of Curriculum and Standards and an external committee. . Predetermined criteria will be used to judge all projects.

B. After the results of the review are compiled by the Office of Curriculum and Standards, the staff will present funding recommendations to the Deputy Superintendent for Curriculum Services and Assessment who will make final funding decisions based on committee and staff recommendations.

Fiscal Impact Statement:

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

Document No. 2763
STATE BOARD OF EDUCATION
CHAPTER 43
Statutory Authority: Code Ann. Section 59-1-447 (1991)

43-100. Test Security

Synopsis:

Assessment Programs, 24 S.C. Code Ann. Regs 43-262 (to be codified at Supp. 2002) became effective on May 24, 2002. The promulgation of amendments to R 43-100, Test Security, reflect the assessment programs in R 43-262. In addition, the amendments revise security procedures to address current assessment practices.

Instructions:

Amend and replace text in its entirety Regulation 43-100, Test Security, in Chapter 43 regulations.

Text:

43-100. Test Security.

I. Tests administered by or through the State Board of Education shall include but are not limited to:

A. The statewide tests; as defined in the State Board of Education Regulation 43-262 including field tests and pilot tests;
B. Examinations for admission to teacher education program and teacher certification examinations;
C. Examinations for admission to programs such as the gifted and talented program;
The High School Equivalency Program test (GED).

II. As used in this regulation, "local school board" means the governing board of a public school district as well as those of special school districts, special schools, and institutions that utilize tests administered by or through the State Board of Education.

III. Each local school board must develop and adopt a district test security policy. The policy must provide for the security of the materials during testing and the storage of all secure tests and test materials, before, during, and after testing. Before and after testing all materials must be stored at a location(s) in the district under lock and key. This also applies to district owned materials that are the same as those used in any State operated testing or assessment program. Throughout the time testing materials are under the control of the school district, tests must be secured under lock and key when not in use for approved test administration activities.

IV. Each District Superintendent must designate annually one individual in each district for each mandated assessment who will be the sole individual in the district authorized to procure test instruments that are utilized in testing programs administered by or through the State Board of Education. The name of the designated individual must be provided to the State Department of Education (SDE) in writing. When the testing program involves procurement of materials available commercially, the designated individual must be the sole individual in the district authorized to procure commercial test instruments which are utilized in testing programs administered by or through the State Board of Education.

V. State owned test materials and district owned materials that are the same as those utilized in any State mandated testing program must not be used for census testing in the grades included in the State mandated program(s) except on testing dates specified by the State Department of Education.

VI. Individuals must adhere to all procedures specified in all operating manuals governing the mandated testing programs. Manuals are provided by or through the SDE.

VII. A. The State Board of Education may invalidate test scores that reflect improbable gains and that cannot be satisfactorily explained through changes in student populations or instruction;

B. In cases where test results are invalidated because of a breach of security or action of the State Board of Education, any programatic, evaluative, or certification criteria dependent upon the data will be deemed to not have been met.

VIII. Any individual(s) who knowingly engage(s) in any activity that results in the invalidation of scores derived from teacher certification examinations, the examinations for admission to teacher education programs, and/or the High School Equivalency Program test (GED) forfeits all opportunities to retake the test(s).

IX. Any knowing involvement in the presentation of forged, counterfeit, or altered identification for the purpose of obtaining admission to a test administration site for any of the tests administered by or through the State Board of Education will be considered a breach of test security within the meaning of S.C. Code Ann. Section 59-1-445 (1990). Any individual(s) who knowingly cause(s) or allow(s) the presentation of forged, counterfeit, or altered identification for the purpose of obtaining admission to any test administration site specified in this paragraph forfeits all opportunities to retake the test(s).

X. Each of the following is considered a breach of professional ethics which may jeopardize the validity of the inferences made on the basis of test data, and as such are viewed as security violations which could result in criminal prosecution and/or disciplinary action to an educator's professional certificate.

A. Failing to administer tests on the test dates specified by the SDE.
B. Failing to maintain an appropriate testing environment, free from undue distractions.
C. Failing to proctor the test to ensure that examinees are engaged in appropriate test taking activities.
D. Providing examinees with access to test questions or specific test content prior to testing.
E. Providing examinees with access to answer keys prior to or during testing.
F. Keeping, copying, reproducing, or using in any manner inconsistent with the instructions provided by or through the State Department of Education any test, test question or specific test content.
G. Keeping, copying, or reproducing in any manner inconsistent with the instructions provided by or through the State Department of Education any portion of examinee responses to any item or any section of a secured test.
H. Coaching examinees, altering examinee responses, or interfering with examinee responses in any way prior to, during, or after testing. This includes hinting to examinees about the correctness of their responses.
I. Failing to follow instructions specified in the test manuals for the distribution, storage, or return of test materials or failing to account for test materials before, during or after testing.
J. Failing to follow all directions pertaining to the administration of a test as specified in the test manuals for that test. This section includes failure to clear the memory of calculators used on a test as directed in the test manual.
K. Allowing, participating in, assisting in, or encouraging any unauthorized access to test materials prior to, during, or after testing.
L. Disclosing the contents of any portion of secure materials or discussing the contents of secure tests with examinees, teachers, or other educators before, during, or after testing.
M. Leaving in view of examinees during test administration materials that are content or conceptually related to the subject areas being assessed.
N. Providing references or tools other than those specifically allowed in test manuals. Providing references or tools during test administration at times other than those specifically allowed in test manuals.
O. Not providing accommodations (to include customized test forms and modifications) as appropriate for students with Individual Education Programs or 504 plans. This includes providing more accommodations (customization, modifications) than appropriate.
P. Excluding examinees or exempting from assessment students who should be assessed.

Q. Failing to return test materials for all examinees.

R. Engaging in inappropriate test preparation practices that invalidate the test scores. These practices include activities that result in an increase in test scores without a simultaneous increase in the examinee's real achievement or performance in the content area.

S. Revealing test scores or test performance to anyone not involved in the education of the examinee.

T. Altering test scores in electronic records or files.

U. Failing to report a security breach.

XI. The South Carolina Department of Education has the right and responsibility to observe test administration activities without prior notice in order to monitor adherence to test security. Examinees should be made aware that monitoring may occur.

XII. Any suspected violation of security must be reported to the South Carolina Law Enforcement Division.

XIII. If a security breach occurs in a district rendering test forms or test items unusable, funds equivalent to replacement costs may be withheld from the district by the State Department Education at the discretion of the State Board of Education.

XIV. At the discretion of the State Board of Education, an educator may receive a public or private reprimand or the credential of an educator may be suspended or revoked based on evidence of violation of test security provisions.

Fiscal Impact Statement:

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

Document No. 2759
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 30
Statutory Authority: S.C. Code Section 48-39-10 *et seq*.; 48-39-290

R. 30-15, *Activities Allowed Seaward of Baseline*

Synopsis:

The proposed changes clarify the Department's regulations regarding the construction of pools in areas seaward of the baseline along the State's beaches. See Discussion below and Statement of Need and Reasonableness and Rationale herein.

Discussion of Revisions:

SECTION	CHANGE
30-15.F(6)(b)	Added a sentence clearly stating the existing prohibition of the construction of new pools seaward of the baseline.

Instructions: Amend R.30-15 pursuant to the individual instruction provided with the text of the amendment below.

Text of Revisions:

Amend R.30-15.F(6)(b) by inserting a new sentence at the beginning in the introductory paragraph; subitems (i) through (vi) remain the same, as follows:

(b) Pools: No new pools shall be constructed seaward of the baseline. Pools may be reconstructed, upon obtaining an OCRM permit, if they are landward of an existing functional erosion control structure or device. The Department may grant a special permit to reconstruct a pool seaward of a habitable structure where such permit meets the conditions of R.30-15(F)(1)-(6) and;

(i) There is no other location on the property suitable for construction of a pool;

(ii) The commercial viability of the project is directly related to the presence of the proposed pool;

(iii) The pool is not constructed upon the active beach and the owner agrees to remove same when it comes onto the active beach;

(iv) The project is constructed so that there are no erosion control devices built as part of the pool structure and the design meets approval of the Department;

(v) The pool is no larger than is deemed necessary by the Department;

(vi) The permittee agrees to conditions as the Department deems appropriate to promote the policies of the Act.

Fiscal Impact Statement:

The Department estimates no additional cost will be incurred by the state or its political subdivisions as a result of the promulgation, approval, and implementation of this amendment; therefore, no additional state funding is being requested. Existing staff and resources have been utilized in preparation of this amendment and will further be utilized in the regulatory administration resulting from the amendments.

Statement of Need and Reasonableness:

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

DESCRIPTION OF REGULATION:

R. 30-15, *Activities Allowed Seaward of Baseline*

Purpose of Regulation: This amendment adds a sentence clarifying the Department's existing policy regarding permitting of pools seaward of the baseline along the State's beachfront.

Legal Authority: S.C. Code Section 48-39-10 *et seq*., Coastal Tidelands and Wetlands Act, 1976; 48-39-290.

Plan for Implementation: The proposed amendments will be incorporated into R. 30-15 upon approval of the General Assembly, and publication in the State Register. The proposed amendments will be implemented, administered, and enforced by existing staff and resources.

DETERMINATION OF NEED AND REASONABLENESS OF THE REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS: These amendments are necessary to add clarity to existing regulations and enable Department staff to more effectively administer the regulatory program of the Coastal Division.

DETERMINATION OF COSTS AND BENEFITS: Promulgation and administration of this amendment is estimated to have no significant economic impacts to entities regulated or result in cost increases to the general public. Public benefits, however, may be evident in improved management of coastal resources through increased clarity of the regulations. See Fiscal Impact Statement.

UNCERTAINTIES OF ESTIMATES: None.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH: The amendments refine the Department's ability to manage public usage of coastal resources and enable the Department to provide a more effective response to those seeking to utilize the public trust areas of the coastal zone.

DETRIMENTAL EFFECTS ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATIONS ARE NOT IMPLEMENTED: Non-implementation of the regulations as proposed will hinder SCDHEC/OCRM's statutory directives to manage the state's coastal environment for its citizens.

Statement of Rationale Pursuant to S.C. Code Section 1-23-120(B):

South Carolina Code Section 48-39-290(A) states that no new construction or reconstruction is allowed seaward of the baseline except for 8 listed items. Item 7 states that pools may be reconstructed if they are landward of an existing, functional erosion control device. New pools cannot be constructed seaward of the baseline because they are not included in the list of exceptions to S.C. Code Section 48-39-290(A). However, there is no precise statement of that prohibition in the existing regulations. This regulation is affirmative statement of the Department's policy, as governed by existing State law, to provide clarity for those impacted by these regulations.

Document No. 2840
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
Statutory Authority: S.C. Code Section 48-1-10 *et seq.*

Regulation 61-62, *Air Pollution Control Regulations and Standards,* and the South Carolina State Implementation Plan

Synopsis:

Pursuant to S.C. Code Section 48-1-10 *et seq.*, the South Carolina Department of Health and Environmental Control (Department) has amended Regulation 61-62, *Air Pollution Control Regulations and Standards*, and the South Carolina State Implementation Plan (SIP), to make corrections and clarifications and to incorporate new Federal requirements into the existing regulations.

Among the revisions are amendments to R. 61-62.60, *South Carolina Designated Facility Plan and New Source Performance Standards*, and R. 61-62.63, *National Emission Standards for Hazardous Air Pollutants,* to incorporate recent Federal amendments promulgated during the period from January 1, 2002, through December 31, 2002. In addition, the Department revised R. 61-62.70, *Title V Operating Permit Program*, to make corrections and incorporate recent federal changes to definitions of major sources. Also, the Department amended R. 62.1 *Definitions and General Requirements,* to clarify the language concerning alternate methods of source testing. Finally, the Department made typographical corrections and clarifications to R.61-62 as necessary.

The amendments to Regulation 61-62, *Air Pollution Control Regulations and Standards* are necessary to maintain consistency with Federal rules and does not require legislative review.

A Notice of Drafting for these proposed changes was published in the *State Register* on November 22, 2002. Since this amendment is consistent with Federal law, neither a preliminary fiscal impact statement nor a preliminary assessment report is required.

Discussion of Revisions

SECTION CITATION:	EXPLANATION OF CHANGE:
R R. 61-62.1, Section II H.1(a) – Permit Requirements	Delete the words “Section I,”
R. 61-62.1, Section IV B. 2. – Source Tests	Clarify language specifying authorization of proposing alternate test methods
R. 61-62.60	Tables in Subparts A, J, SSS, VVV, and AAAA are amended
R. 61-62.63	Tables in Subparts A, T, AA, BB, GG, LL, SS, TT, UU, WW, YY, EEE, JJJ, LLL, MMM, RRR, VVV, and GGGG are amended
R. 61-62.63	Tables in Subparts J, XX, QQQ, UUU, HHHH, JJJJ, NNNN, SSSS, TTTT, UUUU, XXXX, and QQQQQ are added in alpha-numeric order and incorporated by reference

R. 61-62.70.2 r (2)(xxvii)	Amend definition to include stationary sources regulated as of August 7, 1980
R. 61-62.70.5(a)(1)(ii)	Add deleted text to paragraph (ii)

Instructions:

Amend Regulation 61-62*, Air Pollution Control Regulations and Standards,* pursuant to each individual instruction provided below with the text of the amendments.

Text of Amendments to Regulation 61-62, Air Pollution Control Regulations and Standards:

R. 61-62.1, Definitions and General Requirements:

Revise Section II. H.1.(a) – Permit Requirements to read:

SECTION II – PERMIT REQUIREMENTS

H. Synthetic Minor Plant Permits

1. General Provisions

(a) Any stationary source that is a major plant or major modification, as defined by S.C. Regulation 61-62.5, Standard No. 7 may request to use federally enforceable permit conditions to limit the source's potential to emit and become a synthetic minor plant.

R. 61-62.1, Definition and General Requirements:

Revise Section IV B.2. – Source Tests to read:

SECTION IV – SOURCE TESTS
B. Submission and Approval of a Site-Specific Test Plan

2. All test methods included in the site-specific test plan must be either EPA Reference Methods described in 40 CFR Part 51, Appendix M, or 40 CFR Part 60, Appendix A, or 40 CFR Part 61, Appendix B, or 40 CFR Part 63, Appendix A. If an applicable air regulation or permit provides for a choice of test methods, the selected method must be approved by the Department. If an applicable air regulation or permit does not specify use of an EPA standard reference method, the alternative test method to be used must be approved by the Department.

R. 61-62.60, South Carolina Designated Facility Plan and New Source Performance Standards:

Revise Regulation 61-62.60, Subpart A to read:

Subpart A - "General Provisions"

The provisions of Title 40 CFR Part 60, subpart A, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 60 subpart A			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 36	December 23, 1971	[36 FR 24877]
Revision	Vol. 38	October 15, 1973	[38 FR 28565]
Revision	Vol. 39	March 8, 1974	[39 FR 9314]
Revision	Vol. 39	November 12, 1974	[39 FR 39873]
Revision	Vol. 40	April 25, 1975	[40 FR 18169]
Revision	Vol. 40	October 6, 1975	[40 FR 46254]
Revision	Vol. 40	November 17, 1975	[40 FR 53346]
Revision	Vol. 40	December 16, 1975	[40 FR 58418]
Revision	Vol. 40	December 22, 1975	[40 FR 59205]
Revision	Vol. 41	August 20, 1976	[41 FR 35185]
Revision	Vol. 42	July 19, 1977	[42 FR 37000]
Revision	Vol. 42	July 27, 1977	[42 FR 38178]
Revision	Vol. 42	November 1, 1977	[42 FR 57126]
Revision	Vol. 43	March 3, 1978	[43 FR 8800]
Revision	Vol. 43	August 3, 1978	[43 FR 34347]
Revision	Vol. 44	June 11, 1979	[44 FR 33612]
Revision	Vol. 44	September 25, 1979	[44 FR 55173]
Revision	Vol. 45	January 23, 1980	[45 FR 5617]
Revision	Vol. 45	April 4, 1980	[45 FR 23379]
Revision	Vol. 45	December 24, 1980	[45 FR 85415]
Revision	Vol. 47	January 8, 1982	[47 FR 951]
Revision	Vol. 47	July 23, 1982	[47 FR 31876]
Revision	Vol. 48	March 30, 1983	[48 FR 13326]
Revision	Vol. 48	May 25, 1983	[48 FR 23610]
Revision	Vol. 48	July 20, 1983	[48 FR 32986]
Revision	Vol. 48	October 18, 1983	[48 FR 48335]
Revision	Vol. 50	December 27, 1985	[50 FR 53113]
Revision	Vol. 51	January 15, 1986	[51 FR 1790]
Revision	Vol. 51	January 21, 1986	[51 FR 2701]
Revision	Vol. 51	November 25, 1986	[51 FR 42796]
Revision	Vol. 52	March 26, 1987	[52 FR 9781, 9782]
Revision	Vol. 52	April 8, 1987	[52 FR 11428]
Revision	Vol. 52	May 11, 1987	[52 FR 17555]
Revision	Vol. 52	June 4, 1987	[52 FR 21007]
Revision	Vol. 54	February 14, 1989	[54 FR 6662]
Revision	Vol. 54	May 17, 1989	[54 FR 21344]
Revision	Vol. 55	December 13, 1990	[55 FR 51382]
Revision	Vol. 57	July 21, 1992	[57 FR 32338, 32339]
Revision	Vol. 59	March 16, 1994	[59 FR 12427, 12428]
Revision	Vol. 59	September 15, 1994	[59 FR 47265]
Revision	Vol. 61	March 12, 1996	[61 FR 9919]
Revision	Vol. 62	February 24, 1997	[62 FR 8328]
Revision	Vol. 62	September 15, 1997	[62 FR 48348]
Revision	Vol. 63	May 4, 1998	[63 FR 24444]
Revision	Vol. 64	February 12, 1999	[64 FR 7463]
Revision	Vol. 65	August 10, 2000	[65 FR 48914]
Revision	Vol. 65	October 17, 2000	[65 FR 61744]

40 CFR Part 60 subpart A			
Federal Register Citation	Volume	Date	Notice
Revision	Vol. 65	December 6, 2000	[65 FR 76350, 76378]
Revision	Vol. 65	December 14, 2000	[65 FR 78268]
Revision	Vol. 66	February 6, 2001	[66 FR 9034]
Revision	Vol. 66	August 27, 2001	[66 FR 44978]

Revise Regulation 61-62.60, Subpart J to read:

Subpart J - "Standards of Performance for Petroleum Refineries"

The provisions of Title 40 CFR Part 60, subpart J as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 60 subpart J			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 39	March 8, 1974	[39 FR 9315]
Revision	Vol. 40	October 6, 1975	[40 FR 46259]
Revision	Vol. 42	June 24, 1977	[42 FR 32427]
Revision	Vol. 42	August 4, 1977	[42 FR 39389]
Revision	Vol. 43	March 15, 1978	[43 FR 10868]
Revision	Vol. 44	March 12, 1979	[44 FR 13481]
Revision	Vol. 44	October 25, 1979	[44 FR 61543]
Revision	Vol. 45	December 1, 1980	[45 FR 79453]
Revision	Vol. 48	May 25, 1983	[48 FR 23611]
Revision	Vol. 50	August 5, 1985	[50 FR 31701]
Revision	Vol. 51	November 26, 1986	[51 FR 42842]
Revision	Vol. 52	June 1, 1987	[52 FR 20392]
Revision	Vol. 53	October 21, 1988	[53 FR 41333]
Revision	Vol. 54	August 17, 1989	[54 FR 34026]
Revision	Vol. 55	October 2, 1990	[55 FR 40175]
Revision	Vol. 56	February 4, 1991	[56 FR 4176]
Revision	Vol. 64	February 12, 1999	[64 FR 7465]
Revision	Vol. 65	October 17, 2000	[65 FR 61744]

Revise Regulation 61-62.60, Subpart SSS to read:

Subpart SSS - "Standards of Performance for Magnetic Tape Coating Facilities"

The provisions of Title 40 CFR Part 60, subpart SSS as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 60 subpart SSS			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 53	October 3, 1988	[53 FR 38914]
Revision	Vol. 53	October 28, 1988	[53 FR 43799]
Revision	Vol. 53	November 29, 1988	[53 FR 47955]
Revision	Vol. 53	December 9, 1988	[53 FR 49822]
Revision	Vol. 64	February 12, 1999	[64 FR 7467]

Revise Regulation 61-62.60, Subpart VVV to read:

Subpart VVV - "Standards of Performance for Polymeric Coating of Supporting Substrates Facilities"

The provisions of Title 40 CFR Part 60, subpart VVV as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 60 subpart VVV			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 54	September 11, 1989	[54 FR 37551]
Revision	Vol. 61	March 12, 1996	[61 FR 9905]

Revise Regulation 61-62.60, Subpart AAAA to read:

Subpart AAAA - "New Source Performance Standards for New Small Municipal Waste Combustion Units"

The provisions of Title 40 CFR Part 60, subpart AAAA as originally published in the *Federal Register* as listed below are incorporated by reference as if fully repeated herein.

40 CFR Part 60 subpart AAAA			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 65	December 6, 2000	[65 FR 76350]

R. 61-62.63, National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories:

Revise Regulation 61-62.63, Subpart A to read:

Subpart A - "General Provisions"

The provisions of Title 40 CFR Part 63, subpart A, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart A			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 59	March 16, 1994	[59 FR 12430]
Revision	Vol. 59	April 22, 1994	[59 FR 19453]
Revision	Vol. 59	December 6, 1994	[59 FR 62589]
Revision	Vol. 60	January 25, 1995	[60 FR 4963]
Revision	Vol. 60	June 27, 1995	[60 FR 33122]
Revision	Vol. 60	September 1, 1995	[60 FR 45980]
Revision	Vol. 61	May 21, 1996	[61 FR 25399]
Revision	Vol. 61	December 17, 1996	[61 FR 66227]
Revision	Vol. 62	December 10, 1997	[62 FR 65024]
Revision	Vol. 63	May 4, 1998	[63 FR 24444]
Revision	Vol. 63	May 13, 1998	[63 FR 26465]
Revision	Vol. 63	September 21, 1998	[63 FR 50326]
Revision	Vol. 63	October 7, 1998	[63 FR 53996]

40 CFR Part 63 subpart A			
Federal Register Citation	Volume	Date	Notice
Revision	Vol. 63	December 1, 1998	[63 FR 66061]
Revision	Vol. 64	January 28, 1999	[64 FR 4300]
Revision	Vol. 64	February 12, 1999	[64 FR 7468]
Revision	Vol. 64	April 12, 1999	[64 FR 17562]
Revision	Vol. 64	June 10, 1999	[64 FR 31375]
Revision	Vol. 65	October 17, 2000	[65 FR 61744]
Revision	Vol. 67	February 14, 2002	[67 FR 6968]
Revision	Vol. 67	February 27, 2002	[67 FR 9156]
Revision	Vol. 67	April 5, 2002	[67 FR 16582]
Revision	Vol. 67	June 10, 2002	[67 FR 39794]
Revision	Vol. 67	July 23, 2002	[67 FR 48254]

Add Regulation 61-62.63, Subpart J to read:

Subpart J - "National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production"

The provisions of Title 40 CFR Part 63, subpart J, as originally published in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart J			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 67	July 10, 2002	[67 FR 45866]

Revise Regulation 61-62.63, Subpart T to read:

Subpart T - "National Emission Standards for Halogenated Solvent Cleaning"

The provisions of Title 40 CFR Part 63, subpart T, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart T			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 59	December 2, 1994	[59 FR 61805]
Revision	Vol. 59	December 30, 1994	[59 FR 67750]
Revision	Vol. 60	June 5, 1995	[60 FR 29485]
Revision	Vol. 63	May 5, 1998	[63 FR 24751]
Revision	Vol. 63	December 11, 1998	[63 FR 68400]
Revision	Vol. 64	July 13, 1999	[64 FR 37687]
Revision	Vol. 64	October 18, 1999	[64 FR 56173]
Revision	Vol. 64	December 3, 1999	[64 FR 67793]
Revision	Vol. 65	September 8, 2000	[65 FR 54419]

Revise Regulation 61-62.63, Subpart AA to read:

Subpart AA - "National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants"

The provisions of Title 40 CFR Part 63, subpart AA, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart AA			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 64	June 10, 1999	[64 FR 31376]
Revision	Vol. 66	December 17, 2001	[66 FR 65072]
Revision	Vol. 67	June 12, 2002	[67 FR 40578]
Revision	Vol. 67	June 13, 2002	[67 FR 40814]

Revise Regulation 61-62.63, Subpart BB to read:

Subpart BB - "National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizer Production Plants"

The provisions of Title 40 CFR Part 63, subpart BB, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart BB			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 64	June 10, 1999	[64 FR 31382]
Revision	Vol. 66	December 17, 2001	[66 FR 65072]
Revision	Vol. 67	June 13, 2002	[67 FR 40814]

Revise Regulation 61-62.63, Subpart GG to read:

Subpart GG - "National Emission Standards for Aerospace Manufacturing and Rework Facilities"

The provisions of Title 40 CFR Part 63, subpart GG, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart GG			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 60	September 1, 1995	[60 FR 45956]
Revision	Vol. 61	February 9, 1996	[61 FR 4903]
Revision	Vol. 61	December 17, 1996	[61 FR 66227]
Revision	Vol. 63	March 27, 1998	[63 FR 15016]
Revision	Vol. 63	September 1, 1998	[63 FR 46532]
Revision	Vol. 65	October 17, 2000	[65 FR 61744]
Revision	Vol. 65	December 8, 2000	[65 FR 76941]

Add Regulation 61-62.63, Subpart LL to read:

Subpart LL - "National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants"

The provisions of Title 40 CFR Part 63, subpart LL, as originally published in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart LL			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 62	October 7, 1997	[62 FR 52407]

Revise Regulation 61-62.63, Subpart SS to read:

Subpart SS - "National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process"

The provisions of Title 40 CFR Part 63, subpart SS, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart SS			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 64	June 29, 1999	[64 FR 34866]
Revision	Vol. 64	November 22, 1999	[64 FR 63702]
Revision	Vol. 67	July 12, 2002	[67 FR 46258]

Revise Regulation 61-62.63, Subpart TT to read:

Subpart TT - "National Emission Standards for Equipment Leaks - Control Level 1"

The provisions of Title 40 CFR Part 63, subpart TT, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart TT			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 64	June 29, 1999	[64 FR 34886]
Revision	Vol. 64	November 22, 1999	[64 FR 63702]
Revision	Vol. 67	July 12, 2002	[67 FR 46258]

Revise Regulation 61-62.63, Subpart UU to read:

Subpart UU - "National Emission Standards for Equipment Leaks - Control Level 2 Standards"

The provisions of Title 40 CFR Part 63, subpart UU, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart UU			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 64	June 29, 1999	[64 FR 34899]
Revision	Vol. 64	November 22, 1999	[64 FR 63702]
Revision	Vol. 67	July 12, 2002	[67 FR 46258]

Revise Regulation 61-62.63, Subpart WW to read:

Subpart WW - "National Emission Standards for Storage Vessels (Tanks) - Control Level 2"

The provisions of Title 40 CFR Part 63, subpart WW, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart WW			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 64	June 29, 1999	[64 FR 34918]
Revision	Vol.67	July 12, 2002	[67 FR 46258]

Add Regulation 61-62.63, Subpart XX to read:

Subpart XX - "National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations"

The provisions of Title 40 CFR Part 63, subpart XX, as originally published in the *Federal* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart XX			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 67	July 12, 2002	[67 FR 46258]

Revise Regulation 61-62.63, Subpart YY to read:

Subpart YY - "National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards"

The provisions of Title 40 CFR Part 63, subpart YY, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart YY			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 64	June 29, 1999	[64 FR 34921]
Revision	Vol. 64	November 22, 1999	[64 FR 63695]
Revision	Vol. 64	December 22, 1999	[64 FR 71852]
Revision	Vol. 66	November 2, 2001	[66 FR 55844]
Revision	Vol. 67	June 7, 2002	[67 FR 39301]
Revision	Vol. 67	July 12, 2002	[67 FR 46258, 46289]

Revise Regulation 61-62.63, Subpart EEE to read:

Subpart EEE - "National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors"

The provisions of Title 40 CFR Part 63, subpart EEE, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart EEE			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 63	June 19, 1998	[63 FR 33820]
Revision	Vol. 64	September, 30, 1999	[64 FR 53027]

40 CFR Part 63 subpart EEE			
Federal Register Citation	Volume	Date	Notice
Revision	Vol. 64	November 19, 1999	[64 FR 63209]
Revision	Vol. 65	July 10, 2000	[65 FR 42292]
Revision	Vol. 65	November 9, 2000	[65 FR 67268]
Revision	Vol. 66	May 14, 2001	[66 FR 24270]
Revision	Vol. 66	July 3, 2001	[66 FR 35087]
Revision	Vol. 66	October 15, 2001	[66 FR 52361]
Revision	Vol. 66	December 6, 2001	[66 FR 63313]
Revision	Vol. 67	February 13, 2002	[67 FR 6792]
Revision	Vol. 67	February 14, 2002	[67 FR 6968]
Revision	Vol. 67	December 19, 2002	[67 FR 77687]

Revise Regulation 61-62.63, Subpart JJJ to read:

Subpart JJJ - "National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins"

The provisions of Title 40 CFR Part 63, subpart JJJ, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart JJJ			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 61	September 12, 1996	[61 FR 48229]
Revision	Vol. 61	October 18, 1996	[61 FR 54342]
Revision	Vol. 62	January 14, 1997	[62 FR 1838]
Revision	Vol. 62	June 6, 1997	[62 FR 30995]
Revision	Vol. 62	July 15, 1997	[62 FR 37722]
Revision	Vol. 63	February 27, 1998	[63 FR 9944]
Revision	Vol. 63	March 31, 1998	[63 FR 15315]
Revision	Vol. 64	March 9, 1999	[64 FR 11547]
Revision	Vol. 64	June 8, 1999	[64 FR 30409]
Revision	Vol. 64	June 30, 1999	[64 FR 35028]
Revision	Vol. 65	June 19, 2000	[65 FR 38094]
Revision	Vol. 65	August 29, 2000	[65 FR 52588]
Revision	Vol. 65	October 26, 2000	[65 FR 64161]
Revision	Vol. 66	February 23, 2001	[66 FR 11233]
Revision	Vol. 66	February 26, 2001	[66 FR 11543]
Revision	Vol. 66	July 16, 2001	[66 FR 36924]
Revision	Vol. 66	August 6, 2001	[66 FR 40903]

Revise Regulation 61-62.63, Subpart LLL to read:

Subpart LLL - "National Emission Standards for the Portland Cement Manufacturing Industry"

The provisions of Title 40 CFR Part 63, subpart LLL, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart LLL			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 64	June 14, 1999	[64 FR 31925]
Revision	Vol. 64	September 30, 1999	[64 FR 53070]
Revision	Vol. 67	April 5, 2002	[67 FR 16614]
Revision	Vol. 67	December 6, 2002	[67 FR 72580]

Revise Regulation 61-62.63, Subpart MMM to read:

Subpart MMM - "National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production"

The provisions of Title 40 CFR Part 63, subpart MMM, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart MMM			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 64	June 23, 1999	[64 FR 33589]
Revision	Vol. 66	November 21, 2001	[66 FR 58393]
Revision	Vol. 67	March 22, 2002	[67 FR 13508, 13514]
Revision	Vol. 67	May 1, 2002	[67 FR 21579]
Revision	Vol. 67	June 3, 2002	[67 FR 38200]
Revision	Vol. 67	September 20, 2002	[67 FR 59336]

Add Regulation 61-62.63, Subpart QQQ to read:

Subpart QQQ - "National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting"

The provisions of Title 40 CFR Part 63, subpart QQQ, as originally published in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart QQQ			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 67	June 12, 2002	[67 FR 40478]

Revise Regulation 61-62.63, Subpart RRR to read:

Subpart RRR - "National Emission Standards for Hazardous Air Pollutant Emissions for Secondary Aluminum Production"

The provisions of Title 40 CFR Part 63, subpart RRR, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart RRR			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 65	March 23, 2000	[65 FR 15690]
Revision	Vol. 67	June 14, 2002	[67 FR 41118]
Revision	Vol. 67	August 13, 2002	[67 FR 52616]

40 CFR Part 63 subpart RRR			
Federal Register Citation	Volume	Date	Notice
Revision	Vol. 67	September 24, 2002	[67 FR 59787]
Revision	Vol. 67	November 8, 2002	[67 FR 68038]
Revision	Vol. 67	December 30, 2002	[67 FR 79808]

Add Regulation 61-62.63, Subpart UUU to read:

Subpart UUU - "National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries; Catalytic Cracking Units, Catalytic Reforming Units and Sulfur Recovery Units"

The provisions of Title 40 CFR Part 63, subpart UUU, as originally published in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart UUU			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 67	April 11, 2002	[67 FR 17762]

Revise Regulation 61-62.63, Subpart VVV to read:

Subpart VVV - "National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works"

The provisions of Title 40 CFR Part 63, subpart VVV, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart VVV			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 64	October 26, 1999	[64 FR 57572]
Revision	Vol. 66	March 23, 2001	[66 FR 16140]
Revision	Vol. 67	October 10, 2002	[67 FR 64742]

Revise Regulation 61-62.63, Subpart GGGG to read:

Subpart GGGG - "National Emission Standards For Hazardous Air Pollutants: Solvent Extraction For Vegetable Oil Production"

The provisions of Title 40 CFR Part 63, subpart GGGG, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart GGGG			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 66	April 12, 2001	[66 FR 19006]
Revision	Vol. 67	April 5, 2002	[67 FR 16317]

Add Regulation 61-62.63, Subpart HHHH to read:

Subpart HHHH - "National Emission Standards For Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production"

The provisions of Title 40 CFR Part 63, subpart HHHH, as originally published in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart HHHH			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 67	April 11, 2002	[67 FR 17824]

Add Regulation 61-62.63, Subpart JJJJ to read:

Subpart JJJJ - "National Emission Standards For Hazardous Air Pollutants: Paper and Other Web Coating"

The provisions of Title 40 CFR Part 63, subpart JJJJ, as originally published in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart JJJJ			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 67	December 4, 2002	[67 FR 72330]

Add Regulation 61-62.63, Subpart NNNN to read:

Subpart NNNN - "National Emission Standards For Hazardous Air Pollutants: Surface Coating of Large Appliances"

The provisions of Title 40 CFR Part 63, subpart NNNN, as originally published in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart NNNN			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 67	July 23, 2002	[67 FR 48254]

Add Regulation 61-62.63, Subpart SSSS to read:

Subpart SSSS - "National Emission Standards For Hazardous Air Pollutants: Surface Coating of Metal Coil"

The provisions of Title 40 CFR Part 63, subpart SSSS, as originally published in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart SSSS			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 67	June 10, 2002	[67 FR 39794]

Add Regulation 61-62.63, Subpart TTTT to read:

Subpart TTTT - "National Emission Standards For Hazardous Air Pollutants for Leather Finishing Operations"

The provisions of Title 40 CFR Part 63, subpart TTTT, as originally published in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart TTTT			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 67	February 27, 2002	[67 FR 9156]

Add Regulation 61-62.63, Subpart UUUU to read:

Subpart UUUU - "National Emission Standards For Hazardous Air Pollutants for Cellulose Products Manufacturing"

The provisions of Title 40 CFR Part 63, subpart UUUU, as originally published in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart UUUU			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 67	June 11, 2002	[67 FR 40044]

Add Regulation 61-62.63, Subpart XXXX to read:

Subpart XXXX - "National Emission Standards For Hazardous Air Pollutants for Rubber Tire Manufacturing"

The provisions of Title 40 CFR Part 63, subpart XXXX, as originally published in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart XXXX			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 67	July 9, 2002	[67 FR 45588]

Revise Regulation 61-62.63, Subpart QQQQQ to read:

Subpart QQQQQ - "National Emission Standards For Hazardous Air Pollutants for Friction Materials Manufacturing Facilities"

The provisions of Title 40 CFR Part 63, subpart QQQQQ, as originally published in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 63 subpart QQQQQ			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 67	October 18, 2002	[67 FR 64498]

R. 61-62.70, Title V Operating Permit Program:

Revise Section 70.2 r.(2)(xxvii) to read:

(xxvii) Any other stationary source category, which as of August 7, 1980, is being regulated under section 111 or 112 of the Act;

R. 61-62.70.5 Permit applications

Revise Section 70.5 a.(1)(ii), to read:

(a) Duty to apply. For each Part 70 source, the owner or operator shall submit a timely and complete permit application in accordance with this Section.

(1) Timely application.

(i) A timely application for a source applying for a Part 70 permit for the first time is one that is submitted within 12 months after the source becomes subject to the permit program or on or before such earlier date as the Department may establish.

(ii) Part 70 sources required to meet the requirements under Section 112(g) of the Act, or to have a permit under the preconstruction review program approved into the South Carolina Implementation Plan under Part C or D of Title I of the Act, shall file a complete application to obtain the Part 70 permit or permit revision within 12 months after commencing operation or on or before such earlier date as the permitting authority may establish. Where an existing Part 70 permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation.

Fiscal Impact Statement:

The Department estimates no additional cost will be incurred by the state or its political subdivisions as a result of the promulgation, approval, and implementation of this amendment; therefore, no additional state funding is being requested. Existing staff and resources will be utilized in additional regulatory administration resulting from these amendments to the regulations. See Statement of Need and Reasonableness below.

Statement of Need and Reasonableness:

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

DESCRIPTION OF REGULATION: Amendments to Regulation 61-62, *Air Pollution Control Regulations and Standards.*

Purpose of Regulation: These amendments and corrections will maintain conformity with Federal requirements and ensure compliance with Federal standards.

Legal Authority: The legal authority for Regulation 61-62, *Air Pollution Control Regulations and Standards*, is S.C. Code Section 48-1-10 *et seq.*

Plan for Implementation: The proposed amendments will take effect upon approval and adoption by the South Carolina Board of Health and Environmental Control and publication in the *State Register.*

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

The United States Environmental Protection Agency (EPA) promulgates amendments to 40 CFR Parts 60, 63, and 70 throughout each calendar year. Recent federal amendments include clarification, guidance and technical amendments regarding New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAPs), and State Operating Permits Program. Pursuant to S.C. Code Section 48-1-10 *et seq.*, the South Carolina Department of Health and Environmental Control (Department) proposes to amend Regulations 61-62.60, *South Carolina Designated Facility Plan and New Source Performance Standards* and 61-62.63, *National Emission Standards for Hazardous Air Pollutant;* to incorporate recent Federal amendments promulgated during the period from January 1, 2002, through December 31, 2002. In addition, the Department is

proposing to revise R. 61-62.70, *Title V Operating Permit Program*, to make corrections and incorporate recent federal changes to definitions of major sources. Also, the Department is amending R. 62.1 *Definitions and General Requirements,* to clarify the language concerning alternate methods of source testing. Finally, the Department proposes to make typographical corrections and clarifications to R.61-62 as necessary.

The proposed amendments to Regulation 61-62, *Air Pollution Control Regulations and Standards,* are necessary to maintain consistency with Federal rules and will not require legislative review.

DETERMINATION OF COSTS AND BENEFITS:

There will be no increased cost to the State or its political subdivisions as a result of these amendments. The standards to be adopted are already effective and applicable to the regulated community as a matter of Federal law. The proposed amendments will benefit the regulated community by clarifying the regulations and increasing their ease of use.

UNCERTAINTIES OF ESTIMATES:

EPA has provided the estimated costs and benefits for these standards in the *Federal Register* notices that are cited within this document.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

Adoption of the recent changes in Federal law through the proposed amendments to Regulation 61-62, *Air Pollution Control Regulations and Standards*, will provide continued protection of the environment and public health.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATIONS ARE NOT IMPLEMENTED:

While there is no specific detrimental effect on the environment and public health, the State's authority to implement Federal requirements, which are believed to be beneficial to the public health and environment, would be compromised if these amendments are not adopted in South Carolina.

Document No. 2718
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
Statutory Authority: 44-7-110 et seq.

R. 61-15. Certification of Need for Health Facilities and Services

Synopsis:

This amendment of R.61-15 will (1) increase the current Certificate of Need monetary review thresholds as recommended by the SC Health Planning Committee and (2) correct a typographical error contained in one of the ownership disclosure questions within the Certificate of Need application format. See Discussion below and Statement of Reasonableness herein.

Discussion of Revisions:

(1) Increase the current Certificate of Need monetary review thresholds as recommended by the S.C. Health Planning Committee.

SECTION AND CHANGE:

61-15.102.1.c
The monetary review threshold for a capital expenditure by or on behalf of a health care facility which requires Certificate of Need approval is increased from $1,000,000 to $2,000,000.

61-15.102.1.e
The monetary review threshold for the annual operating cost of a new service by a health care facility which requires Certificate of Need approval if no capital expenditure is made for the service is increased from $400,000 to $1,000,000.

(2) Correct a typographical error contained in one of the ownership disclosure questions within the Certificate of Need application format.

SECTION AND CHANGE:

61-15.202.2.b (8)(f)

The item should request the name and mailing address of all persons and/or legal entities claiming Aliabilities≅ of the licensee or of the facility or service requested rather than Aan ownership interest.≅ (The term Aownership interest≅ is used in a prior item in the Regulation and is incorrectly repeated in this item.)

Instructions: Amend R.61-15 pursuant to each individual instruction provided with the text below.

Text:

R.61-15.102.1.c and e are revised to read:

Section 102. Applicability

1. A person or health care facility as defined in this Regulation is required to obtain a Certificate of Need from the Department of Health and Environmental Control before undertaking any of the following:

c. An expenditure by or on behalf of a health care facility in excess of $2,000,000 which, under generally acceptable accounting principles consistently applied, is considered a capital expenditure except those expenditures exempted in Section 104. The cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the development, acquisition, improvement, expansion, or replacement of any plant or equipment must be included in determining if the expenditure exceeds the prescribed amount;

e. If no capital expenditure is made, the offering of any health service by or on behalf of a health care facility which has not been offered by the facility in the preceding twelve months and which has an annual operating cost in excess of $1,000,000 and for which specific standards or criteria are prescribed in the State Health Plan. For purposes of this section, operating costs include expenditures incurred by the health care facility and any person or other entity on behalf of the health care facility to establish a new service. A person or other entity shall not be allowed to incur costs thereby attempting to enable a health care facility to avoid Certificate of Need review and establish a new service as described above;

R.61-15.202.2.b(8)(f) is revised to read:

Section 202. Application

2. Application

b. Part B. Additional Information

(8) Provide the following ownership information:

(f) Name and mailing address of all persons and/or legal entities claiming liabilities of the licensee or of the facility or service for which this Certificate of Need is requested to include a schedule of percent and type of claim of each.

Preliminary Fiscal Impact:
There will be minimal cost to the state and its political subdivisions. See Statement of Need and Reasonableness below.

Statement of Need and Reasonableness:

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

DESCRIPTION OF REGULATION: R.61-15, *Certification of Need for Health Facilities and Services*

Purpose of Regulation Amendment: This amendment will (1) increase the current Certificate of Need monetary review thresholds as recommended by the S.C. Health Planning Committee and (2) correct a typographical error contained in one of the ownership disclosure questions within the Certificate of Need application format.

Legal Authority: S.C. Code Section 44-7-110 *et seq*.

Plan for Implementation: The proposed amendments will make changes to and be incorporated into R.61- 15 upon approval of the General Assembly and publication in the *State Register*. The proposed amendments will be implemented in the same manner in which the existing regulations are implemented.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION AMENDMENT BASED ON ALL FACTORS HEREIN AND EXPECTED BENFITS: On June 14, 2001, the Chairman of the S.C. Health Planning Committee recommended that the S.C. Board of Health and Environmental Control consider directing its staff to amend R.61-15 so as to increase the current Certificate of Need monetary review thresholds, which have been utilized since June 23, 1989. The recommendation was based on the fact that there has been substantial inflation in health care building, equipment, and operational costs during the last decade.

As a result of an analysis conducted by the Certificate of Need staff at the Department of Health and Environmental Control regarding historical and projected hospital inflation information, more appropriate monetary review thresholds are proposed, which will allow flexibility for inflation during future years and are comparable to Certificate of Need monetary review thresholds of several adjacent states.

In addition, a typographical error contained in the current R.61-15 regarding ownership disclosure information to be submitted by Certificate of Need applicants is proposed to be corrected.

DETERMINATION OF COSTS AND BENEFITS: There will be no cost to the state, its political subdivisions, and to the regulated community with the implementation of the proposed amendment.

UNCERTAINTIES OF ESTIMATES: None

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH: There will be no effect on the environment. The amendments will promote public health by making some new health care construction and services more readily accessible without the need for Certificate of Need review and approval.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION AMENDMENT IS NOT IMPLEMENTED: There will be no adverse effect on the environment if the amendments are not implemented. However, there will be an adverse effect on health care providers in completing relatively minor construction programs and establishing new health services with costs below the proposed monetary thresholds in that a Certificate of Need must be obtained which will require an average of four (4) months time before the project may be developed.

Statement of Rationale Pursuant to S.C. Code Section 1-23-120(B):

On June 14, 2001, the Chairman of the S.C. Health Planning Committee recommended that the S.C. Board of Health and Environmental Control consider directing its staff to amend R. 61-15 so as to increase the current Certificate of Need monetary thresholds, which have been utilized since June 23, 1989. The recommendation was based on the fact that there has been substantial inflation in health care building, equipment, and operational costs in the last decade.

An analysis was conducted by the Certificate of Need staff at the Department of Health and Environmental Control where staff was able to obtain historical and projected inflation information from Rate Controls Publications, LLC through the South Carolina Hospital Association. Using the expense category of inflation for the "Plant and Equipment" designation, it was determined that such inflation was 41.2% for the period 1991-2001. "Total Hospital Inflation" for the same time frame was calculated to 57.2%. Therefore, a $1,000,000 capital expenditure for the "Plant and Equipment" designation in 1991 dollars would be $1,412,135 in the year 2001, and a $400,000 annual operating cost for the "Total Hospital Inflation" designation in 1991 dollars would be $628,923 in the year 2001.

In addition, a telephone survey was conducted by the Department's Certificate of Need staff on July 12, 2001, covering seven (7) other states surrounding South Carolina to determine their current Certificate of Need expenditure thresholds. The survey indicated that South Carolina has the lowest expenditure threshold compared to any other Southern state that utilizes monetary thresholds in a similar manner.

As a result of a review and analysis of the information obtained, it was determined that a $2,000,000 capital expenditure threshold would be most appropriate for South Carolina in that it allows flexibility for inflation during future years and is comparable to the Certificate of Need capital expenditure thresholds of several adjacent states. Additionally, it was determined that the annual operating cost threshold of a new health service be increased to $1,000,000, which will allow flexibility for inflation during future years.

Document No. 2757
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
Statutory Authority: S.C. Code Section 44-53-280(a)

Regulation 61-4. Controlled Substances

Synopsis:

This amendment (1) deletes unnecessary language in definitions; (2) replaces references to "Division" with "Bureau of Drug Control"; (3) increases registrant fees; (4) clarifies quantity limitations; (5) clarifies language relating to controlled substances inventory requirements; (6) simplifies procedures for the treatment of patients with methadone; (7) clarifies language regarding quantity limitations for controlled substances prescriptions; (8) deletes references to functions no longer performed by the Bureau of Drug Control; (9) permits the faxing of schedule II narcotic prescriptions for hospice patients, consistent with Federal regulation; and (10) provides for scheduling of controlled substances, consistent with Federal scheduling.

This amendment was approved by the Board of Health and Environmental Control after public hearing on November 14, 2002. No public comments were received during the public comment period on these proposed regulations.

Discussion of Revisions:

SECTION	CHANGE
Table of Contents	The table of contents will be revised due to changes in the text.
All sections	Replaces "may", "must" and "should" with "shall".
All sections	Replaces "Department of Health and Environmental Control" and "Department" with "DHEC".
All sections	Replaces "Drug Enforcement Administration" with "DEA".
All sections	Replaces "South Carolina" with "SC".
All sections	Changes references to Section or Regulation 101, e.g., to § 101, to provide consistent references throughout the Regulation.
All sections	Changes references to "he", to "he or she".
All sections	Changes references to "him", to "him or her".
All sections	Changes references to "himself", to "himself or herself".
All sections	Corrects references to S.C. Code sections.
Section 101	Deletes unnecessary language in definitions.
Section 101(c) and (q)	Deletes references to terms no longer applicable to the Regulation.
Section 101(k)	Deletes and replaces all references to "Division", throughout the

	Regulation with "Bureau of Drug Control"
Section 103	Increases registrant fees.
Section 105	Clarifies federal fee exemption.
Section 120	Clarifies language with reference to failure of an applicant to provide requested information.
Section 143(b)	Clarifies language regarding registrant responsibility to determine suspicious orders for controlled substances.
Section 147	Clarifies language regarding registrant failure to files theft reports.
Section 207	Clarifies quantity limitations for controlled substances dispensed directly to ultimate users.
Section 303	Deletes and replaces a colloquial reference.
Section 305	Clarifies the language relating to the annual inventory date.
Section 306	Clarifies inventory requirements upon transfer of business and change of pharmacist-in-charge.
Section 307	Clarifies the language relating to the annual inventory date.
Section 308	This section references a function that is no longer performed by DHEC and is deleted. The remaining sections in Part 3 will be renumbered 301-322. The Table of Contents was incorrect prior to these amendments because the last section in the text is Section 323.
Section 507.5	Simplifies the treatment of patients with methadone by eliminating notification and unnecessary record keeping requirements.
Section 508(g)	Permits the faxing of schedule II prescriptions for hospice patients, consistent with Federal regulations.
Section 508.1	Clarifies quantity limitations for schedule II controlled substances.
Section 514.1	Clarifies quantity limitations for schedules III, IV and V controlled substances.
Section 517.1	Clarifies quantity limitations for schedule V controlled substances.
Sections 609(b)(3), 610, and 610.1	These sections reference functions that are no longer performed by the Bureau of Drug Control and are deleted.
Sections 701 through 704.2	These sections are combined into Section 701 and provide for the scheduling of Schedule I controlled substances for consistency with Federal scheduling.

Sections 705 through 705.1	These sections are combined into Section 702 and provide for the scheduling of schedule II controlled substances for consistency with Federal scheduling.
Sections 706 through 706.1	These sections are combined into section 703 and provide for the scheduling of Schedule III controlled substances for consistency with federal scheduling.
Sections 707 through 707.1	These sections are combined into section 704 and provide for the scheduling of Schedule IV controlled substances for consistency with Federal scheduling.
Sections 708 through 708.1	These sections are combined into Section 705 and provide for the scheduling of Schedule V controlled substances for consistency with Federal scheduling.
	The remaining unchanged sections in Part 7 will be renumbered to 706, 707, 708, 709 and 710-799
Section 904	This section references a function that is no longer performed by the Bureau of Drug Control and is amended to delete such function.

Instructions: Replace R.61-4 in its entirety with this amendment.

Text:

R.61-4. Controlled Substances

Table of Contents:

PART 1

Definitions, Information, Payment of Fees, Certain Exemptions, Separate Registrations, Out-of-State Dispensing of Prescriptions

101. Definitions.

As used in this regulation, the following terms shall have the meaning specified:

(a) Act. Article 3 of Chapter 53 of Title 44 of the 1976 SC Code of Laws, including all amendments thereto;

(b) Administration and the abbreviation DEA. Refer to Drug Enforcement Administration, United States Department of Justice, the successor agency to the Bureau of Narcotics and Dangerous Drugs as defined in the Act;

(c) Commercial container. Any bottle, jar, tube, ampoule, or other receptacle in which a substance is held for distribution or dispensing to an ultimate user, and, in addition, any box or package in which the receptacle is held for distribution or dispensing to an ultimate user. The term "commercial container" does not include any package liner, package insert, or other material kept with or within a commercial container, nor any carton, crate, box, or other package in which commercial containers are stored or are used for shipment of controlled substances;

(d) Commissioner. Unless otherwise specified, the Commissioner of the Department of Health and Environmental Control;

(e) Commissioner of Narcotics. The Commissioner of Narcotics and Controlled Substances as defined in the Act; or his or her statutory successor;

(f) Controlled premises:

(1) Places where original or other records or documents required under the Act are required to be kept, and

(2) Places, including factories, warehouses, or other establishments, and conveyances, where persons registered under the Act or exempted from registration under the Act may lawfully hold, manufacture, dispense, distribute, administer, or otherwise dispose of controlled substances;

(g) DHEC. The South Carolina Department of Health and Environmental Control;

(h) Director. The Director of the Bureau of Drug Control, DHEC;

(i) Dispenser. An individual practitioner, institutional practitioner, pharmacy or pharmacist who dispenses a controlled substance;

(j) Hearing. Any hearing held pursuant to the provisions of the Act or of this regulation, including, but not limited to, hearings for the granting, denial, revocation, or suspension of a registration pursuant to the Act;

(k) Individual practitioner. A physician, dentist, veterinarian, or other individual licensed, registered, or otherwise permitted by the United States or the State of South Carolina, or by other jurisdiction, or otherwise permitted by the United States or the State of South Carolina, or by any other jurisdiction in which he practices to dispense a controlled substance in the regular course of professional practice, but does not include a pharmacist, a pharmacy, or any institutional practitioner;

(l) Inspector or drug inspector. An officer or employee of the Bureau of Drug Control authorized by the Director to make inspections under the Act, and to conduct audit procedures in relation to controlled substances, and includes the Director of the Bureau of Drug Control;

(m) Institutional practitioner. A hospital or other person (other than an individual) licensed, registered, or otherwise permitted by the United States, the State of South Carolina, or other jurisdiction in which it practices, to dispense a controlled substance in the regular course of professional practice, but does not include a pharmacy;

(n) Interested person. Any person adversely affected or aggrieved by any rule or proposed rule issued or issuable pursuant to the Act;

(o) Name. The official name, common or usual name, chemical name, or brand name of a substance;

(p) Person. Includes any individual, corporation, government or governmental subdivision or agency, business trust, partnership, association, or other legal entity;

(q) Pharmacist. Any pharmacist licensed by a State to dispense controlled substances, and shall include any person (e.g., pharmacy intern) authorized by the State to dispense controlled substances under the supervision of a pharmacist licensed by the State;

(r) Prescription. An order for medication which is dispensed to or for an ultimate user, but does not include an order for medication which is dispensed for immediate administration to the ultimate user (e.g., an order to dispense a drug to a bed patient for immediate administration in a hospital is not a prescription);

(s) Proceeding. All actions taken for the issuance, amendment, or repeal of any rules and regulations issued pursuant to the Act, commencing with the publication by the Director of the proposed rule, amended rule, or appeal.

(t) Readily retrievable. Certain records are kept by automatic data processing systems or other electronic or mechanized record keeping systems in such a manner that they can be separated out from all other records in a reasonable time and/or records are kept on which certain items are asterisked, red-lined, or in some other manner visually identifiable apart from other items appearing on the records; when the term is not applicable to data

processing systems, the term also means that a registrant is able to produce controlled substances records in a timely manner (usually within one hour) and that such records are segregated, sorted, or filed in such a manner that the controlled substances information may be derived from the material within a reasonable time (usually with a few hours) by an inspector.

(u) Register and registration. Refer only to registration required and permitted by the Act;

(v) Registrant. Any person who is registered pursuant to the Act.

(w) Emergency situation. For the purposes of authorizing an oral prescription of a controlled substance listed in Schedule II of the Act, the term "emergency situation" means those situations in which the prescribing practitioner determines:

(1) That immediate administration of the controlled substance is necessary, for proper treatment of the intended ultimate user; and

(2) That no appropriate alternative treatment is available, including administration of a drug which is not a controlled substance under Schedule II of the Act; and

(3) That it is not reasonably possible for the prescribing practitioner to provide a written prescription to be presented to the person dispensing the substance, prior to the dispensing.

(x) Any term not defined in this section shall have the definition set forth in the Act, or amendments thereto.

(y) Long Term Care Facility (LTCF). Nursing home, intermediate care, mental care, or other facility or institution which provides extended health care to resident patients and is licensed as such by DHEC or other appropriate State agency, which may further define the term for licensing and certification purposes.

(z) Compounder. Any person engaging in maintenance or detoxification treatment who also mixes, prepares, packages, or changes the dosage forms of a narcotic drug listed in Schedules II, III, IV, or V for use in maintenance or detoxification treatment by another narcotic treatment program. The term "compounder" as the content requires, includes any lawfully authorized person who changes the dosage forms, mixes, or prepares any controlled substance for use by the ultimate user pursuant to the legitimate and lawful order of a practitioner acting in the regular course of professional practice or by the practitioner personally, if authorized by law to compound and dispense controlled substances.

(aa) Detoxification treatment. The dispensing for a period not in excess of twenty-one days, of a narcotic or narcotics drugs in decreasing dosages to an individual in order to alleviate adverse physiological or psychological effects incidental to withdrawal from the continuous or sustained use of a narcotic drug and as a method of bringing the individual to a narcotic drug-free state within such period of time. SEE ALSO §§ 507 through 507.5 inclusive.

(ab) Code. The Code of Laws of South Carolina, 1976, including all amendments thereto.

(ac) Home infusion pharmacy. A pharmacy which compounds solutions for direct administration to a patient in a private residence, Long Term Care Facility or hospice setting by means of parenteral, intravenous, intra-muscular, subcutaneous or intra-spinal infusion.

102. Information; special instructions.

Information regarding procedures under these rules and special instructions supplementing these rules will be furnished upon request by writing to the Bureau of Drug Control DHEC, 2600 Bull Street, Columbia, SC 29201.

103. Fee amounts.

(a) For each registration or re-registration to possess and dispense controlled substances as a pharmacy or health clinic, the registrant shall pay a fee of $125.00.

(b) For each registration or re-registration to possess, dispense and administer controlled substances as a hospital or other institutional practitioner, the registrant shall pay a fee of $325.00.

(c) For each registration or re-registration to possess, dispense, and administer controlled substances as an individual practitioner other than a pharmacy or hospital [i.e., physician (medical or osteopathic), dentist, veterinarian, podiatrist, optometrist, physician assistant or nurse practitioner], the registrant shall pay a fee of $125.00.

(d) For each registration or re-registration to conduct research or instructional activities with controlled substances listed in schedule II through V inclusive, the registrant shall pay a fee of $125.00.

(e) For each registration or re-registration to conduct research or instructional activities with controlled substances listed in Schedule I, the registrant shall pay a fee of $125.00.

(f) For each registration or re-registration to manufacture controlled substances, the registrant shall pay a fee of $650.00.

(g) For each registration or re-registration to distribute controlled substances, the registrant shall pay a fee of $550.00.

(h) For each registration or re-registration to conduct chemical analysis with controlled substances listed in any schedule, the registrant shall pay a fee of $125.00.

104. Time and method of payment; refund.

Registration and re-registration fees shall be paid at the time when the application for registration is submitted for filing. Payment shall be made in the form of a personal, certified or cashier's check or money order made payable to DHEC. Payments made in the form of stamps, foreign currency, or third party endorsed checks will not be accepted. In the event that the application is not accepted for filing or is denied, the payment shall be refunded to the applicant.

105. Registrants exempt from fee.

(a) Any federal agency, installation or official authorized by law to procure or purchase controlled substances for official use shall be exempt from payment of a fee for registration or re-registration.

(b) In order to claim exemption from the payment of fees for registration or re-registration, the registrant shall have completed the certification on the appropriate application form, wherein the applicant's superior or the agency head certifies to the status and address of the registrant and to the authority of the registrant to acquire, possess or handle controlled substances.

(c) Exemption from payment of a registration fee does not relieve the registrant of any other requirements or duties prescribed by law.

106. Persons required to register.

Every person who manufactures, distributes, prescribes or dispenses any controlled substance or who proposes to engage in the manufacture, distribution or dispensing of any controlled substance shall obtain annually a registration unless exempted by law. Only persons actually engaged in such activities are required to obtain a registration; related or affiliated persons who are not engaged in such activities are not required to be registered. (For example, a stockholder or parent corporation of a corporation manufacturing controlled substances is not required to obtain a registration.)

107. Separate registration for independent activities.

(a) The following groups of activities are deemed to be independent of each other:

(1) Manufacturing controlled substances;

(2) Distributing controlled substances;

(3) Dispensing controlled substances listed in schedules II through V;

(4) Conducting research (other than research described in paragraph (a) (6) of this section) with controlled substances listed in schedules II through V;

(5) Conducting instructional activities with controlled substances listed in schedule II through V;

(6) Conducting a narcotic treatment program using any drug listed in Schedules II through V: however, pursuant to §109, employees, agents or affiliated practitioners, in programs, need not register separately. Each program site located away from the principal location and at which place narcotic drugs are stored or dispensed shall be separately registered and obtain narcotic drugs by use of order forms pursuant to §§ 401 and 402;

(7) Conducting research and instructional activities with controlled substances listed in schedule I;

(8) Conducting chemical analysis with controlled substances listed in any schedules;

(9) Importing controlled substances;

(10) Exporting controlled substances listed in schedules I through IV; and

(11) A compounder as defined by § 101(z).

(b) Every person who engages in more than one group of independent activities shall obtain a separate registration for each group of activities, except as provided in this paragraph. Any person, when registered to engage in the group of activities described in each subparagraph in this paragraph, shall be authorized to engage in the coincident activities described in that subparagraph without obtaining a registration to engage in such

coincident activities, provided that, unless specifically exempted, he complies with all requirements and duties prescribed by law for persons registered to engage in such coincident activities:

(1) A person registered to manufacture or import any controlled substance or basic class of controlled substance shall be authorized to distribute that substance or class, but no other substance or class which he is not registered to manufacture or import;

(2) A person registered to manufacture any controlled substance listed in schedules II through V shall be authorized to conduct chemical analysis and pre-clinical research (including quality control analysis) with narcotic and non-narcotic controlled substances listed in those schedules in which he is authorized to manufacture;

(3) A person registered to conduct research with a basic class of controlled substance listed in schedule I shall be authorized to manufacture or import such class if and to the extent that such manufacture and importation is set forth in the research protocol filed with the application for registration which shall conform with the provisions of 21 CFR § 1301.33, and to distribute such class to other persons registered or authorized to conduct research with such class, or registered or authorized to conduct chemical analysis with controlled substances.

(4) A person registered to conduct chemical analysis with controlled substances shall be authorized to manufacture and import such substances for analytical or instructional purposes, to distribute such substances to other persons registered to conduct chemical analysis or instructional activities and to persons exempted from registration pursuant to § 111, to export such substances to persons in other countries performing chemical analysis or enforcing laws relating to controlled substances or drugs in those countries, and to conduct instructional activities with controlled substances;

(5) A person registered or authorized to conduct research (other than research described in paragraph (a)(6) of this section) with controlled substances listed in those schedules in which he or she is authorized to conduct research, to manufacture such substances if and to the extent that such manufacture is set forth in a statement filed with the application for registration, to import such substances for research purposes, to distribute such substances to other persons registered or authorized to conduct chemical analysis, instructional activities, or research with such substances and to persons exempted from registration pursuant to Regulation III, and to conduct instructional activities with controlled substances, and

(6) A person registered to dispense controlled substances listed in Schedules II through V may conduct research (other than research described in paragraph (a) (6) of this section) in conformity with the provisions of S.C. Code Ann. § 44-53-300(c) and conduct instructional activities with those substances.

(c) A single registration to engage in any group of independent activities may include one or more substances listed in the schedules authorized in that group of independent activities. A person registered to conduct research with controlled substances listed in Schedule I may conduct research with any substance listed in Schedule I for which he or she has filed and had approved a research protocol.

108. Separate registrations for separate locations.

(a) A separate registration is required for each principal place of business or professional practice at one general physical location where controlled substances are manufactured, distributed, or dispensed by a person.

(b) The following locations shall be deemed not to be places where controlled substances are manufactured, distributed, or dispensed:

(1) A warehouse where controlled substances are stored by or on behalf of a registered person, unless such substances are distributed directly from such warehouse to registrants other than the registered person or to persons not required to register by the Act.

(2) An office used by agents of a registrant where sales of controlled substances are solicited, made, or supervised but which neither contains such substances for display purposes or lawful distribution as samples only nor serves as a distribution point for filling sales orders; and

(3) An office used by a practitioner (who is registered at another location) where controlled substances are prescribed but neither administered nor otherwise dispensed as a regular part of the professional practice of the practitioner at such office and where no supplies of controlled substances are maintained.

109. Exemption of agents and employees; affiliated practitioners.

(a) The requirement of registration is waived for any agent or employee of a person who is registered to engage in any group of independent activities, if such agent or employee is acting in the usual course of his or her

business or employment. (For example, a pharmacist employed by a pharmacy need not be individually registered to conduct lawful business activity in preparing and dispensing of controlled substances if the pharmacy in which he or she is employed is properly registered under the Act; a manufacturer's sales representative may lawfully distribute samples of controlled substances manufactured by his or her employer, provided the manufacturer-employer is lawfully registered and the distribution is made to a registrant authorized to possess controlled substances and not to a non-registrant employee of the recipient of the sample.)

(b) An individual practitioner who is affiliated with one or more other individual practitioners in any legitimate and lawful form of business arrangement (i.e., partnership, professional association, etc.) shall be registered individually with DHEC prior to engaging in any form of controlled substances activity, pursuant to the provisions of S.C. Code Ann. §§ 44-53-290 and 44-53-370(a)(1). With the written Power of Attorney of another affiliated practitioner within the group, any other affiliate individual practitioner may administer or dispense (other than by prescribing) controlled substances within the regular course of professional practice if and to the extent the practitioner granting the power of attorney has authorized. (For example, Dr. X and Dr. Y are partners; they shall be individually registered in order to utilize controlled substances in their practice; if Dr. X desired, he or she could issue Dr. Y a power of attorney to utilize Dr. X's office stock of controlled substances to administer an injection of product CRx to Dr. Y's Patient, Mrs. A. while she is in the office. Dr. Y may not, however, sign Dr. X's name to prescriptions, nor may Dr. Y use Dr. X's registration number to obtain stocks of controlled substances for himself or herself or his or her own office stock.) Any power of attorney, once granted, may be revoked by the grantor in writing. Nothing in this Section shall be construed to relieve the grantor of any power of attorney of any responsibility for the proper storage, record keeping, handling, or legitimate use of any controlled substances acquired by the grantor; nor shall anything be construed as relieving the grantee practitioner from full and complete responsibility for his or her actions conducted pursuant to the power of attorney or for controlled substances acquired or utilized pursuant to this paragraph.

(c) Pharmacists listed with the SC Board of Pharmacy as the "pharmacist-in-charge" of a pharmacy holding a permit issued by that Board to operate as a retail pharmacy, shall be considered as a "registrant" within the meaning of the Act and this Regulation, and shall be primarily responsible for the controlled substances activity at the registered location of the pharmacy. Nothing in this paragraph shall be construed as relieving an owner, partner, corporate officer, or any other person who may be a registrant-in-fact (due to his or her position within the business entity) from any direct or vicarious liability which may be incurred due to unlawful or ultra vires activity, nor shall it be construed to relieve any employee of the business entity from direct responsibility for his or her own unlawful acts.

(d) Individual practitioners permitted under the provisions of Federal Regulation 21 CFR § 1301.24 to dispense, administer, or prescribe controlled substances under the registration of a hospital or other institution which is registered, in lieu of personal registration, are prohibited from this practice by the provisions of S.C. Code Ann. §§ 44-53-290 and 44-53-370(a)(1). No prescriptions issued within this State shall be dispensed by any person registered with DHEC unless the individual practitioner issuing the prescription holds a valid individual practitioner registration with DEA. Nothing shall prevent the dispensing of such prescriptions if they are co-signed by an individual practitioner holding a valid individual registration with the DEA and DHEC, providing that the co-signing practitioner has established a valid practitioner-patient relationship as set forth by §§ 508.2 and 514.2 of this Regulation prior to the dispensing of the controlled substance. Nothing in this paragraph shall preclude any pharmacy or dispensary operated by the Federal government on any property or enclave not subject to State jurisdiction from any act permitted under Federal law or regulation, nor shall it preclude the dispensing of out-of-state prescriptions as permitted by § 114 of this Regulation.

110. Exemption of certain military and other personnel.

(a) The requirement of registration is waived for any official of the U.S. Army, Navy, Marine Corps, Air Force, Coast Guard, Public Health Service or Bureau of Prisons who is authorized to prescribe, dispense or administer, but not procure or purchase controlled substances in the course of his or her official duties, provided such prescribing, dispensing, and administering of controlled substances takes place upon a military reservation or other Federal enclave. Any practitioner who issues prescriptions for controlled substances which are to be dispensed from non-governmental pharmacies or dispensaries shall register with DHEC prior to issuing such prescriptions. Public Health Service practitioners who dispense controlled substances from governmental stocks shall be exempt from registration, but if such practitioners issue prescriptions to be dispensed from non-

governmental pharmacies or dispensaries, they shall register with DHEC prior to the issuance of such prescriptions.

(b) If any official exempted by this section also engages as a private individual in any activity or group of activities for which registration is required, such official shall obtain a registration for such private activities.

111. Exemption of law enforcement officials.

(a) The requirement of registration is waived for the following persons in the circumstances described in this section:

(1) Any official or employee of the DEA, U.S. Department of Justice, any officer of the U.S. Bureau of Customs, any officer or employee of the United States Food and Drug Administration, and any other federal officer who is lawfully engaged in the law enforcement of any federal law relating to controlled substances, drugs or customs, and is duly authorized to possess controlled substances in the course of his or her official duties; and

(2) Any officer or employee of any state, or any political subdivision or agency thereof, who is engaged in the enforcement of any state or local law relating to controlled substances and is duly authorized to possess controlled substances in the course of his or her official duties.

(b) Any official exempted by this section may when acting in the course of his or her official duties, possess any controlled substances and distribute any such substance to any other official who is also exempted by this section and acting in the course of his or her official duties.

(c) Any official exempted by this section may procure any controlled substance in the course of an inspection, in accordance with the Act or in the course of any criminal investigation involving the person from whom the substance was procured.

(d) In order to enable law enforcement agency laboratories to obtain and transfer controlled substances for use in chemical analysis, such laboratories shall obtain annually a registration to conduct chemical analysis. Such laboratories shall be exempted from payment of a fee for registration. Laboratory personnel, when acting in the scope of their official duties, are deemed to be officials exempted by this section and within the activity described. For purposes of this paragraph, laboratory activities shall not include field or other preliminary chemical tests by officials exempted by this section.

112. Exemption of civil defense officials.

(a) The requirement of registration is waived for any official of a civil defense or disaster relief organization who, in the course of his or her official duties, is authorized to:

(1) Maintain, and distribute for such maintenance, controlled substances held for emergency use; or

(2) Procure controlled substances for the purpose of maintaining supplies for emergency use, provided that all of such procurement is from the U.S. General Services Administration and in accordance with the rules of the U.S. Office of Emergency Preparedness.

(b) The requirement of registration is waived for any official of a civil defense or relief organization during a state of emergency or disaster within his or her jurisdiction proclaimed by the President or by a concurrent resolution of the Congress, which official, in the course of his or her official duties, during such emergency or disaster, is authorized to:

(1) Dispense controlled substances; or

(2) Procure or distribute controlled substances, provided that all such procurement is on a special "Civil Defense Emergency Order Form" as prescribed in the Federal Regulations (21 CFR § 1301.27(c)).

113. Registration regarding ocean vessels and aircrafts.

Registration of masters of ocean vessels and aircraft or the medical officers thereof shall be deemed sufficient if they are properly registered with the U.S. Department of Justice, DEA.

114. Dispensing of out-of-state prescriptions and orders.

(a) Prescriptions or orders for controlled substances from out-of-state practitioners may be filled in good faith by dispensers provided:

(1) The dispenser knows the recipient; or requires proper ID and notes such on the prescription.

(2) The dispenser makes a good faith inquiry concerning whether the order or prescription is legitimate;

(3) The prescription or order meets all of the requirements of this regulation and the Act, including whether the order or prescription is for legitimate medical purposes, and is within the regular course of practice of the practitioner.

(4) The practitioner who issued the prescription would ordinarily be entitled to issue prescriptions under SC law (i.e., physicians, dentists, veterinarians, and podiatrists are authorized to issue prescriptions; chiropractors, psychologists, etc. are not authorized to prescribe drugs);

(5) The prescribing practitioner holds a valid individual Federal [D.E.A.] controlled substance registration number in the state, district, or territory of origin of the prescription, or is exempt from such registration requirement under the provisions of Federal Regulation 21 CFR § 1301.24.

(b) Out-of-State prescriptions which do not conform to SC law (i.e., prescriptions for amphetamines not permitted under S.C. Code Ann. § 40-47-65, methadone other than as set forth by §§ 507 through 507.5 of these regulations, unapproved uses or excessive quantities within the meaning of S.C. Code Ann. § 44-53-360, etc.) and which are not otherwise exempted shall not be dispensed.

Application for Registration

115. Time for application for registration; expiration date.

(a) Any person who is required to be registered and who is not so registered may apply for registration at any time. No person required to be registered shall engage in any activity for which registration is required until the application for registration is granted and a Certificate of Registration is issued by the Director to such person.

(b) Any person who is registered may apply to be reregistered not more than 60 days before the expiration date of his or her registration.

(c) Fees for registration for a physician shall be from October 2nd of the year until October 1st of the succeeding year. Fees for registration for any other person required to be registered shall be from April 2nd of the year until April 1st of the succeeding year. In the event any physician shall become registered subsequent to October 1st of any year, the entire registration fee shall be due and no pro-rata of fees will be allowed. In the event any other person required to be registered shall become registered subsequent to April 1st of any year, the entire registration fee shall be due and no pro-rata of fees will be allowed.

116. Application forms; content; signature.

(a) If the person is required to be registered, and is not so registered and is applying for registration;

(1) To manufacture or distribute controlled substances, he or she shall apply on DHEC Form 225/227;

(2) To dispense narcotic or non-narcotic, or to conduct instructional activities with narcotic or non-narcotic controlled substances listed in schedules II through V, he or she shall apply on DHEC form 224;

(3) To conduct research with any controlled substances listed in schedules II through V, he or she shall apply on Form 225/227;

(4) To conduct research with a controlled substance listed in schedule I, he or she shall apply on Form 225/227, with three copies of a research protocol describing the research project attached to the form;

(5) To conduct instructional activities with a controlled substance listed in schedule I, he or she shall apply as a researcher on Form 225/227, with two copies of a statement describing the nature, extent, and duration of such instructional activities attached to the form; and

(6) To conduct chemical analysis with controlled substances listed in any schedule, he or she shall apply on Form 225/227.

(b) Application forms may be obtained by writing to the Bureau of Drug Control, DHEC, 2600 Bull Street, Columbia, SC 29201. Renewal forms will be mailed, as applicable, to each registered person approximately 60 days before the expiration date of his or her registration; if any registered person does not receive such forms within 45 days before the expiration date of his or her registration, he or she shall promptly give notice of such fact and request such forms by writing to the Bureau of Drug Control at the foregoing address.

(c) Each application for registration to handle any basic class of controlled substances listed in schedule I (except to conduct chemical analysis with such classes), and each application for registration to manufacture a basic class of controlled substance listed in schedule II, or to conduct research with any Narcotic controlled

substance listed in schedule II, shall include the Controlled Substances Control Number, as set forth in Part 7 of these Regulations for each basic class or substance to be covered by such registration.

(d) Each application shall include all information called for in the form, unless the item is not applicable, in which case this fact shall be indicated.

(e) Each application, attachment, or other document files as part of an application, shall be signed by the applicant, if an individual; by a partner of the applicant, if a partnership; or by an officer of the applicant, if a corporation, corporate division, association, trust or other entity. Another person may be authorized to sign for the applicant, if proof of authority (e.g. general power of attorney) accompanies the application.

117. Research Protocols.

(a) Applicants for "Researcher" registration in Schedule I shall submit a research protocol containing all the information required for Federal Schedule I research protocol set forth under 21 CFR § 1301.32.

(b) Practitioners registered with DHEC desiring to perform incidental research on or with controlled substances under the provisions of S.C. Code Ann. § 44-53-300(c) are not required to furnish the formal protocol (except for narcotic substances as is required under Federal law), but shall instead provide a written summary of the proposed research, including the scope, the substance to be utilized, the number of research subjects (and their identity if protection from prosecution is desired), the duration of the research and the estimated usage of the controlled substance. Insofar as is practical, the dispensing of the controlled substance utilized in a valid research project shall be performed by the researcher or a particular dispenser or small group of dispensers in order to maintain adequate control. While not imperative to DHEC, notice of any participating dispensaries or pharmacies should be made to the Bureau of Drug Control in order that inadvertent and unnecessary investigations of normally unusual dispensing practices may be avoided.

(c) DHEC may require additional information or updating of protocols from time to time, but not more often than annually, unless a major change or deviation from previously submitted protocols or summaries is discovered. It is the responsibility of the person conducting the research project to notify to Department prior to any change in a protocol.

118. Filing an application; joint filings.

(a) All applications for registration shall be submitted for filing to the Bureau of Drug Control, DHEC, 2600 Bull Street, Columbia, SC 29201. The appropriate registration fee and any required attachments shall accompany the application.

(b) Any person required to obtain more than one registration may submit all applications in one package. Each application shall be complete and should not refer to any accompanying application for required information.

119. Acceptance for filing; defective applications.

(a) Applications submitted for filing are dated upon receipt. If complete, the application will be accepted for filing. Applications failing to comply with the requirements of this part will not generally be accepted for filing. In the case of minor defects as to completeness, the Director may accept the application for filing with a request to the applicant for additional information. A defective application will be returned to the applicant within 10 days following its receipt with a statement of the reason for not accepting the application for filing. A defective application may be corrected and resubmitted for filing at any time; the Director shall accept for filing any application upon re-submission by the applicant, whether complete or not.

(b) Accepting an application for filing does not preclude any subsequent request for additional information pursuant to § 120 and has no bearing on whether the application will be granted.

120. Additional information.

The Director may request an applicant to submit such documents or written statements of fact relevant to the application as he or she deems necessary to determine whether the application should be granted. The failure of the applicant to provide such documents or statements within a reasonable time after having been requested to do so shall be deemed to be a waiver by the applicant of an opportunity to present such documents or facts for consideration by the Director in granting or denying the application.

121. Amendments to and withdrawal of applications.

(a) An application may be amended or withdrawn without permission of the Director at any time before the date on which the applicant receives an order to show cause pursuant to § 129 or before the date on which a notice of hearing on the application is published pursuant to § 124 whichever is sooner. An application may be amended or withdrawn with permission of the Director at any time where good cause is shown by the applicant or where the amendment or withdrawal is in the public interest.

(b) After an application has been accepted for filing, the request by the applicant that it be returned or the failure of the applicant to respond to official correspondence regarding the application, when sent by registered or certified mail, return receipt requested, shall be deemed to be a withdrawal of the application.

Action on Applications for Registration; Revocation or Suspension of Registration

122. Administrative review generally.

The Director may inspect, or cause to be inspected the establishment of an applicant or registrant, pursuant to the Act or this Regulation. The Director shall review the application for registration and other information gathered by the Bureau of Drug Control regarding an applicant in order to determine whether the applicable standards of the Act have been met by the applicant.

123. Applications for research in controlled Schedule I substances.

(a) In the case of an application for registration to conduct research with controlled substances, the Director shall refer such application to the Commissioner who shall determine the qualifications and competency of the applicant as well as the merits of the research protocol. The Director, in determining the merits of a research protocol, shall consider procedures to effectively safeguard against diversion of such controlled substances from legitimate medical or scientific use. If the Director finds the applicant qualified and competent and the research protocol meritorious and adequately safeguarded, he shall register the applicant unless he finds registration should be denied on a ground specified in the Act.

(b) If the Director is unable to find the applicant qualified or finds that grounds exist for the denial of the application, the Director shall issue an order to show cause pursuant to § 129 and, if requested by the applicant, hold a hearing on the application pursuant to § 130.

124. Application for bulk manufacture of Schedules I and II substances.

The Director shall coordinate applications for bulk manufacture of schedules I and II controlled substances with the DEA of the U.S. Department of Justice. Applications may be received by the Director for such bulk manufacture, but shall not be acted upon until tentative or conditional approval is made by the appropriate federal agency, and after such notifications, publications, and other actions required by Chapter II, Title 21, Code of Federal Regulations [21 CFR §1301, ff.] are effected by the applicant.

124.1. Provisional Registration

(a) The Director, in his or her discretion, may grant provisional registration as a Researcher, Manufacturer, Distributor, Importer, or Exporter to any applicant, pending such applicant's obtaining a registration under Federal law. The duration of such provisional registration shall not exceed one year, and may not be renewed. Upon the granting of Federal registration, the provisional registration may be converted to a permanent registration by DHEC, which may renew such registration in the same manner as any other regular registration. If the Director does not find it in the public interest to grant a provisional registration, or to convert a provisional registration into a regular registration in the manner provided above, procedures set forth in S.C. Code Ann. § 44-53-320 for denial of registration shall be followed.

(b) Provisional registration does not entitle the applicant (i.e., the provisional registrant) to conduct any controlled substances activity within this State until such time as the applicant obtains a valid Federal [DEA] registration for the identical activity at the same registered location.

125. Certificate of Registration; denial of registration.

(a) The Director shall issue a Certificate of Registration (Form 223) to an applicant if the issuance of registration or re-registration is required under the applicable provisions of the Act. In the event that the issuance

of registration or re-registration is not required, the Director shall deny the application. Before denying any application, the Director shall issue an order to show cause pursuant to § 129 and, if requested by the applicant, shall hold a hearing on the application pursuant to § 130.

(b) The Certificate of Registration (Form 223) shall contain the name, address, and registration number of the registrant, the activity authorized by the registration, the schedules and/or Controlled Substances Code Number (as set forth in Part 7 of this chapter) of the controlled substances which the registrant is authorized to handle, the amount of fee paid (or exemption), and the expiration date of the registration. The registrant shall maintain the Certificate of Registration at the registered location in a readily retrievable manner and shall permit inspection of the certificate by any official, agent or employee of the DEA or of any federal, state, or local agency engaged in enforcement of laws relating to controlled substances.

126. Suspension or revocation of registration.

(a) The Director may suspend any registration pursuant to the Act for any period of time he determines.

(b) The Director may revoke any registration pursuant to the Act.

(c) Before revoking or suspending any registration, the Director shall issue an order to show cause pursuant to § 129 and, if requested by the registrant shall hold a hearing pursuant to § 130. Notwithstanding the requirements of this section, however, the Commissioner may suspend any registration pending a final order pursuant to § 127.

(d) Upon service of the order of the Director suspending or revoking registration, the registrant shall immediately deliver his or her Certificate of Registration and any forms to his or her possession to the office of the Bureau of Drug Control. The suspension or revocation of a registration shall suspend or revoke any individual manufacturing or procurement quota fixed for the registrant. Also, upon service of the order of the Director suspending or revoking registration, the registrant shall:

(1) Deliver all controlled substances in his or her possession to the office of the Bureau of Drug Control or to authorized agents of the Bureau of Drug Control; or

(2) Place all controlled substances in his or her possession under seal as described in the Act.

(e) In the event that revocation or suspension is limited to a particular controlled substance or substances, the registrant shall be given a new Certificate of Registration for all substances not affected by such revocation or suspension; no fee shall be required to be paid for the new Certificate of Registration. The registrant shall deliver the old Certificate of Registration and, if appropriate, any order forms in his or her possession to the office of the Bureau of Drug Control. The suspension or revocation of a registration, when limited to a particular basic class or classes of controlled substances, shall suspend or revoke any individual manufacturing or procurement quota fixed for the registrant for such class or classes. Also, upon service of the order of the Director revoking or suspending registration, the registrant shall:

(1) Deliver to the office of the Bureau of Drug Control or to authorized agents of the Bureau of Drug Control all of the particular controlled substances or substances affected by the revocation or suspension which are in his or her possession; or

(2) Place all of such substances under seal as described in the Act.

127. Suspension of registration pending final order.

(a) The Director may suspend any registration simultaneously with or at any time subsequent to the service upon the registration of an order to show cause why such registration should not be revoked or suspended, in any case where he or she finds there is an imminent danger to the public health or safety. If the Director so suspends, he or she shall serve with the order to show cause pursuant to § 129 an order of immediate suspension, which shall contain a statement of his or her findings regarding the danger in public health or safety.

(b) Upon service of the order of immediate suspension, the registrant shall promptly return his or her Certificate of Registration and any order forms in his or her possession to the office of the Bureau of Drug Control. The suspension of any registration under this section shall suspend any quota fixed for the registrant. Also, upon service of the order of the Director immediately suspending registration, the registrant shall, as instructed by the Director:

(1) Deliver all affected controlled substances in his or her possession to the office of the Bureau of Drug Control or to authorized agents of the Bureau of Drug Control; or

(2) Place all of such substances under seal as described in the Act.

(c) Any suspension shall continue in effect until the conclusion of all proceedings upon the revocation or suspension, including any judicial review thereof, unless sooner withdrawn by the Director or dissolved by a court of competent jurisdiction. Any registrant whose registration is suspended under this section may request a hearing on the revocation or suspension of his or her registration at as time earlier than specified in the order to show cause pursuant to § 129, which request shall be granted by the Director, who shall fix a date for such hearing as early as reasonably possible.

128. Extension of registration pending final order.

In the event that an applicant for re-registration (who is doing business under a registration previously granted and not revoked or suspended) has applied for re-registration of at least 45 days before the date on which the existing registration is due to expire, and the Director has issued an order on the application on the date on which the existing registration is due to expire, the existing registration of the applicant shall automatically be extended and continue to effect until the date on which the Director so issues his or her order.

The Director may extend any other existing registration under the circumstances contemplated in this section even though the registrant failed to apply for re-registration; at least 45 days before expiration of the existing registration, with or without request by the registrant, if the Director finds that such extension is not inconsistent with the public health and safety.

129. Order to show cause.

(a) If, upon examination of the application for registration from any applicant and other information gathered by the Bureau of Drug Control regarding the applicant, the Director is unable to make the determinations required by the applicable provisions of the Act to register the applicant, the Director shall serve upon the applicant an order to show cause why the registration should not be denied.

(b) If, upon information gathered by the Bureau of Drug Control regarding any registrant, the Director determines that the registration of such registrant is subject to suspension or revocation to the Act, the Director shall serve upon the registrant an order to show cause why the registration should not be revoked or suspended.

(c) The order to show cause shall call upon the applicant or registrant to appear before a hearing officer at a time and place stated in the order, which shall not be less than 30 days after the date of receipt of the order. The order to show cause shall also contain a statement of the legal basis for such hearing and for the denial, revocation, or suspension of registration and a summary of the matters of fact and law asserted.

(d) Upon receipt of an order to show cause, the applicant or registrant shall, if he or she desires a hearing, file a request for a hearing in writing. If a hearing is requested, the hearing officer shall hold a hearing at the time and place stated in the order, pursuant to § 131.

(e) When authorized by the Director, any agent of the Bureau of Drug Control may serve the order to show cause, or service may be effected by registered or certified mail.

130. Hearing generally.

(a) In any case where the hearing officer shall hold a hearing on any registration or application therefore, the procedures for such hearing shall be governed generally by the adjudication procedures set forth by statute or by the Attorney General's Office.

(b) Any hearing under this part shall be independent of, and not in lieu of, criminal prosecutions or other proceedings under the Act of any other law of this State or the United States.

131. Purpose of hearing.

If requested by a person entitled to a hearing the hearing officer shall hold a hearing for the purpose of receiving factual evidence regarding the issues involved in the denial, revocation, or suspension of any registration, and the granting of any application for registration to manufacture in bulk a basic class of controlled substances listed in schedules I or II. Extensive argument should not be offered into evidence but rather presented in opening or closing statements of counsel or in memoranda or proposed findings of fact and conclusions of law.

132. Waiver and modification of rules.

The Commissioner or the presiding officer (with respect to matters pending before him or her) may modify or waive any rules in this part by notice in advance of the hearing, if he or she determines that no party in the hearing will be unduly prejudiced and the ends of justice will thereby be served. Such notice of modification or waiver shall be made a part of the record of the hearing.

133. Request for hearing or appearance; waiver.

(a) Any person entitled to a hearing pursuant to §§ 123-126 and desiring a hearing shall, within 30 days after the date of receipt of the order to show cause, file with the Commissioner a written notice for a hearing.

(b) Any person entitled to and desiring to participate in a hearing pursuant to § 124 and desiring to do so shall, within 10 days of the date of the hearing, file with the Commissioner a written notice of his or her intention to participate in such hearing.

(c) Any person entitled to a hearing or to participate in a hearing pursuant to §§ 123-126 may, within the period permitted for filing a request for a hearing or a notice of appearance, file with the Commissioner a waiver of an opportunity for a hearing or to participate in a hearing, together with a written statement regarding his or her position on the matters of fact and law involved in such hearing. Such statement, if admissible, shall be made a part of the record and shall be considered in light of the lack of opportunity for cross-examination in determining the weight to be attached to matters of fact asserted therein.

(d) If any person entitled to a hearing or to participate in a hearing pursuant to §§ 123-126 fails to file a request for a hearing or a notice of appearance, or if he so files and fails to appear at the hearing, he shall be deemed to have waived his or her opportunity for the hearing or to participate in the hearing, unless he show good cause for such failure.

(e) If all persons entitled to a hearing or to participate in a hearing waive or are deemed to waive their opportunity for the hearing or to participate in the hearing, the Commissioner may cancel the hearing if scheduled, and issue his or her final order pursuant to § 136 without a hearing.

134. Burden of proof.

(a) At any hearing on an application to manufacture any controlled substance listed in schedule I or II, the applicant shall have the burden of proving that the requirements for such registration pursuant to the Act are satisfied. Any other person participating in the hearing pursuant to § 124 shall have the burden of proving any proposition of fact or law asserted to him or her in the hearing.

(b) At any hearing on the granting or denial of an application to be registered to conduct a narcotic treatment program or as a compounder, the applicant shall have the burden of proving that the requirements for each registration pursuant to S.C. Code Ann. § 44-53-290(i) are satisfied.

(c) At any other hearing for the denial of a registration, DHEC shall have the burden of proving that the requirements for such registration pursuant to the Act are not satisfied.

(d) At any hearing for the revocation or suspension of a registration, DHEC shall have the burden of proving that the requirements of the Act for such suspension or revocation are satisfied.

135. Time and place of hearing.

The hearing will commence at the place and time designated in the order to show cause or notice of hearing (unless expedited pursuant to § 127) but thereafter it may be moved to a different place and may be continued from day to day or recessed to a later day without notice other than announcement thereof by the presiding officer at the hearing.

136. Final order.

As soon as practicable after the hearing officer has certified the record to the Commissioner, the Commissioner shall certify his or her order on the granting, denial, revocation, or suspension of registration.

137. Modification in registration.

Any registrant may apply to modify his or her registration to authorize the handling of additional controlled substances or to change his or her name or address, by submitting a letter of request to the Bureau of Drug

Control, DHEC, 2600 Bull Street, Columbia, SC 29201. The letter shall contain the registrant's name, address, and registration number as printed on the Certificate of Registration, and the substances and/or schedules to be added to his or her registration or the new name or address and shall be signed in accordance with § 116(e). If the modification in registration is approved, the Director shall issue a new Certificate of Registration (Form 223) to the registrant, who shall maintain it with the old Certificate of Registration until expiration.

138. Termination of registration.

The registration of any person shall terminate if and when such person dies, ceases legal existence, or discontinues business or professional practice. Any registrant who ceases legal existence or discontinues business or professional practice shall notify the Director promptly of such fact.

138.1 Termination of registration; Partnerships and Corporations; other business entities.

(a) Upon the transfer of ownership of a controlling interest in any partnership, corporation, holding company, association, or other business entity holding a registration under the Act, which is not a personal registration as an individual or a proprietorship registration involving a single individual registrant, the registration held prior to any transfer of any controlling interest or controlling ownership shall terminate upon the effective date of the transfer, and a new registration shall be obtained if the business entity is to continue controlled substances activity. DHEC may, in its discretion, permit a transferor-registrant to permit the transferee to continue operation pursuant to a written power of attorney for a period of not more than sixty days, during the pendency of obtaining a new registration for the transferee.

(b) If the control of a corporation already registered under the Act shall be acquired by another corporation not registered under the Act, the acquiring corporation need not obtain a separate registration for itself, unless merger takes place; the corporation acquired shall, however, obtain a new registration even if there is no change in corporate officers if it intends to continue controlled substances activity. In the event a merger is effected between the acquiring corporation and the acquired corporation (regardless of the surviving or ensuing name) the acquiring corporation shall obtain a new registration in its own name, or in the name of the successor or ensuing corporation (if different) prior to engaging in controlled substances activity. Successor corporations shall be deemed to be new business entities, and shall obtain new registration prior to conducting controlled substances activity.

139. Transfer of registration.

No registration or authority conferred thereby shall be assigned or otherwise transferred except upon conditions as the Director may specifically designate and then only pursuant to his or her written consent.

Security Requirements

140. Security requirements generally.

(a) All applicants and registrants shall provide effective controls and procedures to guard against theft and diversion of controlled substances. In order to determine whether a registrant has provided effective controls against diversion, the Director shall use the security requirements set forth in §§ 141-145 as standards for the physical security controls and operating procedures necessary to diversion. Materials and construction which will provide a structural equivalent to the physical security controls set forth in §§ 141, 142, and 144 may be used in lieu of the materials and construction described in those sections.

(b) Substantial compliance with the standards set forth in §§ 141-145 may be deemed sufficient by the Director after evaluation of the overall security system and needs of the applicant or registrant. In evaluating the overall security system of a registrant or applicant, the Director may consider any of the following factors as he may deem relevant to the need for strict compliance with security requirements:

(1) The type of activity conducted (e.g., processing of bulk chemicals, preparing dosage forms, packaging, labeling, cooperative buying, etc.);

(2) The type and form of controlled substances handled (e.g., bulk liquids or dosage units, usable powders or non-usable powders);

(3) The quantity of controlled substances handled;

(4) The location of the premises and the relationship such location bears on security needs;

(5) The type of building construction comprising the facility and the general characteristics of the building or buildings;

(6) The type of vault, safe, and secure enclosures or other storage systems (e.g., automatic storage and retrieval system) used;

(7) The type of closures on vaults, safes, and secure enclosures;

(8) The adequacy of key control systems and/or combination lock control system;

(9) The adequacy of electric detection and alarm systems if any, including use of supervised transmittal lines and standby power sources;

(10) The extent of unsupervised public access to the facility, including the presence and characteristics of perimeter fencing, if any,

(11) The adequacy of supervision over employees having access to manufacturing and storage area;

(12) The procedures for handling business guests, visitors, maintenance personnel, and non-employees service personnel;

(13) The availability of local police protection or of the registrant's or applicant's security personnel; and

(14) The adequacy of the registrant's or applicant's system for monitoring the receipt, manufacture, distribution, and disposition of controlled substances in its operations.

(c) When physical security controls become inadequate as a result of a controlled substance being transferred to a different scientific schedule, or as a result of a non-controlled substance being listed on any schedule, or as a result of a significant increase in the quantity of controlled substances in the possession of the registrant during normal business operations, the physical security controls shall be expanded and extended accordingly. A registrant may adjust physical security controls within the requirements set forth in §§ 141-145 when the need for such controls decreases as a result of a controlled substance being transferred to a different schedule, or a result of a controlled substance being removed from control, or as a result of a significant decrease in the quantity of controlled substances in the possession of the registrant during normal business operations.

(d) Any registrant or applicant desiring to determine whether a proposed security system substantially complies with, or is the structural equivalent of, the requirements set forth in §§ 141-145 may submit any plans, blueprints, sketches or other materials regarding the proposed security system either to the Director or to the Compliance Investigations Division, DEA, Department of Justice, Washington, DC 20537.

(e) Physical security controls of locations registered under the Harrison Act or the Narcotics Manufacturing Act of 1960 on April 30, 1971, shall be deemed to comply substantially with the standards set forth in §§ 141, 142, and 144. Any new facilities or work or storage areas constructed or utilized for controlled substances, which facilities or work or storage areas have not been previously approved by the Bureau of Drug Control, shall not necessarily be deemed to comply substantially with the standards set forth in §§ 141, 142, and 144

notwithstanding that such facilities or work or storage areas have physical security controls similar to those previously approved.

141. Physical security controls for non-practitioners; storage areas.

(a) Schedules I and II. Raw materials, bulk materials awaiting further processing, and finished products which are controlled substances listed in schedules I and II shall be stored in one of the following secure storage areas:

(1) Where small quantities permit, a safe or steel cabinet:

(i) Which safe or steel cabinet shall have the following specifications or the equivalent: 30 man-minutes against surreptitious entry, 10 man-minutes against forced entry, 20 man-minutes against lock manipulation, and 20 man-minutes against radiological techniques.

(ii) Which safe or steel cabinet, if it weighs less than 750 pounds, is bolted or cemented to the floor or wall in such a way that it cannot be readily removed; and

(iii) Which safe or steel cabinet, if necessary, depending upon the quantities and type of controlled substances stored, is equipped with an alarm system which, upon attempted unauthorized entry, shall transmit a signal directly to a central protection company or a local or state police agency which has a legal duty to respond, or a 24-hour control station operated by the registrant, or such other protection as the Director may approve.

(2) A vault constructed before, or under construction on, September 1, 1971, which is of substantial construction with a steel door, combination or key lock, and an alarm system and

(3) A vault constructed after September 1, 1971:

(i) The walls, floors, and ceilings of which vaults are constructed of at least 8 inches of reinforced concrete or other substantial masonry, reinforced vertically and horizontally with ½ inch steel rods tied 6 inches on center, or the structural equivalent to such reinforced walls, floors and ceilings;

(ii) The door and frame of which vault shall conform to the following specifications or the equivalent; 30 man-minutes against surreptitious entry, 10 man-minutes against forced entry, 20 man-hours against local manipulation, and 20 man-hours against radiological techniques.

(iii) Which vault, if operations require it to remain open for frequent access, is equipped with a "day-gate" which is self-closing and self-locking, or the equivalent, for use during the hours of operation in which the vault door is open;

(iv) The walls or perimeter of which vault are equipped with an alarm, which upon unauthorized entry shall transmit a signal directly to a central station protection company, or a local or state police agency which has a legal duty to respond, or a 24-hour control station operated by the registrant as the Bureau of Drug Control may approve and, if necessary, holdup buttons at strategic points of entry to the perimeter area of the vault;

(v) Which vault has one of the following: complete electrical lacing of the walls, floor and ceilings; sensitive ultrasonic equipment within the vault; a sensitive sound accumulator system; or such other device designed to detect illegal entry as may be approved by the Bureau of Drug Control.

(b) Schedules III, IV and V. Raw materials, bulk materials awaiting further processing and finished products which are controlled substances listed in schedules III, IV, and V shall be stored in one of the following secure storage areas:

(1) Where small quantities permit, a safe which complies with the requirements set forth in paragraph (a)(1) of this section;

(2) A vault which complies with the requirements set forth in either paragraph (a)(2) or (3) of this section; equipped with an alarm system as described in paragraph (b) (4) (v) of this section;

(3) A building used for storage of Schedules III through V controlled substances with perimeter security which limits access during working hours and provides security after working hours and meets the following specifications:

(i) Has an electronic alarm system as described in paragraph (b) (4) (v) of this section,

(ii) Is equipped with self-closing, self-locking doors constructed of substantial material commensurate with the type of building construction, provided, however, a door which is kept closed and locked at all times when not in use, and when in use is kept under direct observation of a responsible employee of the agent or registrant is permitted in lieu of a self-closing, self-locking door. Doors may be sliding or hinged. Regarding hinged doors, where hinges are mounted on the outside, such hinges shall be sealed, welded, or

otherwise constructed to inhibit removal. Locking devices for such doors shall be either of the multiple-position combination or key lock type and:

(a) In the case of key locks, shall require key control which limits access to a limited number of employees, or;

(b) In the case of combination locks, the combination shall be limited to a minimum number of employees and can be changed upon termination of employment of an employee having knowledge of the combination;

(4) A cage, located within a building on the premises, meeting the following specifications:

(i) Having walls constructed of not less than No. 10 gauge steel posts, which posts are:

(a) at least one inch in diameter;

(b) set in concrete or installed with lag bolts that are pinned or brazed; and

(c) which are placed no more than 10 feet apart with horizontal one and one-half inch reinforcements every sixty inches;

(ii) Having a mesh construction with openings of not more than two and one-half inches across the square,

(iii) Having a ceiling constructed of the same material, or in the alternative, a cage shall be erected which reaches and is securely attached to the structural ceiling of the building. A lighter gauge mesh may be used for the ceilings of large enclosed areas if walls are at least 14 feet in height.

(iv) Is equipped with a door constructed of No. 10 gauge steel fabric on a metal door frame in a metal door flange, and in all other respects conforms to all of the requirements of subparagraph (b)(3)(ii) of this section, and

(v) Is equipped with an alarm system which upon unauthorized entry shall transmit a signal directly to a central station protection agency, or a local or state police agency, each having a legal duty to respond, or a 24-hour control station operated by the registrant, or to such other source of protection that the Director may approve;

(5) An enclosure of masonry or other material, approved in writing by the Director as providing security comparable to a cage;

(6) A building or enclosure within a building which has been inspected and approved by DEA or its predecessor, agency, BNDD, and continues to provide adequate security against the diversion of Schedule III through V controlled substances, of which fact written acknowledgment from DEA (BNDD) has been received for the area in which such building or enclosure is situated;

(7) Such other secure storage areas as may be approved by the Director after consulting with DEA and the factors listed in § 140(b)(1) through (14) of this regulation;

(8) (i) Schedule III through V controlled substances may be stored with Schedules I and II controlled substances under security measures provided by paragraph (a) of this section;

(ii) Non-controlled drugs, substances, and other materials may be stored with Schedule III through V controlled substances in any of the secure storage areas required by this section, provided, that permission for such storage of non-controlled substances has been obtained in advance, in writing, from both the Director and the DEA agent in charge of the area in which such storage area is situated [See 21 CFR § 1301.72 (b)(8)(ii)]. Any such permission shall be based upon the determination that the storage of such items does not diminish security for the controlled substances.

(c) Multiple store areas. Where several types or classes of controlled substances are handled separately by the registrant or applicant for different purposes (e.g. returned goods, or goods in process), the controlled substances may be stored separately, provided that each storage area complies with the requirements set forth in this section.

(d) Accessibility to storage areas. The controlled substances storage areas shall be accessible only to an absolute minimum number of specifically authorized employees. When it is necessary for employee maintenance personnel, non-employee maintenance personnel, business guests, or visitors to be present in or pass through controlled substances storage areas, the registrant shall provide for adequate observation of the area by an employee specifically authorized in writing.

142. Physical security controls for non-practitioners; manufacturing areas.

All manufacturing activities (including processing, packaging, and labeling) involving controlled substances listed in any schedule and all activities of compounders shall be conducted in accordance with the following:

(a) All in-process substances shall be returned to the controlled substances storage area at The termination of the process. If the process is not terminated at the end of a workday (except where a continuous process or other normal manufacturing operation should not be interrupted), the processing area or tanks, vessels, bins or bulk containers containing such substances shall be securely locked, with adequate security for the area or building. If such security requires an alarm, such alarm, upon unauthorized entry, shall transmit a signal directly to a central station protection company, or local or state police agency which has a legal duty to respond, or a 24-hour control station operated by the registrant.

(b) Manufacturing activities with controlled substances shall be conducted in an area or areas of clearly defined limited access which is under surveillance by an employee or employees designated in writing as responsible for the area. "Limited access" may be provided in the absence of physical dividers such as walls or partitions, by traffic control lines or restricted space designation. The employee designated as responsible for the area may be engaged in the particular manufacturing operation being conducted, provided, that he is able to provide continuous surveillance of the area in order that unauthorized persons may not enter or leave the area without his or her knowledge.

(c) During the production of controlled substances, the manufacturing areas shall be accessible to only those employees required for efficient operation. When it is necessary for employee maintenance personnel, non-employee maintenance personnel, business guests, or visitors to be present in or pass through manufacturing areas during production of controlled substances, the registrant shall provide for adequate observation of the area by an employee specifically authorized in writing.

143. Other security controls for non-practitioners; narcotic treatment programs and compounders for narcotic treatment programs.

(a) Before distributing a controlled substance to any person who the registrant does not know to be registered to possess the controlled substance, the registrant shall make a good faith inquiry either with the DEA or with the state controlled registration agency to determine that the person is registered to possess the controlled substance.

(b) The registrant shall design and operate a system to alert the registrant of suspicious orders of controlled substances. The registrant shall inform the Bureau of Drug Control of suspicious orders when discovered by the registrant. Suspicious orders include orders of unusual size, orders deviating substantially from a normal pattern, and orders of unusual frequency.

(c) The registrant shall notify the office of the Bureau of Drug Control of any theft or significant loss of any controlled substances upon discovery of such theft or loss. The supplier shall be responsible for reporting in-transit losses of controlled substances by the contract or common carrier pursuant to subparagraph (e) of this section, upon discovery of such theft or loss. The registrant shall also complete DEA Form 106 regarding such theft or loss. Thefts shall be reported whether or not the controlled substances are subsequently recovered and/or the responsible parties are identified and action taken against them.

(d) The registrant shall not distribute any controlled substances in schedules II through V as a complimentary sample to any potential or current customer (1) without the prior written request of the customer, (2) to be used only for satisfying the legitimate medical needs of patients of the customer and (3) only in reasonable quantities. Such request shall contain the name, address, and registration number of the customer and the name and quantity of the specific controlled substances desired. The request shall be preserved by the registrant with other records of distribution of controlled substances. In addition, the requirements of Part 4 of the Regulation shall be complied with for any distribution of a controlled substance listed in schedule II. For purposes of this paragraph, The term "customer" includes a person to whom a complimentary sample of a substance is given in order to encourage the prescribing or recommending of the substance to the person.

(e) When shipping controlled substances, a registrant is responsible for selecting common or contract carriers, which provide adequate security to guard against in-transit losses. When storing controlled substances in a public warehouse, a registrant is responsible for selecting a warehouseman which will provide adequate security to guard against storage losses; wherever possible, the registrant shall store controlled substances in a public warehouse which complies with the requirements set forth in § 141. In addition, the registrant shall employ precautions (e.g. assuring that shipping containers do not indicate the contents are controlled substances) to guard against storage or in-transit losses.

(f) When distributing controlled substances through agents (e.g., detail men), a registrant is responsible for providing adequate security to guard against theft and diversion while the substances are being stored or handled by the agent or agents.

(g) Before the initial distribution of etorphine hydrochloride and/or diprenorphine to any person, the registrant shall verify that the person is authorized to handle the substance(s) by contacting the Bureau of Drug Control and DEA.

(h) The acceptance of delivery of narcotic substances by a narcotic treatment program shall be made only by a licensed practitioner employed at the facility or other authorized individuals designated in writing. At the time of delivery, the licensed practitioner or other authorized individual designated in writing (excluding persons currently or previously dependent on narcotic drugs), shall sign for the narcotics and place his or her specific title (if any) on any invoice. Copies of these signed invoices shall be kept by the distributor.

(i) Narcotics dispensed or administered at a narcotic treatment program will be dispensed or administered directly to the patient by either (1) the licensed practitioner, (2) a registered nurse under the direction of the licensed practitioner, (3) a licensed practical nurse (LPN) under the direction of the licensed practitioner, or (4) a pharmacist acting under a prescription or an order issued by the licensed practitioner.

(j) Persons enrolled in a narcotic treatment program will be required to wait in an area physically separated from the narcotic storage and dispensing area. This requirement will be enforced by the program physician and employees.

(k) All narcotic treatment programs shall comply with standards established by the appropriate Federal authorities [see 21 CFR § 1301.74(k)] and the Bureau of Drug Control, and the provisions of S.C. Code Ann. §§ 44-53-710 through 44-53-760 respecting the quantities of narcotic drugs that may be provided to persons enrolled in a narcotic treatment program for unsupervised use.

(l) DEA and the Bureau of Drug Control may exercise discretion regarding the degree of security required in narcotic treatment programs based upon such factors as the location of the program, the number of patients enrolled in a program, and the number of physicians, staff members, and security guards. Similarly, such factors will be taken into consideration when evaluating existing security or requiring new security at a narcotic treatment program.

144. Physical security controls for practitioners.

(a) Controlled substances listed in schedule I shall be stored in a securely locked, substantially constructed cabinet.

(b) Controlled substances listed in schedules II, III, IV, and V shall be stored in a securely locked, substantially constructed cabinet. However, pharmacies may disperse such substances throughout the stock of non-controlled substances in such a manner as to obstruct the theft or diversion of the controlled substances.

(c) This section shall also apply to non-practitioners authorized to conduct research or chemical analysis under another registration.

(d) Etorphine hydrochloride and diprenorphine shall be stored in a safe or steel cabinet equivalent to a U.S. Government Class V security container.

145. Other security controls of practitioners.

(a) The registrant shall not knowingly employ as an agent or employee, who has access to controlled substances, any person who has been convicted of a felony offense relating to controlled substances or who, at any time, had an application for registration denied, or has had his or her registration revoked, at any time.

(b) The registrant shall notify the Bureau of Drug Control, DHEC, of the loss or theft of any controlled substances upon discovery of such loss or theft. The registrant shall also complete DEA Form 106 regarding such loss or theft. The Bureau of Drug Control will forward copies of DEA Form 106 to the appropriate federal authority.

(c) The registrant shall notify the Bureau of Drug Control of any theft or significant loss of any controlled substances upon discovery of such theft or loss. The supplier shall be responsible for reporting in-transit losses of controlled substances by the common or contract carrier selected pursuant to 21 CFR § 1301.74(e), upon discovery of such theft or loss. Thefts shall be reported whether or not the controlled substances are subsequently recovered and/or the responsible parties are identified and action taken against them.

(d) Whenever the registrant distributes a controlled substance (without being registered as a distributor, as permitted by § 107(b) and/or §§ 604 through 607 of this Regulation) he or she shall comply with the requirements imposed on non-practitioners in § 143(a), (b), and (e).

146. Significant loss by diversion due to repeated thefts.

(a) Any registrant who suffers repeated significant losses of controlled substances by theft due to break-ins, employee theft, mysterious disappearance, or other than through an armed robbery shall be deemed to be providing inadequate security for such controlled substances.

(b) Upon the first such significant diversion, the registrant shall cause such physical security measures to be instituted to prevent reoccurrence.

(c) Upon the second such significant diversion, the registrant shall be required to appear before the designated hearing officer of DHEC to provide, under oath, the security measures that the registrant has effected and plans to effect in the future to prevent further diversion by theft.

(d) Upon the third such significant diversion, the registrant shall be cited to show cause, if any he or she may have, why his or her registration under the Controlled Substances Act should not be revoked, suspended, or denied pursuant to the provisions of S.C. Code Ann. § 44-53-310(e).

(e) For the purposes of this section, a significant diversion shall be considered the loss of two thousand dosage units, or the equivalent thereof.

147. Filing of theft reports.

Theft reports (DEA Form 106) as required by this regulation shall be filed with the Bureau of Drug Control not later than thirty days following the discovery of the theft. Failure to file theft reports within the thirty-day period shall result in the issuance of an order to show cause for revocation or suspension of registration under the Act.

148. Employee screening procedures.

It is the position of the Bureau of Drug Control that the obtaining of certain information by registrants is vital to fairly assess the likelihood of an employee committing a drug security breach. The need to know this information is a matter of business necessity, essential to overall controlled substances security. In this regard, it is believed that conviction of crimes and unauthorized use of controlled substances are activities that are proper subjects for inquiry. It is therefore assumed that the following questions will become a part of an employer's comprehensive employee screening program:

Question: Within the past five years have you been convicted of a felony or any misdemeanor or are you presently formally charged with committing a criminal offense? (Do not include any traffic violations, juvenile offenses, or military conviction, except by general court martial.) If the answer is yes, furnish details of the conviction, offense, location, date, and sentence.

Question: In the past three years, have you ever knowingly used any narcotic, barbiturates, or amphetamines, other than prescribed to you by a physician or other practitioner? If the answer is yes, furnish details.

Advice: An authorization, in writing, that allows inquires to be made of courts and law enforcement agencies for possible pending charges or convictions shall be executed by a person who is allowed to work in an area where access to controlled substances clearly exists. A person shall be advised that any false information or omission of information will jeopardize his or her position with respect to employment. The application for employment should inform a person that information furnished or recovered as a result of any inquiry will not necessarily preclude employment, but will be considered as part of an overall evaluation of the person's qualifications. The maintaining of fair employment practices, the protection of the person's right to privacy, and the assurance that the results of such inquires will be treated by the employer in confidence will be explained to the employee.

149. Employee responsibility to report drug diversion.

Report of drug diversion by fellow employees is not only a necessary part of an overall employee security program, but also serves the public interest at large. It is therefore the position of the Bureau of Drug Control that an employee who has knowledge of drug diversion from his or her employer by a fellow employee has an obligation to report such information to a responsible security official of the employer, or to a person in a management position with the employer. The employer shall treat such information as confidential and shall take all reasonable steps to protect the confidentiality of the information and the identity of the employee furnishing information. A failure to report information of drug diversion will be considered in determining the feasibility of continuing to allow an employee to work in a drug security area, or with access to controlled substances. The employer shall inform all employees concerning this policy.

150. Illicit activities by employees.

It is the position of the Bureau of Drug Control that employees who sell, possess, use, or divert controlled substances will subject themselves not only to State and Federal criminal prosecution for any illicit activity, but shall also immediately become the subject of independent action regarding their continued employment. The employer will assess the seriousness of the employee's violation, the position of responsibility held by the employee, past record of employment, etc., in determining whether to suspend, transfer, terminate, or take other action against the employee.

PART 2

Labeling and Packaging Requirements for Controlled Substances

201. (Reserved)

202. Symbol required; exceptions.

(a) Each commercial container of a controlled substance (except for a controlled substance excepted by the Director pursuant to § 708 of this chapter) shall have printed on the label the symbol designating the schedule in which such controlled substance is listed. Each such commercial container if it otherwise has no label, shall bear a label complying with the requirement of this part.

(b) Each manufacturer shall print upon the labeling of each controlled substance distributed by him or her the symbol designating the schedule in which such controlled substance is listed.

(c) The following symbols shall designate the schedule corresponding thereto:

Schedule	Symbol
Schedule I	I or C-I
Schedule II	II or C-II
Schedule III	III or C-III
Schedule IV	IV or C-IV
Schedule V	V or C-V

The word "schedule" need not be used. No distinction need be made between narcotic and non-narcotic substances.

(d) The symbol is not required on a carton or wrapper in which a commercial container is held if the symbol is easily legible through such carton or wrapper.

(e) The symbol is not required on a commercial container too small or otherwise unable to accommodate a label, if the symbol is printed on the box or package from which the commercial container is removed upon dispensing to an ultimate user.

(f) The symbol is not required on a commercial container containing, or on the labeling of, a controlled substance being utilized in clinical research involving blind and double blind studies.

(g) The symbol is not required on a commercial container containing, or on labeling of, a controlled substance intended for export from the United States.

203. Location and size of symbol on label.

(a) The symbol shall be prominently located on the right upper corner of the principal panel of the label of the commercial container and/or the panel of the commercial container normally displayed to dispensers of any controlled substance listed in schedules I through V. The symbol shall be at least two times as large as the largest type otherwise printed on the label.

(b) In lieu of locating the symbol in the corner of the label, as prescribed in paragraph (a) of this section, the symbol may be overprinted on the label, in which case the symbol shall be printed at least one-half the height of the label and in a contrasting color providing clear visibility against the background color of the label.

(c) In all cases the symbol shall be clear and large enough to afford easy identification of the schedule of the controlled substance upon inspection without removal from the dispenser's shelf.

204. Location and size of symbol on labeling.

The symbol shall be prominently located on all labeling other than labels covered by Regulation 203. In all cases the symbol shall be clear and large enough to afford prompt identification of the controlled substance upon inspection of the labeling.

(a) All labels on commercial containers of, and all labeling of, a controlled substance which is listed in any schedule on July 1, 1971, and which is packaged after December 1, 1971, shall comply with the requirements of § 202.

(b) All labels on commercial containers of, and all labeling of, a controlled substance which either is listed in any schedule on July 1, 1971, and thereafter transferred to another schedule or is added to any schedule after July 1, 1971, and which is packaged more than 180 days following the dates on which the transfer or addition becomes effective shall comply with the requirements of § 202.

(c) The Director may, in the case of any controlled substance, require compliance with the requirements of § 202 within a period of time shorter than required by this section if he or she finds that public health or safety necessitates an earlier effective date.

(d) Until compliance is required under this section, the label on commercial container containing, and the labeling of, any controlled substance shall comply with any requirements under Federal or State law as to labels of such containers and as to labeling of such substances existing prior to the effective date prescribed in this section.

205. Effective dates of labeling requirements.

(a) All labels on commercial containers of, and all labeling of, a controlled substance which is listed in any schedule on July 1, 1971, and which is packaged after December 1, 1971, shall comply with the requirements of § 202.

(b) All labels on commercial containers of, and all labeling of, a controlled substance which either is listed in any schedule on July 1, 1971, and thereafter transferred to another schedule or is added to any schedule after July 1, 1971, and which is packaged more than 180 days following the dates on which the transfer or addition becomes effective shall comply with the requirements of § 202.

(c) The Director may, in the case of any controlled substance, require compliance with the requirements of § 202 within a period of time shorter than required by this section if he or she finds that public health or safety necessitates an earlier effective date.

(d) Until compliance is required under this section, the label on commercial container containing, and the labeling of, any controlled substance shall comply with any requirements under Federal or State law as to labels of such containers and as to labeling of such substances existing prior to the effective date prescribed in this section.

206. Sealing of controlled substances.

(a) On each bottle, multiple dose vial, other commercial container of any controlled substance listed in schedules I and/or II, and of any narcotic controlled substance listed in schedule III or IV, there shall be securely affixed to the stopper, cap, lid, covering, or wrapper of such container a seal to disclose upon inspection any tampering or opening of the container.

(b) Any seal accepted for use, under Federal law prior to July 1, 1971, shall be deemed acceptable for use under this section.

207. Labeling for controlled substances dispensed directly to ultimate users.

Controlled substances which are dispensed directly to an ultimate user other than by a prescription dispensed by a pharmacy or by direct administration or application of the substance into or upon the person for whom it is intended, shall bear a label or labeling containing the name and address of the dispenser, the name of the ultimate user (i.e., the "patient"), specific directions for use, and the date of the dispensing. The label or labeling shall include any necessary cautionary statement, whether customary or required by State or Federal law. A serial number may be utilized at the discretion of the dispenser. The act of dispensing controlled substances shall be performed by the registrant, and shall not be delegated to any person other than a pharmacist acting in the regular course of professional activity. Prescriptions shall be labeled pursuant to the provisions of Part 5 of this Regulation, unless specifically exempted. No practitioner shall directly dispense more than a thirty-one day supply.

PART 3

Records and Reports of Registrants

301. Scope of Part 3.

Inventory and other records and reports required under the Act shall be in accordance with, and contain the information required by, those sections and by the sections of this Part.

302. (Reserved)

303. Persons required to keep records and file reports.

(a) Each registrant shall maintain the records and inventories and shall file the reports required by this Part, except as exempted by this Section. Any registrant who is authorized to conduct other activities without being registered to conduct these activities, either pursuant to § 107(b) or to §§ 604 through 608, shall maintain the records and inventories and shall file the reports required by this Part for persons registered to conduct such activities. The latter requirement should not be construed as requiring stocks of controlled substances being used in various activities under one registration to be stored separately, nor that separate records are required for each activity. The intent of the Bureau of Drug Control is to permit the registrant to keep one set of records which are adapted by the registrant to account for controlled substances used in any activity. The Bureau of Drug Control does not wish to require separate stocks of the same substance to be purchased and stored for separate activities. Otherwise, there is no advantage gained by permitting several activities under one registration. Thus, when a researcher manufactures a controlled item, he or she shall keep a record of the quantity manufactured; when he or she distributes a quantity of the item, he or she shall use and keep invoices or order forms to document the transfer; when he or she imports a substance, he or she keeps as part of his or her records the documentation required to an importer; and when substances are used in chemical analysis, he or she need not keep a record of this because such a record would not be required of him or her under a registration to do chemical analysis. All of those records may be maintained in one consolidated record system. Similarly, the researcher may store all of his or her controlled items in one place, and every year take inventory of all items in hand, regardless of whether the substances were manufactured by him or her, imported by him or her, or purchased domestically by him or her, or whether the substances will be administered to subjects, distributed to other researchers, or destroyed during chemical analysis.

(b) A registered individual practitioner is not required to keep specific records with respect to controlled substances for which he or she issues prescriptions or orders for administration within an institutional practitioner setting (e.g., hospital "orders") in the lawful course of his or her professional practice; provided, that a record or memorandum of such prescription or order be maintained upon regular patient records.

(c) A registered individual practitioner is required to maintain a readily retrievable record, separate from patient charts, of all controlled substances acquired, dispensed, administered (other than by the issuance of an institutional order or a prescription) distributed, or otherwise disposed of by the practitioner, his or her employees or agents, whether the controlled substance is separately charged for, included in other charges, or is provided at no charge. Practitioners who personally administer narcotic controlled substances in an emergency need only keep a simple record of the date, kind, quantity, and strength of the controlled substance administered in such

emergency, and the name of the recipient. Within 72 hours of the emergency administration, a permanent record shall be constituted and included in the readily retrievable records of dispensing required herein. Repeated or excessive emergency administrations will require the registrant to notify the Bureau of Drug Control of such happenstance.

(d) A registered person using any controlled substance in research conducted in conformity with an exemption granted under § 505(i) or 512(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) as a registered establishment which maintains records in accordance with either of those sections is not required to keep records if he notified the Bureau of Drug Control of the name, address, and registration number of the establishment maintaining such records.

(e) A registered person using any controlled substance in pre-clinical research or in teaching at a registered establishment, which maintains records with respect to such substance is not required to keep records if he notifies the Bureau of Drug Control of the name, address, and registration number of the establishment maintaining such records.

(f) Notice required by paragraphs (d) and (e) of this section shall be given at the time the person applies for registration or re-registration and shall be made in the form of an attachment to the application, which shall be filed with the application.

304. Maintenance of records and inventories.

(a) Every inventory and other record required to be kept under this Part shall be kept by the registrant and be available, for at least two years from the date of such inventory or record, for inspecting and copying by authorized employees of the Bureau of Drug Control, except that financial and shipping records (such as invoices and packing slips but not executed order forms subject to 21 CFR § 1305.13) may be kept at a central location rather than at the registered location if the registrant has notified the Bureau of Drug Control of its intention to keep central records. Written notification shall be submitted by registered or certified mail, return receipt requested, in triplicate to the Director. Unless the registrant is informed by the Director that permission to keep central records is denied, the registrant may maintain central records commencing 14 days after receipt of the return receipt accompanying the notification.

All notifications shall include:

(1) The nature of the records to be kept centrally and the exact location where the records will be kept;

(2) The name, address, State and DEA registration numbers, and type of registration of the registrant whose records are being maintained centrally;

(3) Whether central records will be maintained in a manual, or computer readable form.

(b) Each registered manufacturer, distributor, importer, and exporter shall maintain inventories and records of controlled substances as follows:

(1) Inventories and records of controlled substances listed in schedules I and II shall be maintained separately from all of the records of the registrants, and

(2) Inventories and records of controlled substances listed in schedules III, IV, and V shall be maintained either separately from all other records of the registrant or in such form that the information required is readily retrievable from the ordinary business records of the registrant.

(c) Each registered individual practitioner required to keep records and each institutional practitioner shall maintain inventories and records of controlled substances in the manner prescribed in paragraph (b) of this section.

(d) Each registered pharmacy shall maintain the inventories and records of controlled substances as follows:

(1) Inventories and records of all controlled substances listed in schedules I and II shall be maintained separately from all other records of the pharmacy, and prescriptions for such substances shall be maintained as a separate prescription file.

(2) Inventories and records of controlled substances listed in schedules III, IV, and V shall be maintained either separately from all other records of the pharmacy or in such form that the information required is readily retrievable from ordinary business records of the pharmacy.

(3) Prescriptions for controlled substances shall be maintained in separate files from prescriptions for non-controlled substances. Prescriptions for schedule II controlled substances shall be filed separately from prescriptions for schedules III, IV, and V controlled substances. Compliance with this Section will be deemed proper if the pharmacy maintains not less than three files, those being:

File No. 1-Schedule II Controlled Substances only.
File No. 2-Schedules III, IV, and V Controlled Substances only.
File No. 3- Non-controlled Substances.

Sequential numbering systems of the files shall be at the discretion of the dispenser.

(e) All registrants that are authorized to maintain a central record keeping system shall be subject to the following conditions:

(1) The records to be maintained at the central record location shall not include executed order forms, prescriptions, and/or inventories which shall be maintained at each registered location.

(2) If the records are kept on microfilm, computer media, or in any form requiring special equipment to render the records easily readable, the registrant shall provide access to such equipment with the records. If any code system is used (other than pricing information) a key to the code shall be provided to make the records understandable.

(3) The registrant agrees to deliver all or any part of such records to the registered location within two business days upon receipt of a written request from the Bureau of Drug Control, and if the Bureau of Drug Control chooses to do so in lieu of requiring delivery of such records to the registered location, to allow authorized employees of the Bureau of Drug Control to inspect such records at the central location upon request by such employees without a warrant of any kind.

(4) In the event that a registrant fails to comply with these conditions, the Director may cancel such central record keeping authorization, and all other central record keeping authorization held by the registrant without a hearing or other procedures. In the event of cancellation of central record keeping authorization under this paragraph, the registrant shall, within the time specified by the Director, comply with the requirements of this section that all records be kept at the registered location.

(f) Original documents shall be maintained in addition to those which are stored in computer media for a period of two years from the date of the origination of the document, or from the last transaction contained therein or entered thereupon, whichever is the later date.

Inventory Requirements

305. General requirements for inventories.

(a) Each inventory shall contain a complete and accurate record of all controlled substances on hand on the date the inventory is taken. Controlled substances shall be deemed to be "on hand" if they are in the possession of or under the control of the registrant, including substances returned by a customer, substances ordered by a customer but not yet invoiced, substances stored in a warehouse on behalf of the registrant, and substances in the possession of employees of the registrant and intended for distribution as complimentary samples.

(b) A separate inventory shall be made by a registrant for each registered location. In the event controlled substances in the possession or under the control of the registrant at a location for which he is not registered, the substances shall be included in the inventory of the registered location to which they are subject to control or to which the person possessing the substance is responsible. Each inventory for a registered location shall be kept at the registered location.

(c) A separate inventory shall be made by a registrant for each independent activity for which he is registered, except as provided in § 311.

(d) A registrant may take an inventory either as of the opening of business or as of the close of business on the inventory date. The registrant shall indicate on the inventory records whether the inventory is taken as of the opening or as of the close of business and the date the inventory is taken.

(e) An inventory shall be maintained in a written, typewritten, or printed form. An inventory taken by use of an oral recording device shall be promptly transcribed.

306. Inventory upon transfer of business; change of pharmacist-in-charge.

(a) Inventory upon transfer of business.

(1) Any registrant transferring his or her business to another person who shall become registered to continue such business shall inventory all controlled substances on hand at the close of business on the day of transfer. The receiving registrant shall either (a) certify the inventory taken as being correct, or (b) shall affect his

or her own inventory at the start of business on the date of transfer. Any discrepancy in the inventory shall be reported within five days to the Director.

(2) A new establishment, never before having been registered, and having no prior inventory of controlled substances, shall be deemed to have a zero inventory as of the first day of business.

(3) A registrant discontinuing business shall upon the date of discontinuance inventory all controlled substances and place said controlled substances in sealed containers under adequate protection from theft, until such time as the controlled substances are transferred to another registrant or are surrendered to the Director. A copy of this inventory shall be forwarded to the Director, a copy placed with the controlled substances, and a copy retained by the discontinuing registrant.

(b) A complete inventory of all controlled substances on hand shall be performed at the time of a change in pharmacist-in charge.

307. Annual inventory date.

Inventories shall be taken on May 1st of each year unless permission for another date is granted by the Bureau of Drug Control. In the event that a person commences business with no controlled substances on hand, he or she shall record this fact as his or her initial inventory.

308. Inventories of manufacturers.

Each registered manufacturer shall include the following information in his or her inventory:

(a) For each controlled substance in bulk form to be used in (or capable of use in) the manufacture of the same or other controlled or non-controlled substances in finished form:

(1) The name of the substance; and

(2) The total quantity of the substance to the nearest metric unit weight consistent with unit size (except that for inventories made in 1971), avoirdupois weights may be utilized where metric weights are not readily available)

(b) For each controlled substance in the process of manufacture on the inventory date:

(1) The name of the substance;

(2) The quantity of the substance in each batch and/or state of manufacture, identified by the batch number of other appropriate identifying number;

(3) The physical form which the substance is to take upon completion of the manufacturing process (e.g., granulations, tablets, capsules, or solutions), identified by the batch number or other appropriate identifying number, and if possible the finished form of the substance (e.g., 10-milligram tablet or 10-milligram concentration per fluid ounce or milliliter) and the number of volume thereof.

(c) For each controlled substance in finished form:

(1) The name of the substance;

(2) Each finished form of the substance (e.g. 10-milligram tablet or 10-milligram concentration per fluid ounce or milliliter);

(3) The number of units or volume of each finished form in each commercial container (e.g. 100-tablet bottle or 3-milliliter vial); and

(4) The number of commercial containers of each such finished form (e.g., four 100-tablet bottles or six 3-milliliter vials).

(d) For each controlled substance not included in paragraphs (a), (b), or (c) of this section (e.g., damaged, defective or impure substances awaiting disposal, substances held for quality control purposes, or substances maintained for extemporaneous compounding):

(1) The name of the substance;

(2) The total quantity of the substance to the nearest metric unit weight or the total number of units of finished form; and

(3) The reason for the substance being maintained by the registrant and whether such substance is capable of use in the manufacture of any controlled substance in finished form.

309. Inventories for distributors.

Each registered distributor shall include in his or her inventory the same information required of manufactures pursuant to §§ 308(c) and (d).

310. Inventories of dispensers and researchers.

Each person registered to dispense or conduct research with controlled substances and required to keep records pursuant to § 301 shall include in his or her inventory the same information required of manufacturers pursuant to §§ 308(c) and (d). In determining the number of units of each finished form of a controlled substance in a commercial container which has been opened, the dispenser shall do as follows:

(a) If the substance is listed in schedule I or II, he or she shall make an exact count or measure of the contents; and

(b) If the substance is listed in schedule III, IV, V, he or she shall make an estimated count or measure of the contents, unless the container holds more than 1,000 tablets or capsules in which case he or she shall make an exact count of the contents.

(c) It is the responsibility of the registrant to determine that any estimates are accurate, as audit procedures will be based upon the inventories maintained by the registrant. The Bureau of Drug Control utilizes exact counts in all audit procedures, and will allow only minor leeway for estimated inventories.

311. Inventories of importers and exporters.

Each registered importer or exporter shall include in his or her inventory the same information required of manufacturers pursuant to §§ 309(a), (c), and (d). Each registered importer or exporter who is also registered as a manufacturer or as a distributor shall include in his or her inventory as an importer or exporter only those stocks of controlled substances that are actually separated from his or her stocks as a manufacturer or as a distributor (e.g., in transit or in storage for shipment).

312. Inventories for chemical analysis.

Each analytical laboratory registered to conduct chemical analysis with controlled substances shall include in its inventory the same information required of manufacturers pursuant to §§ 309(a), (c), and (d) as to substances which have been manufactured, imported, or received by the laboratory conducing the inventory. If less than 1 kilogram of any controlled substance (other than a hallucinogenic controlled substance listed in schedule I), or less than 20 grams of a hallucinogenic substance listed in schedule I (other than lysergic acid diethylamide), or less than 0.5 grams of lysergic acid diethylamide, is on hand at the time of inventory, that substance need not be included in the inventory. Laboratories of the Bureau of Drug Control may possess up to 150 grams of any hallucinogenic substance in schedule I without regard to a need for an inventory of those substances.

Continuing Records

313. General requirements for continuing records.

(a) On and after June 17, 1971 every registrant required to keep records pursuant to Regulation 303 shall maintain on a current basis a complete and accurate record of each such substance manufactured, imported, received, sold, delivered, exported, or otherwise disposed of by him or her, except that no registrant shall be required to maintain a perpetual inventory, except as provided in paragraph (e) of this section.

(b) Separate records shall be maintained by a registrant for each registered location except as provided in § 303. In the event controlled substances are in the possession or under the control of a registrant at a location for which he or she is not registered, the substance shall be included in the records of the registered location to which they are subject to control or to which the person possessing the substance is responsible.

(c) Separate records shall be maintained by a registrant for each independent activity for which he or she is registered, except as provided in § 316.

(d) In recording dates of receipt, importation, distribution, exportation or other transfers, the date on which the controlled substances are actually received, imported, distributed, exported or otherwise transferred shall be used as the date of receipt or distribution of any packing slips.

(e) DHEC, upon a finding that a registrant has maintained inadequate records, or upon a finding that the registrant has a history of poor or inadequate record keeping, may, in its discretion, require perpetual inventories of all or a part on the controlled substances possessed or otherwise utilized or handled by such registrant (or an applicant for new registration having a history of record keeping deficiencies) as a condition for granting or renewing controlled substances registration. DHEC, upon a finding that adequate record keeping has been

maintained for two or more years, pursuant to a perpetual inventory requirement, may remove the requirement and permit the registrant to resume standard record keeping activities with or without a probationary period of registration, as DHEC deems proper.

314. Records of manufacture.

Each registered manufacturer shall maintain records with the following information.

(a) For each controlled substance in bulk form to be used, or capable of use in, or being used in, the manufacture of the same or other controlled or non-controlled substance in finished form:

(1) The name of the substance;

(2) The quantity manufactured in bulk form by the registrant, including the date, quantity and batch or other identifying number of each batch manufactured;

(3) The quantity received from other persons, including the date and quantity of each receipt and the name, address, and registration number of the other person from whom the substance was received;

(4) The quantity imported directly by the registrant (under a registration as an importer) for use in manufacture by him or her, including the date, quantity, and import permit or declaration number for each importation.

(5) The quantity used to manufacture the same substance in finished form, including:

(i) The date and batch or other identifying number of each manufacturer;

(ii) The quantity used in the manufacture;

(iii) The finished form (e.g., 10-milligram tablets or 10 milligram concentrate per fluid ounce or milliliter);

(iv) The number of units of finished form manufactured;

(v) The quantity used in quality control;

(vi) The quantity lost during manufacturing and the causes thereof, if known;

(vii) The total quantity of the substance contained in the finished form;

(viii) The theoretical and actual yields; and

(ix) Such other information as is necessary to account for all controlled substances used in the manufacturing process.

(6) The quantity used to manufacture other controlled and non-controlled substances, including the name of each substance manufactured and the information required in subparagraph (5) of this paragraph;

(7) The quantity distributed in bulk form to other persons, including the date and quantity of each distribution and the name, address, and registration number of each person to whom a distribution was made;

(8) The quantity exported directly the registrant (under a registration as an exporter), including the date quantity, and export permit or declaration number of each exportation;

(9) The quantity distributed or disposed of in any other manner by the registrant (e.g., by distribution of complimentary samples or by destruction), including the date and manner of distribution or disposal, the name, address, and registration number of the person to whom distributed, and the quantity distributed or disposed.

(b) For each controlled substance in finished form:

(1) The name of the substance;

(2) Each finished form (e.g., 10-milligram tablet or 10-milligram concentration per fluid ounce or milliliter) and the number of units or volume of finished form in each commercial container (e.g., 100-tablet bottle or 3-milliliter vial);

(3) The number of containers of each such commercial finished form manufactured from bulk form by the registrant, including the information required pursuant to subparagraph (5) of paragraph (a) of this section;

(4) The number of units of finished forms and/or commercial containers received from other persons, including the date of and number of units and/or commercial containers in each receipt and the name, address, and registration number of the person from whom the units were received.

(5) The number of units of finished forms and/or commercial containers imported directly by the registrant (under a registration as an importer), including the date of and the number of units and for commercial containers to each importation;

(6) The number of units and/or commercial containers manufactured by the registrant from units in finished form received from others or imported, including:

(i) The date and batch or other identifying number of each manufacturer;

(ii) The operation performed (e.g., repackaging or re-labeling);

(iii) The number of units of finished form used in the manufacture, the number manufactured and the number lost during manufacture, with the causes therefore, if known; and

(iv) Such other information as is necessary to account for all controlled substances used in the manufacturing process.

(7) The number of commercial containers distributed to other persons, including the date and number of containers in each distribution, and the name, address, and registration number of the person to whom the containers were distributed.

(8) The number of commercial containers exported directly by the registrant (under a registration as an exporter), including the date, number of containers and export permit or declaration number for each exportation; and

(9) The number of units of finished forms and/or commercial containers distributed or disposed of in any other manner by the registrant (e.g., by distribution of complimentary samples or by destruction), including the date and manner of distribution or disposal, the name, address, and registration number of the person to whom distributed, and the quantity in finished form distributed or disposed.

315. Records for distributors.

Each registered distributor shall maintain records with the following information for each controlled substance:

(a) The name of the substance;

(b) Each finished form (e.g. 10-milligram tablet or 10-milligram concentration per fluid ounce or milliliter) and the number of units or volume of finished form in each commercial container (e.g., 100-tablet bottle or 3-milliliter vial);

(c) The number of commercial containers of each such finished form received from other persons, including the date of and number of containers in each receipt and the name, address, and registration of the person from whom the containers were received;

(d) The number of commercial containers of each such finished form imported directly by the registrant (under a registration as an importer), including the date of and the number of containers in each importation;

(e) The number of commercial containers of each such finished form distributed to other persons, including the date of and number of containers in each distribution and the name, address and registration number of the person to whom the containers were distributed;

(f) The number of commercial containers of such finished form exported directly by the registrant (under a registration as an exporter), including the date of and the number of containers of each exportation; and

(g) The number of units or volume of finished forms and/or commercial containers distributed or disposed of in any other manner by the registrant (e.g., by distribution as complimentary samples), including the date and manner of distribution or disposal, the name and address, and registration number of the person to whom distributed or disposed.

316. Records for dispensers and researchers.

Each person registered to dispense or conduct research with controlled substances required to keep records pursuant to § 303 shall maintain records with the following information for each controlled substance:

(a) The name of the substance;

(b) Each finished form (e.g., 10-milligram tablet or 10-milligram concentration per fluid ounce or milliliter) and the number of units or volume of finished form in each commercial container (e.g., 100-tablet bottle or 3-milliliter vial).

(c) The number of commercial containers of each such finished form received from other persons, including the date of and number of containers in each receipt and the name, address, and registration number of the person from whom the containers were received;

(d) The number of units or volume of such finished form dispensed, including the name and address of the person to whom it was dispensed, the date of dispensing, the number of units or volume dispensed, and the written or typewritten name or initials of the individual who dispensed or administered the substance on behalf of the dispenser; and

(e) The number of units or volume of such finished form and/or commercial containers disposed of in any other manner by the registrant, including the date and manner of disposal and the quantity of the substance in finished form disposed.

317. Records for importers.

Each registered importer shall maintain records with the following information for each controlled substance:

(a) The name of the substance;

(b) The quantity (or number of units or volume in finished form) imported, including the date, quantity (or number of units or volume), and import permit or declaration number for each importation;

(c) The quantity (or number of units or volume in finished form) distributed to other persons, including the date and quantity (or number of units or volume) of each distribution and the name, address, and registration number of each person to whom a distribution was made; and

(d) The quantity disposed of in any other manner by the registrant, except quantities used for manufacturing by an importer under a registration as a manufacturer, which quantities are to be recorded pursuant to § 314(a)(4) or (b)(5) including the date and manner of disposal and the quantities disposed.

318. Records of exporters.

Each registered exporter shall maintain records with the following information for each controlled substance:

(a) The name of the substance;

(b) The quantity or number of units (or volume in finished form) received from other persons, including the date and quantity (or number of units or volume) of each receipt and the name, address, and registration number of each person from whom the substance was received;

(c) The quantity (or number of units or volume in finished form) exported, including the date, quantity or number of units or volume), and the export permit or declaration number for each exportation, but excluding all quantities (and numbers of units and volumes) manufactured by an exporter under a registration as a manufacturer, which quantities (and numbers of units and volumes) are to be recorded pursuant to § 314(a)(8) or (b)(8); and

(d) The quantity disposed of in any other manner by the registrant including the date and manner of disposal and the quantity disposed.

319. Records for chemical analysis.

(a) Each person registered to conduct chemical analysis with controlled substances shall maintain records, with the following information (to the extent known and reasonably ascertainable by him or her) for each controlled substance:

(1) The name of the substance;

(2) The form or forms in which the substance is received, imported, or manufactured by the registrant (e.g., powder, granulation, tablet, capsules, or solution) and the concentration of the substance in such form (e.g., C.P., U.S.P., N.F., 10-milligram concentration per milliliter);

(3) The total number of the forms received, imported, or manufactured (e.g., 100 tablets, thirty 1-milliliter vials, or 10 grams of powder), including the date and quantity of each receipt, importation, or manufacture and the name, address, and registration number, if any, of the person from whom the substance was received;

(4) The quantity distributed, exported, or destroyed in any manner by the registrant (except quantities used in chemical analysis or other laboratory work), including the date and manner of distribution, exportation or destruction, and the name, address, and registration number, if any, of each person to whom the substance was distributed or exported.

(b) Order forms, import and export permits, import invoices, and export declarations, relating to controlled substances shall be maintained separately from all other records of the registrant.

(c) Records of controlled substances used in chemical analysis or other laboratory work are not required.

(d) Records relating to known or suspected controlled substances received as samples for analysis are not required under paragraph (a) of this section.

320. Reports.

Manufacturers, re-packers, re-labelers, importers, exporters, and distributors who are required to report to ARCOS systems of the DEA, U.S. Department of Justice, need not file copies of such reports with the Bureau of Drug Control, but such registrants shall make copies of the reports available to the Bureau of Drug Control upon its written or oral request. Substantial compliance with the provisions of 21 CFR §§ 1304.31 through 1304.33 shall be deemed sufficient compliance with state reporting requirements.

321. Records for maintenance treatment programs and detoxification treatment programs.

(a) Each person registered or authorized by DHEC to maintain and/or detoxify controlled substances users in a narcotic treatment program shall maintain records with the following information for each narcotic controlled substance:

(1) Name of substance;
(2) Strength of substance;
(3) Dosage form;
(4) Date dispensed;
(5) Adequate identification of the patient (consumer);
(6) Amount consumed;
(7) Amount and dosage form taken home by patient; and
(8) Dispenser's initials.

(b) The records required by paragraph (a) of this section will be maintained in a dispensing log at the narcotic treatment program site and will be maintained in compliance with § 316 without reference to § 303.

(c) All sites which compound a bulk narcotic solution from bulk narcotic powder to liquid for on-site use, shall keep a separate batch record of the compounding.

(d) Records of identity, diagnosis, prognosis, or treatment of any patients which are maintained in connection with the performance of a narcotic treatment program shall be confidential, except that such records may be disclosed for purposes and under the circumstances authorized by this regulation and any other State or Federal law or regulation.

322. Records for treatment programs which compound narcotics for treatment programs and other locations.

Each person registered or authorized under the provisions of Section 107 of this Regulation to compound narcotic drugs for off-site use in a narcotic treatment program shall maintain records which include the following information for each narcotic drug:

(a) For each narcotic controlled substance in bulk form to be used in, or capable of being used in, or being used in the compounding of the same or other non-controlled substances in finished form:

(1) The name of the substance;

(2) The quantity compounded in bulk form by the registrant, including the date, quantity and batch or other identifying number of each batch compounded;

(3) The quantity received from other persons, including the date and quantity of each receipt and the name, address, and registration number of the other person from whom the substance was received;

(4) The quantity imported directly by the registrant (under a registration as an importer) for use in compounding by him or her, including the date, quantity, and import permit or declaration number of each importation;

(5) The quantity used to compound the same substance in finished form, including:

(i) The date and batch or other identifying number of each compounding;
(ii) The quantity used in the compound;
(iii) The finished form (e.g., 10-milligram tablets; 10 mg/ml per fluidounce, etc.)
(iv) The number of units of finished form compounded;
(v) The quantity used in quality control;
(vi) The quantity lost through compounding and the causes therefore, if known;
(vii) The total quantity of the substance contained in the finished form;
(viii) The theoretical and actual yields;
(ix) Such other information as is necessary to account for all controlled substances used in the compounding process;

(6) The quantity used to manufacture other controlled and non-controlled substances, including the name of each substance manufactured and the information required in paragraph (a) (5) of this section;

(7) The quantity distributed in bulk form to other programs, including the date and quantity of each distribution, and the name, address, and registration number of each program to whom a distribution was made;

(8) The quantity exported directly by the registrant (under a registration as an exporter), including the date, quantity, and export permit or declaration number of each exportation; and

(9) The quantity disposed of by destruction, including the reason, date, and manner of destruction. All other destruction of narcotic controlled substances will comply with § 609.

(b) For each narcotic controlled substance in finished form:

(1) The name of the substance;

(2) Each finished form and the number of units or volume or finished form in each commercial container (e.g., 100- tablet bottle or 3 ml. ampoule, etc.);

(3) The number of containers of each such commercial finished form compounded from bulk form by the registrant, including the information required by paragraph (a) (5) of this section;

(4) The number of units of finished forms and/or commercial containers received from other persons, including the date of and number of units and/or commercial containers in each receipt and the name, address, and registration number of the person from whom the units were received;

(5) The number of units of finished forms and/or commercial containers imported directly by the person (under a registration or authorization to import), including the date of, the number of units and/or commercial containers in, and the import permit or declaration number for, each importation;

(6) The number of units and/or commercial containers compounded by the registrant from units in finished form received from others or imported, including:

(i) The date and batch or other identifying number of each compounding.

(ii) The operation performed (e.g., repackaging or re-labeling);

(iii) The number of units of finished form used in the compound, the number compounded, and the number lost during compounding, with the causes for such losses, if known;

(iv) Such other information as is necessary to account for all controlled substances used in the compounding process.

(7) The number of containers distributed to other programs, including the date, the number of containers in each distribution, and the name, address, and registration number of the program to whom the containers were distributed;

(8) The number of commercial containers exported directly by the registrant (under a registration as an exporter), including the date, number of containers, and export permit or declaration number for each exportation; and

(9) The number of units of finished forms and/or commercial containers destroyed in any manner by the registrant, including the reason, the date, and manner of destruction. All other destruction of narcotic controlled substances will comply with § 609.

PART 4

Order Forms

401. Order forms.

DEA Form 222 as issued by the DEA, U.S. Department of Justice, as required by the Federal Controlled Substances Act (21 USC 828) when properly executed and filed will be deemed a sufficient order form as required by the Act.

402. Handling and filing.

Handling and filing of order forms shall be accomplished in the manner provided under Part 1305, 21 C.F.R. (Regulations of the DEA, United States Department of Justice.)

403. Power of attorney.

Any purchaser may authorize one or more individuals, whether or not located at the registered location of the purchaser, to obtain and execute order forms on his or her behalf by executing a power of attorney for each such individual. The power of attorney shall be signed by the same person who signed (or was authorized to sign) the most recent application for registration or re-registration and by the individual being authorized to obtain and execute order forms. The power of attorney shall be filed with the executed order forms of the purchaser, and shall be retained for the same period as any order form bearing the signature of the attorney. The power of attorney shall be available for inspection together with other order form records. Any power of attorney shall be available for inspection together with other order form records. Any power of attorney may be revoked at any time by executing a notice of revocation, signed by the person who signed (or was authorized to sign) the power of attorney or by a successor, whoever signed the most recent application for registration or re-registration, and filing it with the power of attorney being revoked. The forms are available from Director of the Bureau of Drug Control, DHEC, 2600 Bull Street, Columbia, SC 29201.

PART 5

Prescriptions

501. (Reserved)

502. (Reserved)

503. Persons entitled to issue prescriptions.

(a) A prescription for a controlled substance may be issued only by an individual practitioner who is:

(1) Licensed by the SC State Board of Medical Examiners, State Board of Dentistry, State Board of Veterinary Medicine Examiners, State Board of Nursing, State Board of Examiners in Optometry, or the State Board of Podiatry Examiners, and is authorized to prescribe under the type of license issued by the pertinent Board to the individual practitioner; and

(2) Acting in the regular course of professional practice, e.g., a veterinarian prescribing for a human is not within the regular course of professional practice, nor is a dentist when prescribing for illnesses or disease other than those of the oral cavity and adjacent tissues, nor is a podiatrist when prescribing for treatment of disease other than those manifesting themselves in the foot; and

(3) Registered with DHEC under the provisions of the Act.

(b) A prescription issued by an individual practitioner may be communicated to a pharmacist by an employee or agent of the individual practitioner. The individual practitioner may not delegate the act of prescribing (i.e., the decision-making process whether to issue a prescription, what drug or substance to prescribe, what dosage, what frequency, and whether to refill the prescription) to a person not authorized to issue a prescription in his or her own right as an individual practitioner.

Example: A nurse or other employee of a physician may transmit an oral prescription (if permissible as a Schedule III, IV, or V substance) to a pharmacist if authorized to do so by the prescribing physician; the transmitting person has no authority to make any change whatsoever in the order of the practitioner, nor to add or delete any information to be transmitted.

504. Purpose of issue of prescription.

(a) A prescription for a controlled substance to be effective shall be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner but a corresponding responsibility rests with the pharmacist who fills the prescription. An order purporting to be a prescription issued not in the usual course of professional treatment or in legitimate and authorized research is not a prescription within the meaning and intent of the Act and the person knowingly filling such a purported prescription, as well as the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances.

(b) A prescription may not be issued in order for an individual practitioner to obtain controlled substances for supplying the individual practitioner for the purpose of general dispensing to patients.

(c) A prescription may not be issued for the dispensing of narcotic drugs listed in any schedule to a narcotic drug dependent person for the purpose of continuing his or her dependence upon such drugs whether or not in the course of conducting an authorized clinical investigation in the development of a narcotic rehabilitation program.

505. Manner of issuance of prescription.

All prescriptions for controlled substances shall be dated as of, and signed on, the day when issued and shall bear the full name and address of the patient, the drug name, strength, dosage form, quantity prescribed, directions for use and the name, address, and registration number of the practitioner. A practitioner shall sign a prescription in the same manner as he or she would sign a check or legal document (e.g., J. H. Smith or John H. Smith). Where an oral order is not permitted, prescriptions shall be written with ink or indelible pencil or typewriter, or other mechanical means of printing, and shall be manually signed by the practitioner. The prescriptions may be prepared by a secretary or agent for the signature of a practitioner, but the prescribing practitioner is responsible in case the prescription does not conform in all essential respects to the law and regulations. A corresponding liability rests upon the pharmacist who fills a prescription not prepared in the form prescribed by this regulation. See also § 503(b).

505.1. Registration number required on prescriptions.

All prescriptions for controlled substances, whether written by the practitioner or telephoned and subsequently reduced to writing, shall bear the Federal Controlled Substances Registration Number (DEA Number) of the prescribing practitioner.

506. Persons entitled to fill prescriptions.

A prescription for controlled substances may only be filled by a pharmacist acting in the usual course of his or her professional practice and either registered individually or employed in a registered pharmacy or registered institutional practitioner.

506.1. Information required for filled prescriptions.

A notation shall be placed upon any prescription for controlled substances when originally filled that shall indicate the date filled, the identity or initials of the pharmacist dispensing the prescription and, if different from the quantity prescribed, the quantity dispensed. All notations shall be performed manually and in cursive handwriting, except that a date stamp (manual or mechanical) may be utilized by the pharmacist in lieu of handwriting the date dispensed or the refill date. The purpose of the manual handwriting is to assist in positively identifying the performer of the dispensing function.

507. Dispensing of narcotic drugs for maintenance purposes.

The administering or dispensing directly (but not prescribing of) narcotic drugs listed in any schedule to a narcotic drug dependent person for the purpose of continuing his or her dependence upon such drugs in the course of conducting an authorized clinical investigation in the development of a narcotic addict rehabilitation program shall be deemed to be within the meaning of the term "in the course of his or her professional practice or research" in the Act, provided, that approval is obtained prior to the initiation of such a program by submission of a Notice of Claimed Investigational Exemption for a New Drug to the Food and Drug Administration which will be reviewed concurrently by the Food and Drug Administration for scientific merit and by the DEA for drug control requirements, and that the clinical investigation thereafter accords with such approval.

507.1. Federal approval of maintenance programs required.

DHEC will not register any person to conduct an authorized maintenance program for drug dependent persons until approval of such program has been made by the Food and Drug Administration, U.S. Department of Health, Education, and Welfare, and the DEA, U. S. Department of Justice. Upon approval by these agencies, the applicant for such registration shall submit to the Bureau of Drug Control copies of such approvals and copies of the protocols required by Federal Regulations. The Bureau of Drug Control shall accept the application for registration as complete only after submission of the aforementioned information and other information required by this regulation.

507.2. Withdrawal of drug dependent persons by use of methadone or other narcotic controlled substances.

Practitioners desiring to withdraw, but not maintain, drug dependent persons addicted to narcotic controlled substances from such substances by the use of methadone or any other schedule II narcotic controlled substance, may do so provided that all of the following criteria are met:

(a) The drug dependent person shall be a narcotic addict.

(b) The drug dependent person shall be confined to a hospital, clinic, rest home, or other appropriate location that properly segregates the drug dependent person from contact with possible illicit suppliers.

(c) The withdrawal program shall be on a reducing dosage basis, preferably through use of oral administration of the narcotic controlled substance used for withdrawal.

(d) Withdrawal treatment shall not exceed twenty-one days in length and shall not be available to any drug dependent person more often than once every six months. If, in the opinion of the withdrawing practitioner, longer periods of withdrawal treatment are necessary, application for such longer treatment shall be made to the Commissioner stating the reasons therefore, along with pertinent medical facts including, but not limited to, the following:

(1) Medical condition of subject at onset of withdrawal treatment;
(2) Amount of drug intake and name of drug at onset of treatment;
(3) Initial withdrawal dosage of methadone (or other narcotic controlled substance);
(4) Reduction schedule of withdrawal substance;
(5) Current medical evaluation of withdrawal regimen;
(6) Statement concerning presence or absence from urine sample of drug dependent person of the drug to which he or she was addicted; and
(7) Any other pertinent facts deemed necessary by the withdrawing practitioner or by the Commissioner.

(e) Any maintenance facility shall be approved by DHEC, by the Food and Drug Administration, and the DEA.

507.3 Approved uses of methadone in hospitals. Methadone is approved for the following uses for inpatients of hospitals licensed by DHEC:

(a) analgesia;

(b) pertussis;

(c) detoxification (withdrawal) of drug dependent persons under conditions set forth in Section 507.2 of this regulation; or

(d) temporary maintenance of methadone treatment of a drug dependent person enrolled in a methadone maintenance program licensed by any State or the federal government while such person is institutionalized within a licensed hospital for medical treatment of an illness or malady medically unrelated to drug dependence.

507.4 Departmental Approval; when required.

(a) Prior approval by DHEC for methadone use as set forth in § 507.3 of this regulation is not required.

(b) Prior approval of DHEC and registration as provided by Title 21, § 1301.22(a)(6) of the Code of Federal Regulations and S.C. Code Ann. § 44-53-290(i), is required of all persons desiring to operate a treatment program utilizing methadone (i.e., a "methadone maintenance program"). Concurrence with Departmental approval by the SC Department of Mental Health, licensure by that Department as provided by Section 1 of Act No. 439 of 1980, and approval by the SC Commission on Alcohol and Drug Abuse, is required before such treatment program may dispense or administer methadone to any person, unless otherwise provided by statute.

(c) Prior approval by DHEC in the manner set forth by § 507.5 of this regulation is not required to dispense methadone to outpatients of a hospital licensed by DHEC. Prior approval of DHEC is not required for "take home" methadone preparations which are lawfully dispensed by a methadone maintenance treatment facility licensed or operated by the SC Department of Mental Health or by and the Federal government.

(d) Approvals by DHEC, as required by §§ 507.2 through 507.5 of this regulation, may be granted by the Bureau of Drug Control in its discretion. If the Bureau finds that it cannot approve a request, the request shall be submitted to the Commissioner, along with the Bureau's reasons for non-approval. The Commissioner, in his or

her discretion, may then approve or deny the request, but if he or she shall deny such request, the person making the request shall be entitled to a hearing to determine the public interest, in the manner provided for "contested cases" in the South Carolina Administrative Procedures Act.

(e) DHEC may require further information from any applicant in order to obtain sufficient information to be utilized in approving or denying any request.

507.5 Treatment of outpatients with methadone.

(a) If a physician determines that methadone would be the drug of choice as an analgesic for a particular patient, the physician may issue prescriptions for methadone to the patient. Such prescriptions may be dispensed by any pharmacy that has agreed to perform such dispensing function.

(b) The treating physician shall agree to maintain adequate records to substantiate the use of methadone as an analgesic for the patient and shall make such records available to DHEC upon request.

Controlled Substances Listed in Schedule II

508. Requirement of prescription.

(a) A pharmacist may dispense directly a controlled substance listed in schedule II, which is a prescription drug as determined under the Act, only pursuant to a written prescription signed by the prescribing individual practitioner, except as provided in paragraph (d) of this section.

(b) An individual practitioner may administer or dispense directly a controlled substance listed in schedule II in the course of his or her professional practice without a prescription subject to § 507.

(c) An institutional practitioner may administer or dispense directly (but not prescribe) a controlled substance listed in schedule II only pursuant to a written prescription signed by the prescribing individual practitioner or to an order for medication made by an individual practitioner which is dispensed for immediate administration to the ultimate user.

(d) In the case of an emergency situation, a pharmacist may dispense a controlled substance listed in schedule II upon receiving oral authorization of a prescribing individual practitioner, provided that:

(1) The quantity prescribed and dispensed is limited to the amount adequate to treat the patient during the emergency period (dispensing beyond the emergency period shall be pursuant to a written prescription signed by the prescribing individual practitioner);

(2) The prescription shall be immediately reduced to writing by the pharmacist and shall contain all information requested in § 505 except for the signature of the prescribing individual practitioner;

(3) If the prescribing individual practitioner is not known to the pharmacist, he or she shall make a reasonable effort to determine that the oral authorization came from a registered individual practitioner, which may include a callback to the prescribing individual practitioner using his or her phone number as listed in the telephone directory and/or other good faith efforts to insure his or her identity; and

(4) Within 72 hours after authorizing an emergency oral prescription, the prescribing individual practitioner shall cause a written prescription for the emergency quantity prescribed to be delivered to the dispensing pharmacist. In addition to conforming to the requirements of § 505, the prescription shall have written on its face "Authorization for Emergency Dispensing" and the date of the oral order. The written prescription may be delivered to the pharmacist in person or by mail, but if delivered by mail it shall be postmarked within the 72-hour period. Upon receipt, the dispensing pharmacist shall attach this prescription to the oral emergency prescription which had earlier been reduced to writing. The pharmacist shall notify the Director if the prescribing individual practitioner fails to deliver a written prescription to him or her; failure of the pharmacist to do so shall void the authority conferred by this paragraph to dispense without a written prescription of a prescribing individual practitioner.

(e) A prescription prepared in accordance with § 505 written for a Schedule II narcotic controlled substance, to be compounded for the direct administration to a patient by parenteral, intravenous, intra-muscular, subcutaneous or intra-spinal infusion, may be transmitted by the practitioner or the practitioner's agent by facsimile to a home infusion pharmacy. The facsimile serves as the original prescription for the purposes of this paragraph (e) and it shall be maintained in accordance with § 304(d). The written, signed prescription shall be maintained in the medical record of the patient.

(f) A prescription prepared in accordance with § 505 written for a Schedule II substance for a resident of a Long Term Care Facility may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile. The facsimile serves as the original written prescription for purposes of this paragraph (f) and it shall be maintained in accordance with Section 304(d). The written, signed and voided prescription shall be maintained in the medical record of the patient.

(g) A prescription prepared in accordance with § 505 written for a Schedule II narcotic controlled substance for a patient enrolled in a hospice care program certified and/or paid for by Medicare under Title XVIII, or a hospice program which is licensed by DHEC may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile. The practitioner or the practitioner's agent shall note on the prescription that the patient is a hospice patient. The facsimile serves as the original written prescription for purposes of this paragraph (g) and shall be maintained in accordance with § 304(d). The written, signed, and voided prescription shall be maintained in the medical record of the patient.

508.1. Limitations on prescriptions for schedule II substances.

Prescriptions for schedule II controlled substances shall not be issued for more than a thirty-one day supply of the substance. No prescription for schedule II controlled substances shall be dispensed later than sixty days from the date of issue.

508.2. Practitioner-patient relationship required.

Prior to the issuance of a prescription for, or the direct dispensing of any schedule II controlled substances, the prescribing practitioner shall have a valid practitioner-patient relationship established with the recipient of the prescription, such relationship to include, but not be limited to, a sufficient knowledge of the medical need of the patient for such schedule II controlled substance, determination of the benefit to risk ratio of the use of such substance, good faith determination of the identity and address of the patient, a determination of the physical condition of the patient, and such practitioner shall be in personal attendance of the patient at the time of issuance of the prescription. Any prescription issued by any practitioner for any person outside of the reasonable bounds of a practitioner-patient relationship shall be deemed issued other than in the course of professional practice required by the Act. A practitioner cannot usually acquire a valid patient-practitioner relationship with himself or herself, nor with a member of his or her immediate family, due to the likelihood of the loss of or the vitiation of the objectivity required in making the necessary medical decisions in order to properly prescribe or dispense controlled substances. The practitioner may not be able to acquire a sufficient practitioner-patient relationship with non-family members (i.e., fiancé or fiancee, close personal friend, paramour, etc.) if total objectivity in deciding to prescribe or dispense controlled substances cannot be maintained due to such factors as extreme compassion, ardor, extortion, etc. which would vitiate such objectivity. In the event of a bona fide emergency situation, where great detriment to the health or safety of a patient may be involved, a practitioner may administer, dispense or prescribe limited amounts of controlled substances to any person, notwithstanding the provisions of this Section, until such time as another objective practitioner can be contacted.

509. Refilling prescription.

The refilling of a prescription for a controlled substance listed in schedule II is prohibited.

510. Partial filling of prescription.

(a) The partial filling of a prescription for a controlled substance listed in schedule II is permissible, if the pharmacist is unable to supply the full quantity called for in a written or emergency oral prescription and he makes a notation of the quantity supplied on the face of the written prescription (or written record of the emergency oral prescription). The remaining portion of the prescription may be filled within 72 hours of the first partial filling; however, if the remaining portion is not or cannot be filled within the 72-hour period, the pharmacist shall so notify the prescribing individual practitioner. No further quantity may be supplied beyond 72 hours without a new prescription.

(b) Prescriptions for schedule II controlled substances issued for patients in Long Term Care Facilities (LTCF) or for a patient with a medical diagnosis documenting a terminal illness may be dispensed in partial quantities, to include individual dosage units. If there is any question whether a patient may be classified as having a terminal illness, the pharmacist shall contact the practitioner prior to partially filling the prescription.

Both the pharmacist and the prescribing practitioner have a corresponding responsibility to assure that the controlled substance is for a terminally ill patient. The pharmacist shall record on the prescription whether the patient is "terminally ill" or LTCF patient." A prescription that is partially filled and does not contain the notation "terminally ill" or "LTCF patient" shall be deemed to have been filled in violation of the Act. For each partial dispensing, the pharmacist shall record on the back of the prescription the date of the partial dispensing, quantity dispensed, remaining quantity authorized to be dispensed, and the identification of the dispensing pharmacist. Prior to any subsequent partial filling the pharmacist is to determine that the additional partial filling is necessary. The total quantity of Schedule II controlled substances dispensed in all partial dispensings shall not exceed the total quantity prescribed. Schedule II prescriptions, for patients in a LTCF or patients with a medical diagnosis documenting a terminal illness shall be valid for a period not to exceed 30 days from the issue date unless sooner terminated by the discontinuance of medication.

(c) Information pertaining to current Schedule II prescriptions for patients in a LTCF may be maintained in a computerized system if this system has the capability to permit:

(1) Output (display or printout) of the original prescription number, date of issue, identification of prescribing individual practitioner, identification of patient, identification of LTCF, identification of medication authorized (to include dosage form, strength and quantity), listing of partial dispensings that have been dispensed under each prescription and the information required in § 510(b).

(2) Immediate (real time) updating of the prescription record each time a partial dispensing of the prescription is conducted.

(3) Retrieval of partially dispensed Schedule II prescription information is the same as required by §§ 514(b)(4) and (5) for Schedule III, IV, and V prescription refill information.

511. Labeling of substance.

The pharmacist filling a written or emergency oral prescription for a controlled substance listed in schedule II shall affix to the package a label showing date of filling, the pharmacy name and address, the serial number of the prescription, the name of the patient, the name of the prescribing practitioner, and directions for use and cautionary statements, if any, contained in such prescription or required by law. See also § 920.

512. Filing of prescriptions.

All written prescriptions and written records of emergency oral prescriptions shall be kept in accordance with requirements of § 304.

Controlled Substances listed in Schedules III, IV, and V.

513. Requirement of prescription.

(a) A pharmacist may dispense a controlled substance listed in schedule III, IV, or V which is a prescription drug as determined under the Act, only pursuant to either a written prescription signed by a prescribing individual practitioner or an oral prescription made by a prescribing individual practitioner and promptly reduced to writing by the pharmacist containing all information required in § 505, except for the signature of the prescribing individual practitioner.

(b) An individual practitioner may administer or dispense a controlled substance listed in schedule III, IV, or V in the regular course of his or her professional practice without a prescription subject to § 507.

(c) An institutional practitioner may administer or dispense directly (but not prescribe) a controlled substance listed in schedule III, IV, or V pursuant to a written prescription signed by a prescribing individual practitioner, or pursuant to an oral prescription made by a prescribing individual practitioner and promptly reduced to writing by the pharmacist (containing all information required in Regulation 505 except for the signature of the prescribing individual practitioner), or pursuant to an order for medication made by an individual practitioner which is dispensed for immediate administration to the ultimate user, subject to § 507.

514. Refilling of Prescriptions.

(a) No prescription for a controlled substance listed in schedule III, IV, or V shall be filled or refilled more than six months after the date on which such prescription was issued and no such prescription authorized to be refilled may be refilled more than five times. Each refilling of a prescription shall be entered on the back of the prescription and shall indicate the date of each refilling, the quantity dispensed, and the initials of the dispensing pharmacist in each refilling. If the pharmacist merely initials and dates the back of the prescription he shall be deemed to have dispensed a refill for the face amount of the prescription. Additional quantities of controlled substances listed in schedule III, IV, or V may only be authorized by a prescribing practitioner through issuance of a new prescription as provided in § 513 which shall be a new and separate prescription.

(b) As an alternative to the procedures provided by subsection (a), an automated data processing system may be used for the storage and retrieval of refill information for prescription orders for controlled substances in Schedules III, IV, and V, subject to the following conditions:

(1) Any such proposed computerized system shall provide online retrieval (via CRT display or hard-copy printout information for those prescription orders which are currently authorized for refilling. This shall include, but is not limited to data such as the original prescription number, date of issuance of the original prescription order by the practitioner, full name and address of the patient, name, address, and DEA registration number of the practitioner, and the name, strength, dosage form, quantity of the controlled substance prescribed (and quantity dispensed if different from the quantity prescribed), and the total number of refills authorized by the prescribing practitioner.

(2) Any such proposed computerized system shall also provide on-line retrieval (via CRT display or hard-copy printout) of the current refill history for Schedule III, IV, or V controlled substance prescription orders (those authorized for refill during the past six months). This refill history shall include, but is not limited to, the name of the controlled substance, the date of refill, the quantity dispensed, the identification code, or name or initials of the dispensing pharmacist for each refill and the total number of refills dispensed to date for that prescription order.

(3) Documentation of the fact that the refill information entered into the computer each time a pharmacist refills an original prescription order for a Schedule III, IV, or V controlled substance is correct shall be provided by the individual pharmacist who makes use of such a system. If such a system provides a hard-copy of each day's controlled substance prescription order refill data, that print-out shall be verified, dated, and signed by the individual pharmacist who refilled such a prescription order. The individual pharmacist shall verify that the data indicated is correct and then sign this document in the same manner as he or she would sign a check or legal document (e.g. J.H. Smith or John H. Smith). This document shall be maintained in a separate file at that pharmacy for a period of two years from the dispensing date. This printout of the day's controlled substance prescription order refill data shall be provided to each pharmacy using such a computerized system within 72 hours of the date on which the refill was dispensed. It shall be verified and signed by each pharmacist who is involved with such dispensing. In lieu of such a printout, the pharmacy shall maintain a bound log book, or

separate file, in which each individual pharmacist involved in such dispensing shall sign a statement (in the manner previously described) each day, attesting to the fact that the refill information entered into the computer that day has been reviewed by him or her and is correct as shown. Such a book or file shall be maintained at the pharmacy employing such a system for a period of two years after the date of dispensing the appropriately authorized refill.

(4) Any such computerized system shall have the capability of producing a print-out of any refill data which the user pharmacy is responsible for maintaining under the Act and its implementing regulation. For example, this would include a refill-by-refill audit trail for any specified strength and dosage form of any controlled substance (by either brand or generic name or both.) Such a print-out shall indicate name of the prescribing practitioner, name and address of the patient, quantity dispensed on each refill, date of dispensing for each refill, name or identification code of the dispensing pharmacist and the number of the original prescription order. In any computerized system employed by a user pharmacy the central record-keeping location shall be capable of sending the print-out to the pharmacy within 48 hours, and if a DEA Special Agent or compliance Investigator or an Inspector from DHEC requests a copy of such print-out from the user pharmacy it shall, if requested to do so by the Agent, Investigator, or Inspector verify the print-out transmittal capability of its system by documentation (e.g. postmark).

(5) In the event that a pharmacy which employs such a computerized system experiences system down-time, the pharmacy shall have an auxiliary procedure which will be used for the documentation of refills of Schedule III, IV, and V controlled substance prescription orders. This auxiliary procedure shall insure that refills are authorized by the original prescription order, that the maximum number of refills has not been exceeded, and that all of the appropriate data is retained for on-line data entry as soon as the computer system is available for use again.

(c) When filing refill information for original prescription orders for Schedule III, IV, or V controlled substances, a pharmacy may use the system described in either paragraph (a) or (b) of this section.

514.1. Limitations on prescriptions for Schedules III, IV, and V substances.

Prescriptions for controlled substances listed in Schedules III, IV, and V shall not be issued for more than a thirty-one day supply of the substance. If authorized for refill, no prescription shall be refilled sooner than 48 hours prior to the time that the prescription should be consumed if the prescribed daily dosage is divided into the total prescribed amount. (Example: 4 daily divided into 100 dosage units = 25 days.) Carry over time shall not accrue between refills. In the event that the practitioner does not specify an exact daily dosage, the dispenser shall calculate date of refill from the usual daily dosage recommended by the manufacturer of the controlled substance.

514.2. Practitioner-patient relationship required.

Prior to the issuance of a prescription for controlled substances listed in Schedule III, IV, or V the prescribing practitioner shall have a valid practitioner-patient relationship established with the recipient of the prescription, such relationship to include, but not be limited to, a sufficient knowledge of the medical need of the patient for such schedule III, IV, or V controlled substance, determination of the benefit to risk ratio of the use of such substance, good faith determination of the identity and address of the patient, a determination of the physical condition of the patient, and such practitioner shall be in personal attendance of the patient at the time of issuance of the prescription. Any prescription issued by any practitioner for any person outside of the reasonable bounds of a practitioner-patient relationship shall be deemed issued other than in the course of professional practice required by the Act. A practitioner cannot usually acquire a valid patient-practitioner relationship with himself or herself, now with a member of his or her immediate family, due to the likelihood of the loss or vitiation of the objectivity required in making the necessary medical decisions in order to properly prescribe or dispense controlled substances. The practitioner may not be able to acquire a sufficient practitioner-patient relationship with non-family members (i.e., fiancé or fiancee, close personal friend, paramour, etc.) if total objectivity in deciding to prescribe or dispense controlled substances cannot be maintained due to such factors as extreme compassion, ardor, extortion, etc. which would vitiate such objectivity. In the event of a bona fide emergency situation, where great detriment to the health or safety of a patient may be involved, a practitioner may administer, dispense or prescribe limited amounts of controlled substances to any person, notwithstanding the provisions of this Section, until such time as another objective practitioner can be contacted.

514.3 Partial Filling of Prescriptions.

The partial filling (dispensing) of a prescription for a controlled substance listed in Schedules III, IV, or V is permissible, provided that:

(a) Each partial filling is recorded in the same manner as a refilling.

(b) The total quantity dispensed in all partial fillings does not exceed the total quantity prescribed, and

(c) No dispensing occurs after six months from the date on which the prescription was issued.

515. Labeling of substances.

The pharmacist filling a prescription for a controlled substance listed in schedule III, IV, or V shall affix to the package a label showing the pharmacy name and address, the serial number of the prescription and the date of the initial filling, the name of the patient, the name of the practitioner issuing the prescription, and directions for use and cautionary statements, if any, contained in such prescriptions as required by law.

516. Filing prescriptions.

All prescriptions for controlled substances listed in schedules III, IV, and V shall be kept in accordance with § 304.

Controlled Substances Listed in Schedule V

517. Requirement of prescription

(a) A pharmacist may dispense a controlled substance listed in Schedule V pursuant to a prescription as required for controlled substances listed in Schedules III and IV in § 513. A prescription for a controlled substance listed in Schedule V may be refilled only as expressly authorized by the prescribing individual practitioner on the prescription; if no such authorization is given, the prescription may not be refilled. A pharmacist dispensing such substance pursuant to a prescription shall label the substance in accordance with § 515 and file the prescription in accordance with § 516.

(b) An individual practitioner may administer or dispense a controlled substance listed in Schedule V in the course of his or her professional practice without a prescription, subject to § 507.

(c) An institutional practitioner may administer or dispense directly (but not prescribe) a controlled substance listed in Schedule V only pursuant to a written prescription signed by the prescribing individual practitioner, or pursuant to an oral prescription made by a prescribing individual practitioner and promptly reduced to writing by the pharmacist (containing all information required in § 505 except for the signature of the prescribing individual practitioner), or pursuant to an order for medication made by an individual practitioner which is dispensed for immediate administration to the ultimate user, subject to § 507.

517.1 Limitation on prescriptions for schedule V substances

Prescriptions for schedule V controlled substances shall not be issued for more than a thirty-one day supply of the substance. Such prescriptions shall not be refilled more than five times, or after six months from the date of issue, and shall be refilled only if authorized by the prescribing practitioner.

518. Dispensing without prescription

A controlled substance in Schedule V, and a controlled substance listed in schedule II, III, or IV which is not a prescription drug as determined under the Act, may be dispensed by a pharmacist without a prescription to a purchaser at retail, provided that:

(a) Such distribution is made only by a pharmacist and not by a non-pharmacist employee even if under the direct supervision of a pharmacist (although after the pharmacist has fulfilled his or her professional and legal responsibilities set forth in this section, the actual cash, credit transaction, or delivery, may be completed by a non-pharmacist):

(b) Not more than 240 ml. (8 ounces) of any such substance containing opium, nor more than 120 ml. (4 ounces) of any other controlled substance listed in Schedule V may be distributed at retail to the same purchaser in any given 48-hour period;

(c) The purchaser is at least 18 years of age;

(d) The pharmacist requires every purchaser of a controlled substance listed in Schedule V not known to him or her to furnish suitable identification (including proof of age where appropriate);

(e) A bound record book for distributions of controlled substances listed in Schedule V (other than by prescription) is maintained by the pharmacist, which book shall contain the name and address of the purchaser, the name and quantity of controlled substance purchased, the date of each purchase, and the name or initials of the pharmacist who distributed the substance to the purchaser (the book shall be maintained in accordance with the record keeping requirement of § 304 of this chapter); and

(f) A prescription is not required for distribution or dispensing of the substance pursuant to the Act or any other law.

(g) Repetitive sales without prescription of Schedule V controlled substances without positive determination of medical need by the pharmacist selling the non-prescription controlled substance shall be deemed dispensing for other than medical purposes, and shall be prima facie evidence of detriment to the public health and safety.

PART 6

Miscellaneous

601. Severability.

If a provision of any section of Part 1 through 10 of this regulation is held invalid, all valid provisions that are severable shall remain in effect. If a provision of any of this regulation is held invalid in one or more of its applications, the provision shall remain in effect in all its valid applications that are severable.

602. Application of other laws.

Nothing in this regulation shall be construed as authorizing or permitting any person to do any act which such person is not authorized or permitted to do under Federal laws or obligations under international treaties, conventions or protocols, or under the law of the State in which he desires to do such act nor shall compliance with such Parts be construed as compliance with other Federal or State laws unless expressly provided in such other laws.

603. Exceptions in regulations.

Any person may apply for an exception to the application of any provision of these regulations by filing a written request stating the reasons for such exception. Requests shall be filed with the Director. The Director may grant an exception in his or her discretion, but in no case shall he or she be required to grant an exception to any person which is not otherwise required by law or the regulations cited in this section.

Special Exceptions for Manufacture and Distribution of Controlled Substances

604.1 Distribution by Dispenser to another practitioner.

(a) A practitioner who is registered to dispense a controlled substance may distribute (without being registered to distribute) a quantity of such substance to another practitioner for the purpose of general dispensing by the practitioner to his or her patients, provided that;

(1) The practitioner to whom the controlled substance is to be distributed is registered under the Act to dispense that controlled substance;

(2) The distribution is recorded by the distributing practitioner in accordance with § 316(e) of this regulation and by the receiving practitioner in accordance with § 316(c) of this regulation;

(3) If the substance is listed in Schedule I or II, an order form (DEA Form 222) is used as required by Part 4 of this regulation;

(4) The total number of dosage units of all controlled substances distributed by the practitioner pursuant to this section during any 12 month period does not exceed five percent of the total number of dosage units of all controlled substances distributed and dispensed by the practitioner during the twelve month period. Registrants in existence less than 12 months shall prorate the time period, and shall not distribute more than five percent of the dispensings for any monthly period.

(b) If, at any time during any consecutive 12 month period during which the practitioner is registered to dispense, there is reason to believe that the total number of dosage units of all controlled substance which will be distributed by him or her pursuant to this section will exceed five percent of the total number of dosage units of all controlled substances distributed and dispensed by him or her during the 12 month period, the practitioner shall obtain a registration to distribute controlled substances.

605. Manufacture and distribution of narcotic solutions and compounds by a pharmacist.

As an incident to a distribution under § 604.1, a pharmacist may manufacture (without being registered to manufacture) an aqueous or oleaginous solution or solid dosage form containing a narcotic controlled substance in a proportion not exceeding 20 percent of the complete solution, compound, or mixture.

606. Distribution to supplier.

Any person lawfully in possession of a controlled substance listed in any schedule may distribute (without being registered to distribute) that substance to the person from whom he or she obtained it or to the manufacturer of the substance, provided that a written record is maintained which indicates the date of the transaction, the name, form and quantity of the substance, the name, address, and registration number, if any, of the person making the distribution, and the name, address, and registration number, if know, of the supplier or manufacturer. In the case of returning a controlled substance listed in schedule I or II, an order form shall be used in the manner prescribed in Part 4 of these regulations and be maintained as the written record of the transaction.

607. Distribution upon discontinuance of transfer of business.

(a) Any registrant desiring to discontinue business activities altogether or with respect to controlled substances (without transferring such business activities to another person) shall return for cancellation his or her certificate of registration, and any un-executed order forms in his or her possession, to the Registration Unit, DEA, Department of Justice, Post Office Box 28083, Central Station, Washington, DC 20005, or to Bureau of Drug Control, DHEC, 2600 Bull Street, Columbia, SC 29201. Any controlled substances in his or her possession may be disposed of in accordance with § 609.

(b) Any registrant desiring to discontinue business activities altogether or with respect to controlled substances (by transferring such business activities to another person) shall submit in person or by registered or certified mail, return receipt requested, to the Director at least 14 days in advance of the date of the proposed transfer (unless the Director waives this time limitation in individual instances), the following information:

(1) The name, address, registration number, and authorized business activity of the registrant discontinuing the business (registrant-transferor);

(2) The name, address, registration number, and authorized business activity of the person acquiring the business (registrant-transferee);

(3) Whether the business activities will be continued at the location registered by the person discontinuing business, or moved to another location (if the latter, the address of the new location should be listed);

(4) Whether the registrant-transferor has a quota to manufacture or procure any controlled substance listed in schedule I or II (if so, the basic class or class of the substance should be indicated); and

(5) The date on which the transfer of controlled substances will occur.

(c) Unless the registrant-transferor is informed by the Director, before the date on which the transfer was stated to occur, that the transfer may not occur, the registrant-transferor may distribute (without being registered to distribute) controlled substances in his or her possession to the registrant-transferee in accordance with the following:

(1) On the date of transfer of the controlled substances, a complete inventory of all controlled substances being transferred shall be taken in accordance with §§ 305-312. This inventory shall serve as the final inventory of the registrant-transferor and the initial inventory of the registrant-transferee, and a copy of the inventory shall be included in the records of each person. It shall not be necessary to file a copy of the inventory with the Bureau of Drug Control unless requested by the Director. Transfers of any substances listed in schedules I or II shall require the use of order forms in accordance with Part 1305 of the Federal Regulations.

(2) On the date of transfer of the controlled substances, all records required to be kept by the registrant-transferor with reference to the controlled substances being transferred, under Part 3 of this Regulation, shall be

transferred to the registrant-transferee. Responsibility for the accuracy of records prior to the date of transfer remains with the transferor, but responsibility for custody and maintenance shall be upon the transferee.

(3) In the case of registrants required to make reports pursuant to Part 3 of this Regulation, a report marked "Final" will be prepared and submitted by the registrant-transferor showing the disposition of all the controlled substances for which a report is required; no additional report will be required from him or her, if no further transactions involving controlled substances are consummated by him or her. The initial report of the registrant-transferee shall account for transactions beginning with the day next succeeding the date of discontinuance or transfer of business by the transferor-registrant, and the substances transferred to him or her shall be reported as receipts in his or her initial report.

608. Incidental manufacture of controlled substances.

Any registered manufacturer who, incidentally but necessarily, manufactures a controlled substance or basic class of controlled substance for which he is registered and has been issued an individual manufacturing quota (if such substance or class is listed in schedule I or II) shall be exempt from the requirement of registration pursuant to Part I of this chapter and, if such incidentally manufactured substance is listed in schedule I or II, shall be exempt from the requirement of an individual manufacturing quota, if such substances are disposed of in accordance with § 609.

Disposal of Controlled Substances

609. Procedure for disposing of controlled substances.

(a) Any person in possession of any controlled substance and desiring or required to dispose of such substance may request the Director for authority and instructions to dispose of such substance. The request should be made as follows:

(1) If the person is a registrant required to make reports pursuant to Part 3 of this chapter, he or she shall list the controlled substance, or substances which he or she desires to dispose of on the "b" subpart of the report normally filed by him or her, and submit three copies of that subpart to the Director;

(2) If the person is a registrant not required to make reports pursuant to Part 2 of this chapter, he or she shall list the controlled substance or substances which he or she desires to dispose of on DHEC Form 41 and submit three copies of that form to the Director; and

(3) If the person is not a registrant, he or she shall submit to the Director a letter stating:

(i) The name and address of the person;

(ii) The name and quantity of each controlled substance to be disposed of;

(iii) How the applicant obtained the substance, if known; and

(iv) The name, address, and registration number, if known, of the person who possessed the controlled substances prior to the applicant, if known.

The name, address, and registration number, if known, of the person who possessed the controlled substances prior to the applicant, if known.

(b) The Director shall authorize and instruct the applicant to dispose of the controlled substance in one of the following manners:

(1) By transfer to person registered under the Act and authorized to possess the substance;

(2) By destruction in the presence of an agent of the Bureau of Drug Control or other authorized person, or

(3) By such other means as the Director may determine to assure that the substance does not become available to unauthorized persons.

(c) In the event that a registrant is required regularly to dispose of controlled substances, the Director may authorize the registrant to dispose of such substances, in accordance with paragraph (b) of this section, without prior approval of the Bureau of Drug Control in each instance, on the condition that the registrant keep records of such disposals and file periodic reports with the Director summarizing the disposals made by the registrant. In granting such authority, the Director may place such condition as he deems proper on the disposal of controlled substances, including the method of disposal and the frequency and detail of reports.

PART 7

Schedules of Controlled Substances

701. Schedule I.

Any substance declared a controlled substance in schedule I by the DEA, United States Department of Justice or its successor agency, and listed in 21 CFR § 1308.11, shall be considered a schedule I controlled substance within the meaning of this regulation upon the effective date specified in the Federal Register announcement.

702. Schedule II.

Any substance declared a controlled substance in schedule II by the DEA, United States Department of Justice, or its successor agency, and listed in 21 CFR § 1308.12, shall be considered a schedule II Controlled Substance within the meaning of this regulation upon the effective date specified in the Federal Register announcement.

703. Schedule III.

Any substance declared a controlled substance in schedule III by DEA, United States Department of Justice, or its successor agency, and listed in 21CFR § 1308.13, shall be considered a Schedule III Controlled Substance within the meaning of this regulation upon the effective date specified in the Federal Register announcement.

704. Schedule IV.

Any substance declared a controlled substance in schedule IV by the DEA, United States Department of Justice, or its successor agency, and listed in 21 CFR § 1308.14, shall be considered a Schedule IV Controlled Substance within the meaning of this regulation upon the effective date specified in the Federal Register announcement.

705. Schedule V.

Any substance declared a controlled substance in schedule V by the DEA, United States Department of Justice, or its successor agency, and listed in 21 CFR § 1308.15, shall be considered a Schedule V Controlled Substance within the meaning of this regulation upon the effective date specified in the Federal Register announcement.

Excluded Non-narcotic Substances

706. Application for exclusion of a non-narcotic substance.

(a) Any person seeking to have any non-narcotic substance which may, under the Federal Food, Drug and Cosmetic Act (21 USC 301, et seq.), be lawfully sold over the counter without a prescription, excluded from any schedule, pursuant to the Act, may apply to the Director, Bureau of Drug Control, DHEC, 2600 Bull Street, Columbia, SC 29201. No substance, drug, or any other product which is not excluded or exempted under the Federal Controlled Substances Act (21 USC Section 801 et seq.) or regulations (21 CFR § 1301 et seq.) may lawfully be excluded or exempted under state law pursuant to Federal preemption under the provisions of 21 USC Section 903.

(b) An application for an exclusion under this section shall be handled by the Director, in determining whether the substance shall be excluded, in the manner prescribed for petitions to classify a substance on a schedule set forth in 21 CFR § 1301 et seq.

707. Excluded substances.

Substances excluded from Federal schedules of controlled substances by Federal regulation 21 CFR § 1308.22 of the DEA, U.S. Department of Justice, are hereby excluded from the schedules of this regulation.

Excepted Stimulant or Depressant Compounds

708. Application for exception of a stimulant or depressant compound.

An application for an exception under this section shall be handled in the manner prescribed for petitions to classify a substance on any schedule set forth in Federal Regulation 21 CFR § 1308.31.

709. Excepted compounds.

Substances excepted from Federal schedules of controlled substances pursuant to 21 CFR § 1308.32 are hereby excepted from the provisions of this regulation.

710-799. (Reserved)

PART 8

Hearings and Other Administrative Matters.

Subpart A

801. Hearings.

Hearings shall be conducted in the manner set forth by the Office of General Counsel, DHEC.

802. (Reserved)

803. Authority to make inspections.

In carrying out his or her functions under the Act, the Director, through his or her inspectors, is authorized in accordance with the Act to enter controlled premises and conduct administrative inspections thereof, for the purpose of:

(a) Inspecting, copying, and verifying the correctness of records, reports, or other documents required to be kept or made under the Act and any regulations promulgated under the Act, including, but not limited to, inventory and other records required to be kept pursuant to Part 3 of this chapter, order form records required to be kept pursuant to Part 4 of this chapter, prescription and distribution records required to be kept pursuant to Part 5 of this chapter, shipping records identifying the name of each carrier used and the date and quantity of each shipment, and storage records identifying the name of each warehouse used and the date and quantity of each storage;

(b) Inspecting within reasonable limits and in a reasonable manner all pertinent equipment, finished and unfinished controlled substances and other substances or materials, containers, and labeling found at the controlled premises relating to this Act;

(c) Making a physical inventory of all controlled substances on hand at the premises;

(d) Collecting samples of controlled substances or precursors (in the event any samples are collected during an inspection, the inspector shall issue a receipt for such samples on DEA Form 84 to the owner, operator, or agent in charge of the premises);

(e) Checking of records and information on distribution of controlled substances by the registrant as they relate to total distribution of the registrant (i.e., has the distribution in controlled substances increased markedly within the past year, and if so, why); and

(f) Except as provided in § 804, all other things therein (including records, files, papers, processes, controls and facilities) appropriate for verification of the records, reports, documents referred to above or otherwise bearing on the provisions of the Act and the regulations thereunder.

804. Exclusion from inspection.

(a) Unless the owner, operator, or agent in charge of the controlled premises so consents, no inspection authorized by the regulations shall extend to:

(1) Financial data;

(2) Sales data other than shipping data; or

(3) Pricing data.

805. Entry.

An inspection shall be carried out by an inspector. Any such inspector, upon:

(a) Stating his or her purpose and

(b) Presenting to the owner, operator, or agent in charge of the premises to be inspected:

(1) Appropriate credentials, or

(2) Written notice of or her inspection authority under § 803 and the Act, or

(c) Receiving informed consent under § 808 of this Regulation or through the use of administrative warrant issued under the Act shall have the right to enter such premises and conduct inspections at reasonable times and in a reasonable manner.

806. Notice of inspection.

The notice of inspection shall contain:

(a) The name and title of the owner, operator, or agent in charge of the controlled premises;

(b) The controlled premises name;

(c) The address of the controlled premises to be inspected;

(d) The date and time of the inspection;

(e) A statement that a notice of inspection is given pursuant to the Act;

(f) A reproduction of the pertinent parts of the Act; and

(g) The signature of the inspector.

807. (Reserved)

808. Consent to inspection.

(a) An administrative inspection warrant shall not be required if informed consent is obtained from the owner, operator, or agent in charge of the controlled premises to be inspected.

(b) Wherever possible, informed consent obtained by the inspector shall consist of a written statement signed by the owner, operator or agent in charge of the premises to be inspected.

(c) After August 17, 1974, informed consent may be shown by the production of a completed registration application or certificate, which shall contain printed thereon a preamble and conditions of registration.

809. Application for administrative inspection warrant.

(a) An administrative inspection warrant application shall be submitted to any judge or any magistrate and shall contain the following information:

(1) The name and address of the controlled premises to be inspected;

(2) A statement of statutory authority for the administrative inspection warrant, and that the fact that the particular inspection in question is designed to insure compliance with the regulations promulgated under those acts;

(3) A statement relating to the nature and extent of the administrative inspection, including, where necessary, a request to seize specified items and/or to collect samples of finished or unfinished controlled substances;

(4) A statement that the establishment either:

(i) has not been previously inspected, or

(ii) was last inspected on a particular date.

(b) The application shall be submitted under oath to an appropriate judge or magistrate.

810. Administrative probable cause

If the judge or magistrate is satisfied that "administrative probable cause" exists, he shall issue an administrative warrant. Administrative probable cause shall not mean criminal probable cause as defined by Federal or State statute or case law.

811. Execution of warrants.

An administrative inspection warrant shall be executed and returned as required by, and any inventory or seizure made shall comply with the requirements of the Act. The inspection shall begin as soon as is practicable

after the issuance of the administrative inspection warrant and shall be completed with reasonable promptness. The inspection shall be conducted during regular business hours and shall be completed in a reasonable manner.

812. Refusal to allow inspection with an administrative warrant.

If a registrant or any person subject to the Act refuses to permit execution of an administrative warrant or impedes the inspector in the execution of that warrant, he shall be advised that such refusal or action constitutes a violation of the Act. If he or she persists and the circumstances warrant, he she shall be arrested and the inspection shall commence or continue.

813. (Reserved)

Subpart B

Protection of Researchers and Research Subjects

814. Confidentiality of research subjects.

(a) Any person registered to conduct a bona fide research project with controlled substances under the Act who intends to maintain the confidentiality of those persons who are the subjects of such research, shall, upon registration or within a reasonable time thereafter, submit to the Bureau of Drug Control, DHEC, 2600 Bull Street, Columbia, SC 29201, a separate request for each research project involving controlled substances, which shall contain the following:

(1) The researcher's registration number for that project;

(2) The location of the research project;

(3) A general description of the research or a copy of the research protocol;

(4) A specific request to withhold the names and/or any other identifying characteristics of the research subjects; and

(5) The reasons supporting the request.

(b) Within 60 days from the date of receipt of the request, the Director shall issue a letter, either granting confidentiality, requesting additional information or denying confidentiality, in which case the reasons for the denial shall be included. A grant of confidentiality shall be limited solely to the specific research project indicated in the request.

(c) Within 30 days after the date of completion of the research project, the researcher shall so notify the Director.

(d) In addition to the requirements set forth in paragraphs (a), (b), and (c) of this Section, the person requesting confidentiality of research subjects shall also provide the Bureau of Drug Control with a copy of the petition to the Attorney General of the United States required pursuant to the provisions of 21 CFR § 1316.23. In the event that the Federal petition for confidentiality is not granted, or is withdrawn by the Attorney General of the United States, the Bureau of Drug Control shall, after notice to the researcher, remove its grant of confidentiality, if previously granted.

815. Exemption from prosecution for researcher.

(a) Upon registration of a practitioner to engage in research in controlled substances under the Act, the Bureau of Drug Control, DHEC, on its own motion or upon request in writing from the Commissioner or from the practitioner, may exempt the registrant when acting within the scope of his or her registration, from prosecution under State or local laws for offenses relating to possession, distribution or dispensing of those controlled substances within the scope of his or her exemption. However, this exemption does not diminish any requirement of compliance with the Federal Food, Drug and Cosmetic Act (21 USC 301, et seq.) or with the Federal Controlled Substances Act (84 Stat. 1242; 21 U.S.C. 801, et seq.).

(b) All petitions for Grants of Exemption from Prosecution for the Researcher shall be addressed to the Director, Bureau of Drug Control, SCDHEC, 2600 Bull Street, Columbia, SC 29201, and shall contain the following:

(1) The researcher's registration number, if any, for the project;

(2) The location of the research of the research project;

(3) The qualifications of the principal investigator;

(4) A general description of the research or a copy of the research protocol;

(5) The source of funding for the research project;

(6) A statement as to the risks posed to the research subjects by the research procedures and what measures of protection will be afforded to the research subjects;

(7) A statement as to the risks posed to society in general by the research procedures and what measures will be taken to protect the interests of society;

(8) A specific request for exemption from prosecution by Federal, State, or local authorities for offenses related to the possession, distribution, and dispensing of controlled substances in accord with the procedures described in the research protocol;

(9) A statement establishing that a grant of exemption from prosecution is necessary to the successful completion of the research project;

(c) Any researcher or practitioner proposing to engage in research requesting both exemption from prosecution and confidentiality of identity of research subjects may submit a single petition incorporating the information required in §§ 814 and 815.

(d) The exemption shall consist of a letter issued by the Director, which shall include:

(1) The researcher's name and address;

(2) The researcher's registration number for the research project;

(3) The location of the research project;

(4) A concise statement of the scope of the researcher's registration; and

(5) The limits of the exemption;

(6) The exemption shall apply to all acts done in the scope of the exemption while the exemption is in effect. The exemption shall remain in effect until completion of the research project or until the registration of the researcher is either revoked or suspended or his or her removal of registration is denied. However, the protection afforded by the grant of exemption from prosecution during the research period shall be perpetual.

(e) Within 30 days of the date of completion of the research project, the researcher shall so notify the Director. The Director shall issue another letter including the information required in paragraph (d) of this section and stating the date on which the period of exemption concluded; upon receipt of this letter, the researcher shall return the original letter of exemption.

Subpart C

Enforcement Proceedings

816. Authority for enforcement proceeding.

A hearing may be ordered or granted by the Director of the Bureau of Drug Control, at his or her discretion, to permit any person against whom criminal and/or civil action is contemplated under the Act an opportunity to present his or her views and his or her proposals for bringing his or her alleged violations into compliance with the law. Such hearing will also permit him or her to show cause why prosecution should not be instituted, or to present his or her views on the contemplated proceeding.

817. Notice of proceeding; time and place.

Appropriate notice designating the time and place for the hearing shall be given to the person. Upon request, timely and properly made, by the person to whom notice has been given, the time and place of the hearing, or both, may be changed if the request states reasonable grounds for such change. Such request shall be addressed to the Director who issued the notice.

818. Conduct of proceeding.

Presentation of views at a hearing under this Subpart shall be private and informal. The views presented shall be confined to matters relevant to bringing violations into compliance with the Act or to other contemplated proceedings under the Act. These views may be presented orally or in writing by the person to whom the notice was given, or by his or her authorized representative.

PART 9

Handling and Administering Controlled Substances in Hospitals.

901. Hospital registration.

All hospitals (except those owned and operated by the Federal government) shall be registered with DHEC in controlled substances schedules II through V inclusive.

902. Practitioners' registration.

Physicians and other practitioners who prescribe or order controlled substances for, or administer controlled substances to, patients in a hospital, shall be registered under the provisions of Article 3 of Chapter 53 of Title 44 of the 1976 Code.

903. Interns' registration.

An intern employed by a hospital may prescribe or order the administration of controlled substances for patients within the hospital, provided, that such intern has completed his or her course of study in a recognized college of medicine and has been duly licensed by the Board of Medical Examiners of South Carolina to practice medicine within this state, and has duly registered with DHEC and the DEA under the respective Controlled Substances Acts. An intern who is not licensed to practice medicine within this state may not register.

904. Damaged controlled substances.

Damaged, deteriorated, surplus, outdated, unusable, or unsalable controlled substances shall be returned to a manufacturer or a distributor for credit, or destroyed pursuant to State and Federal regulations in the manner provided for elsewhere within this chapter, on an annual basis. All such controlled substances shall be separated from usable or active stock; the registrant or his or her agent shall maintain a current inventory (similar to a perpetual inventory) of these substances until such substances can be returned to a manufacturer or distributor or destroyed in accordance with the above provisions. Returns to manufacturers and distributors can be made at any time within the year, and may, for good reason shown, be delayed past one year upon notice to DHEC.

905. Responsibility for controlled substances.

The administrative head of the hospital as a registrant under the Controlled Substances Act is responsible for the proper safeguarding and handling of controlled substances within the hospital. Responsibility for storage, accountability, and proper dispensing of controlled substances from the pharmacy may be delegated to a pharmacist employed by the hospital. Likewise, the Director of Nursing is usually delegated the authority for proper storage at nursing stations, and use, as directed by physician orders. However, delegation of authority does not relieve the administrator of the hospital of supervisory responsibility to insure detection and correction or any diversion of mishandling. The administrator shall be certain that all possible control measures are observed, and that any suspected diversion or mishandling of controlled substances is reported immediately to the Bureau of Drug Control for investigation. The administrator is ultimately responsible that all thefts be reported to DHEC pursuant to §§ 149 through 150 of this Regulation.

906. Prescriptions not required on floor-stocked Controlled Substances.

(a) Physicians' orders for patients within the hospital shall appear on the doctor's order sheet and no prescription is required. (It is unlawful for a hospital to fill or dispense a physician's prescription on an outpatient basis unless the hospital maintains a pharmacy holding a permit for such issued by the South Carolina Board of Pharmacy, and which is under the supervision of a registered pharmacist.) The nursing station floor stock used in administering controlled substances in any schedule shall be accounted for on a controlled substances certificate or disposition form. The physician's order sheet shall be checked against the medication administration record (MAR) and the controlled substances control sheet periodically by the person in charge of the pharmacy or drug room.

(b) Due to finite limits of nursing unit controlled substances storage areas, controlled substances that are not kept as floor stock will be occasionally ordered. Proper accountability for these controlled substances not included in floor stock require that they be issued on an individual demand basis with an accompanying sign-out control sheet. Any amount of these controlled substances which are not administered to or ingested by the patient shall be returned to the pharmacy within 72 hours after the medication order is discontinued by the individual practitioner treating the patient.

(c) Controlled substances secured from or obtained by prescription from retail sources outside the hospital are to be stored securely with all other controlled substances on the nursing unit. These controlled substances are to be monitored as to their administration to the patient by a supplemental controlled substances disposition sheet. This sheet should be designated with a control number or an identifying mark in order to distinguish it from regular hospital stock. If the patient is discharged before all of these controlled substances are administered, the amount sent home with the patient (if any) shall be noted on the disposition sheet and signed and dated by a registered nurse involved in the discharge process, who shall cause the sheet to be transmitted to the hospital pharmacy. In the event there are controlled substances obtained from outside sources which are not to be sent home with the patient, or if the patient expires and there are unutilized controlled substances from these sources, the balance of the medication shall be noted on the sheet by the Registered Nurse, and the sheet and the medication shall be returned to the hospital pharmacy for disposition.

(d) All orders shall be signed by the practitioner.

(e) All controlled substances within a hospital that are not located within the hospital pharmacy shall be accompanied by a disposition sheet or a sign-out sheet upon which to record the administration of the substance, whether the substance originated as hospital stock, from a retail source outside the hospital, or was brought into the hospital by the patient with the consent of the hospital and the patient's practitioner.

907. Registry number.

The physician's full name shall appear on the physician's order sheet. The physician's registry number is not required on the sheet, but shall be recorded within the pharmacy or drug room.

908. Telephone orders.

Telephone orders for hospital patients are permissible only in absolute necessity. The nurse will write the order on the physician's order sheet, stating "Telephone Order" and sign the physician's name and the nurse's initials. The controlled substance may be administered at once. The physician shall verify his or her telephoned order by signature upon the patient's chart within 72 hours.

909. Verbal orders.

Verbal (oral) orders for hospital patients are permitted in a bona fide emergency. Such orders shall be handled in the same manner as telephone orders.

910. Controlled substances records.

All orders and records of controlled substances shall be in ink, typed, or indelible pencil. Mechanical systems may be used to collect and store this data. All data shall be kept in a readily retrievable manner as set forth in §§ 301, 303, 304, 313, and 316 of this regulation. Any mechanical system shall be designed to retrieve data in such a manner as to show individual controlled substance activity per nursing unit as well as individual controlled substance volume in its entirety. This shall include, but is not limited to, control numbers, date dispensed, identity of the controlled substance, strength, quantity dispensed, and location within the hospital.

911. Procedure in case of waste, destruction, contamination, etc.

(a) Aliquot part of solutions used for drugs: The nurse shall use the proper number of tablets or ampoules from nursing unit stock. The nurse shall record the number of tablets or ampoules used and the does given in the proper columns of the controlled substances disposition sheet. The nurse shall expel into the sink that portion of the solution not used. The aliquot shall be recorded and witnessed by a second signature on the back of the disposition sheet, or on a separate waste form designated by the hospital.

(b) Prepared dose refused by patient or canceled by physician: When a dose of a controlled substance has been prepared for a patient but not used due to refusal by the patient or cancellation by the physician, or has been accidentally contaminated during the regular course of administering the drug to the patient for whom it has been ordered (e.g., blood aspirated into a syringe when beginning the administration of an intra-muscular medication) the nurse shall expel the solution into the sink, and record on the back of the disposition sheet the reason why the controlled substance was not administered.

Example: "Discarded: Refused by patient," or "Order cancelled by Dr. A. Jones." The head nurse of the unit shall sign the statement.

(c) Accidental destruction of controlled substance: When a solution, table, ampoule or substance is accidentally destroyed on a nursing unit, the person responsible shall indicate the accidental loss by writing "wasted; see waste report" on the line allowed for the record on the controlled substances disposition sheet. The person shall write on the back of the disposition sheet a complete report of the accident and sign the statement. The head nurse or charge nurse of the unit shall witness and sign the statement when complete.

(d) Contaminated or broken hypodermic tablets and contaminated controlled substance solutions: When a controlled substance hypodermic tablet is contaminated or broken or a controlled substance solution is contaminated, the person responsible or the head nurse shall place the tablets, particles, or solution in a suitable container and label. The person responsible, or the head nurse, shall indicate the contaminated controlled substance by check in the space or spaces allowed for the record on the controlled substance disposition sheet of that substance. He or she shall write on the back of the sheet a complete report and sign the statement when complete. The container with the contaminated controlled substance shall be returned to the pharmacy or drug room. The pharmacist or person in charge of the drug room will receive it and note on the controlled substances disposition sheet covering the particular substance that it has been returned. The hospital shall return the material either by itself or with similar controlled substance material at a convenient time, to the DEA or the Bureau of Drug Control, DHEC, through an Inspector. (In using the above procedure, the head nurse should sign entries as a witness.)

912. Procedures in case of loss, theft, etc.

(a) Discrepancies in controlled substances count: Those involving small amounts (such as single doses) shall be reported to a responsible supervisory official. An investigation should be made to determine the cause of the loss. A copy of the report of the investigation, signed by the responsible supervisor shall be filed with the hospital controlled substance records, and appropriate action taken to prevent recurrence.

(b) Recurring shortages: In cases of recurring shortages or loss of significant quantities of controlled substances (several doses), a thorough investigation shall be made, making every effort to determine the reason for the shortages, and the person responsible for the shortage, if possible. A complete report of the incident and findings shall be made to the administrative authority of the hospital. Appropriate action shall be taken immediately to prevent recurrence. A copy of the report, including any findings resulting from the local investigations, and a theft report, as required by §147, shall be forwarded to the Bureau of Drug Control, DHEC, 2600 Bull Street, Columbia, SC 29201.

913. (Reserved)

914. Controlled substances of physician's office or bag.

It is unlawful for a physician to obtain substances for his or her office or bag use from the controlled substances stock of the hospital. A physician may obtain his or her controlled substances from a drug wholesaler by invoice; Schedule II substances shall be acquired through the use of order forms supplied by the DEA, U. S. Department of Justice (DEA Forms 222). Those hospitals maintaining permitted retail pharmacies, or otherwise licensed as a "drug outlet" by the SC Board of Pharmacy, may at their option, furnish controlled substances to practitioners pursuant to the provisions of § 604.1 of this Regulation.

915. Dispensing to outpatients.

It is unlawful for a hospital to dispense controlled substances to outpatients on physicians' orders. Such dispensing shall be done only on the prescription of a duly licensed physician and only from the pharmacy holding a permit as a retail pharmacy of a hospital registered under Article 3 of Chapter 53 of Title 44 of the 1976 Code, and by or under the immediate supervision of a registered pharmacist. With the permission of the hospital, a practitioner may personally dispense limited quantities of controlled substances to their patients for take-home purposes, provided that such substances are properly packaged and labeled as required by provisions elsewhere within this regulation, and in compliance with statutory provisions.

916. Administering to outpatients.

Controlled substances may be administered to outpatients or emergency patients when admitted to the emergency room of the hospital when ordered by the physician in charge of the case, provided a record is kept showing the name and address of the patient, kind and quantity of controlled substance administered, date and physician's order. Under no conditions may the patient be given controlled substances to take out of the hospital except as provided in § 915.

916.1 Emergency Rooms.

The stock of controlled substances maintained in hospital emergency rooms or outpatient facilities is kept for the use by or at the direction of physicians in the emergency room. Therefore, in order to receive such medication, a patient shall be examined by a physician in the emergency room or outpatient facility and the need for the particular controlled substance determined by such physician. It is not possible under Federal requirements for the use of controlled substances for a physician to see a patient outside of the emergency room setting, or talk to the patient over a telephone, and then call the emergency room and order the administration of a stocked controlled substance upon the patient's arrival at the emergency facility. Cf., S.C. Code Ann. § 44-53-110, "administer" ['...in his presence...']; §§ 508.2 and 514.2 of this Regulation, requiring personal attendance, etc.

917. Storage of controlled substances.

All controlled substances shall be kept in a locked, secure place. Large reserve stocks should be kept in a strong safe, substantial enough to deter entry and heavy enough to prevent being carried away. Other valuable property may be kept in the safe provided adequate security of the controlled substances contained therein is maintained. See also §§ 140 through 145, inclusive.

(a) Nursing station controlled drug box: Responsibility: Only a very limited number of persons should possess the key to the controlled substances on the nursing station. When such person(s) are relieved from duty, the person(s) taking charge, should count and transfer the controlled substances in the presence of the person(s) being relieved, and all controlled substances should be accounted for. The responsibility rests with the person(s) assigned to possession of the key on each shift. The administrator shall be responsible for control of these keys. This responsibility may be delegated to the Director of Nursing. Written documentation of accountability of controlled substances (i.e., shift change nurses' signatures) shall be stored in a readily retrievable manner and maintained for a period of not less than two years, after which they may be destroyed.

(b) Responsibility of drug room: In those hospitals not maintaining a pharmacy under the supervision of a registered pharmacist, the drug room shall be restricted to the Director of Nurses, a designated assistant, or a designated registered nurse, not more than one of whom shall be in possession of the key to the drug room at the same time. The nurse in possession of the key to the drug room shall be responsible for all transactions in the drug room on his or her respective shift. (Observance of (a) and (b) does not relieve the Administrator of his or her responsibilities.)

918. Dispensing of controlled substances to employees of hospitals.

The dispensing of controlled substances from the stock of the hospital to employees of the hospital is prohibited. Provided, however, that in those hospitals maintaining a pharmacy holding a permit as a retail pharmacy and registered under Article 3 of Chapter 53 of Title 44 of the 1976 Code, the pharmacist may compound or dispense a properly executed prescription issued by a duly licensed physician, provided further, that an employee of the hospital may be administered a controlled substance in an emergency if the administration of such drug is properly ordered and recorded in the same manner as provided for patients in the emergency room.

919. Availability of records for inspectors.

The administrative head of the hospital shall, upon service of an inspection warrant by an inspector of the Bureau of Drug Control, DHEC, or if such administrative head chooses, voluntarily without inspection warrant, (acting pursuant to the informed consent to inspection delineated as a condition of registration upon the application for registration and the registration certificate issued to the registrant by DHEC) make available to such inspector all dispensing and administering records of controlled substances, for the purpose of audit of said controlled substances, as well as records of receipt and disposition of all controlled substances acquired by the hospital. Inspectors shall not divulge information contained on patient records that do not concern controlled substances or other drugs restricted to prescription use only.

920. Labeling of substances. (Schedule II)

The requirements of § 511 do not apply when a controlled substance listed in schedule II is prescribed for administration to an ultimate user who is institutionalized: Provided, that:

(1) Not more than 7-day supply of the controlled substance listed in schedule II is dispensed at one time;

(2) The controlled substance listed in schedule II is not in the possession of the ultimate user prior to the administration; and

(3) The institution maintains appropriate safeguards and records regarding the proper administration, control, dispensing, and storage of the controlled substances listed in schedule II; and

(4) The system employed by the pharmacist in filling a prescription is adequate to identify the supplier, the product, and the patient, and to set forth the directions for use and cautionary statements, if any, contained in the prescription or required by law.

921. Labeling of substances. (Schedules III, IV, V)

The requirements of §513 do not apply when a controlled substance listed in schedule III or IV is prescribed for administration to an ultimate user who is institutionalized; Provided, that:

(1) Not more than a 30-day supply or 100 dosage units, whichever is less, of the controlled substance listed in schedule III, IV or V is dispensed at one time.

(2) The controlled substance listed in schedule III, IV or V is not in the possession of the ultimate user prior to administration;

(3) The institution maintains appropriate safeguards and records regarding the proper administration, control, dispensing and storage of the controlled substance listed in schedule III, IV or V; and

(4) The system employed by the pharmacist in dispensing a prescription is adequate to identify the supplier, the product, and the patient, and to set forth the directions for use and cautionary statements, if any, contained in the prescription or required by law.

922. Clarification and intent.

These regulations are considered to be a general but minimal required control level in the opinion of the Bureau of Drug Control, DHEC. More stringent control for the institution in question, or special interpretations of these regulations may be approved by a special meeting with the Bureau of Drug Control, and the administrator or designated pharmacy and therapeutics committee of the respective hospital every 3 to 5 years when the need is felt for such clarification. The intent of these 900 series regulations is to insure adequate control and accountability of controlled substances utilized in health care without duly hindering or restraining the delivery of such care. Accountability and an accurate audit at periodic intervals are the crux of the adequate control system.

923. Consultation procedure.

At the request of the institution under examination and/or the Bureau of Drug Control, DHEC, the SC Society of Hospital Pharmacists may furnish a recognized local authority on Institutional Medication Delivery and Control Systems to accompany the agent/or inspector and act as a consultant to the institution in question on rectifying flaws in the system under scrutiny.

Fiscal Impact Statement:

There will be no additional cost to the state and its political subdivisions.

Statement of Need and Reasonableness:

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

DESCRIPTION OF REGULATION:

Purpose of Regulation: The purpose of this amendment is to: (1) delete unnecessary language in definitions; (2) replace references to "Division" with "Bureau of Drug Control"; (3) increase registrant fees; (4) clarify quantity limitations for controlled substances dispensed directly to ultimate users; (5) clarify language relating to controlled substances inventory requirements; (6) simplify procedures for the treatment of patients with methadone; (7) clarify quantity limitations for controlled substances prescriptions; (8) delete references to functions no longer performed by the Bureau of Drug Control; (9) permit the faxing of schedule II narcotic prescriptions for hospice patients, consistent with Federal regulation; and (10) to provide for scheduling of controlled substances, consistent with Federal scheduling.

Legal Authority: The South Carolina Controlled Substances Regulations are authorized by S.C. Code Ann. 44-53-280(A).

Plan for Implementation: These amendments will make changes to and be incorporated into R.61-4 upon approval by the S.C. General Assembly and publication in the *State Register*. The proposed amendments will be implemented in the same manner in which the existing regulations are implemented.

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

These amendments to R.61-4 are needed to increase registrant fees to offset the reduction in State funding, in order to provide the current level of services in future years, to provide consistency with various federal regulations, and to clarify quantity limitations for controlled substances prescriptions and inventory requirements. The amendments are reasonable since they accomplish their intended purpose while placing no significant burden or financial hardship upon the regulated community.

DETERMINATION OF COSTS AND BENEFITS:

There will be no additional costs to the state or its political subdivisions. There will be additional costs to the regulated community for registrant fees, however, such costs are reasonable and will not place a significant financial hardship on the regulated community.

UNCERTAINTIES OF ESTIMATES: None.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

Implementation of these amendments will not compromise the protection of the environment or the public health. The effect should be beneficial because the amendments will simplify record keeping and provide easier compliance for the regulated community.

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

There will be no adverse effect on the environment if the amendments are not implemented. Failure to amend the regulations would deny the regulated community the benefits from the clarification and simplification of record keeping procedures.

Statement of Rationale Pursuant to S.C. Code Section 1-23-120:

See Statement of Need and Reasonableness.

Document No. 2734
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
Chapter 61
Statutory Authority: 44-56-30, 48-1-10 et seq., 1-23-10 et seq.

R.61-79 Hazardous Waste Management Regulations

Synopsis:

The Department is amending R.61-79 to remove State provisions which are not required for federal compliance and which provide financial assurance for restoration of environmental impairment. This amendment removes regulatory requirements that were vacated by a decision of the South Carolina Court of Appeals on April 4, 2000, which determined that environmental impairment regulations had not been properly promulgated. This amendment removes the environmental impairment regulations which were published as proposed in the State Register on June 24, 1994, and published as final regulations in the State Register on June 23, 1995 as Document No. 1823. Affected sections are R.61-79.264.152, .153, and .154 and 265.152 and .153 and cross references at 264.140 and 265.140.

Discussion of Revisions:

Section Citation Explanation of Change: To comply with South Carolina Court of Appeals which vacated the regulations by order on April 4, 2000

264.140(c) Remove text and reserve (c)

264.152 Remove entire section, (a) through (d); reserve 264.152

264.153 Remove entire section, (a) through (i); reserve 264.153

264.154 Remove entire section, (a) through (g) including appendices; reserve 264.154

265.140(c) Remove text and reserve 265.140(c)

265.152 Remove entire section, (a) through (d); reserve 265.152

265.153 Remove entire section, (a) through (h); reserve 265.153

Instructions: Amend each section in the text below as explained above in the Discussion of Revisions; all other sections of R.61-79 remain the same.

Text of Amendment:

264.140 (c) [Reserved]

264.152 [Reserved]

264.153 [Reserved]

264.154 [Reserved]

265.140 (c) [Reserved]

265.152 [Reserved]

265.153 [Reserved]

Fiscal Impact Statement: Due to the fact that environmental impairment financial assurance will continue to be a statutory requirement [44-56-60(c)(3)], there should be no significant impact upon State or local governments.

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

DESCRIPTION OF REGULATION: Amendment of Regulation 61-79, South Carolina Hazardous Waste Management.

Purpose: This amendment deletes State more-stringent regulations vacated by the South Carolina Court of Appeals on April 4, 2000.

Authority: The amendment will continue to be in accord with the federal authorization requirements of the U.S. Environmental Protection Agency Resource Conservation and Recovery Act of 1976 as amended, Title II, Subtitle C Section 3009; South Carolina Hazardous Waste Management Act 44-56-30 et seq.; the Pollution Control Act 48-1-10 et seq.; and the Administrative Procedures Act 1-23-10 et seq.

Plan for implementation: After review by the General Assembly and publication in the State Register, the amendments will be incorporated within R.61-79. All Department regulations are provided to the community at cost through the Department's Freedom of Information Office.

DETERMINATION OF NEED AND REASONABLENESS, and EXPECTED BENEFIT OF THE REGULATION: This amendment removes regulatory requirements that were vacated by a decision of the South Carolina Court of Appeals on April 4, 2000.

DETERMINATION OF COSTS AND BENEFITS: Due to the fact that environmental impairment financial assurance continues to be a statutory requirement [44-56-60(c)(3)], there should be no significant change in cost to commercial hazardous waste facilities.

UNCERTAINTIES OF ESTIMATES: None.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH: Because this requirement is also a statutory requirement [44-56-60(c)(3)] removal from regulation should not create a significant effect on the environment and public health.

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

Statement of Rationale Pursuant to S.C. Code Section 1-23-120(B): See Statement of Need and Reasonableness.

Document No. 2834
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
Statutory Authority: 1976 Code Ann. Section 44-56-30

R. 61-79. Hazardous Waste Management Regulations

Synopsis:

Reword heading and text: The Department has amended Regulation 61-79 to adopt federal amendments through June 30, 2002. Adoption of federal amendments will ensure federal compliance.

The United States Environmental Protection Agency (USEPA) promulgates amendments to 40 CFR 124, 260 through 266, 268, 270, and 273 throughout each calendar year. Recent amendments include: a clarifying revision to the Mixture and Derived-From Rules; new listings for three inorganic chemical manufacturing wastes including additional toxic constituents and treatment standards for the wastes; amendments to the Corrective Action Management Unit rule to facilitate cleanup; and deletion of regulatory language vacated by two federal court actions for some mineral processing secondary materials and the application of the Toxicity Characteristic Leaching Procedure to manufactured gas plant wastes.

In addition, the Bureau has made amendments to the Hazardous Air Pollutant Standards for Combustors. In September 2000 the Bureau began the adoption process for the Hazardous Air Pollutant Standards for Combustors promulgated by EPA. However, a federal appeals court struck down the EPA standards on July 24, 2001. At the

September 13, 2001 Board meeting, staff recommended that those portions of the proposed federal compliance standards regarding combustion not be adopted. The Board concurred. On February 13, 2002, EPA developed interim standards and will develop final standards by June 14, 2005. The Bureau has adopted the interim standards and those portions of the combustor standards that have not been vacated. Minor errors will be corrected to achieve conformity with federal regulations. These rules and other amendments have been published in the Federal Register between September 30, 1999, and June 30, 2002.

These amendments appeared at: 64 FR 52828, September 30, 1999; 64 FR 63209, November 19, 1999; 65 FR 42292, July 10, 2000; 66 FR 24270, May 14, 2001; 66 FR 35087, July 3, 2001; 66 FR 50332, October 3, 2001; 66 FR 58258, November 20, 2001; 67 FR 2962, December 3, 2001; January 22, 2002; 67 FR 6792, February 13, 2002; 67 FR 6968, February 14, 2002; 67 FR 11251, March 13, 2002; and 67 FR 17119, April 9, 2002.

Neither a preliminary assessment report, a fiscal impact statement, nor legislative review of this amendment is required.

Discussion of Revisions:

SECTION	CHANGE (all for federal compliance)
260.10	Remove two "CAMU" and amend "Remediation waste" definitions
261.2(c)(3)	Amend paragraph to delete repetitive phrase
261.3(c)(2)(i)	Remove irrelevant language; add reclamation option
261.3(g)(4)	Add new paragraph regarding mixture
261.4(a)(17), (i)-(vi)	Amend Exclusions to Solid Wastes
261.4(a)(17)(iv)(B)	Amend regarding eligible spent materials
261.4(a)(17)(v)	Edit and amend to cover reporting in land-based units
261.4(a)(17)(vi)	Amend cross reference, amend regarding eligible spent materials
261.4(b)(15)(i)&(v)	Amend to accommodate additional K listings
261.6(a)(3)	Change numbering of (iv) to (iii), (v) to (vi), delete (vi), and move (iii) to (vi)
261.24(a)	Amend to exclude manufactured gas plant waste
261.32/Table	Under Inorganic Chemicals, add in alphanumeric order: K176-K178
261 Appendix VII	Add in alphanumeric order: K176-K178
264.340(b)	Amend citations in (1); add new (4)
264.340(c)	Add (1) & (2) under (c)
264.550(a)&(b)	Retitle and renumber Subpart S; add new (a) and (b).
264.551	Retitle and renumber .552 as .551; amend (a) & (e)
264.552(a)-(k)	Insert new section on CAMUs
264.554(a)(1)	Insert (1) after current (a); add and reserve (2)
264.555(a)-(g)	Add new provision for Disposal of CAMU-eligible wastes in permitted landfills
265.340(a), (b)(1), (2) & (3), (c)	Edit (a), add new (b) about MACT standards; reletter old (b) to (c) and edit
265.353-365.369	Add and reserve
266.100(b)	Add new (b); reletter previous (b) and (c) as new (c) and (d); amend new (d)(1) with new citation and reference to (h)
266.100(c)(1)	Edit(c)(1)
266.100(d)(1);	Amend new (d)(1) to accommodate lead recovery facilities;
266.100(d)(2)(i)&(ii)	Edit cross references
266.100(d)(3); (3)(i) and (3)(i)(D)	Edit; amend cross references
266.100(e)-(h)	Reletter previous (d)-(f) as new (e)-(g); add new (h)
266.101(c)	Amend to accommodate treatment facilities

266.112(b)(1)	Add sentence at end of paragraph on analyses for polychlorinated wastes
266.112(b)(2)(i)	Edit to accommodate methods; add treatment standards at end of (i); add Note
266 Appendix VIII	Amend title; add two polychlorinated waste streams; add footnote 1 and note
268.36	Add new prohibition, including (a) through (c)
268.40/table	Add K176 through K178 in alphanumeric order
270.19	Amend intro with new cross reference; add new (e)
270.22(a)	Amend (a) with additional language; introductory paragraph prior to (a) and (1) and (2) following (a) are retained
270.42(b)(1)	Amend cross references
270.42(g)(1)(ii)	Amend regarding permit modification due date
270.42(j)(1)	Amend effective date
270.42 Appendix I	Add new A(8)
270.62	Add new introductory paragraph on incinerator permits; retain (a)&(b)
270.66 intro	Add new introductory paragraph on BIF permits; retain (a)&(b), etc.
270.235(a)-(b)	Add new Subpart I integration with MACT standards

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

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

R.61-79. Hazardous Waste Management

Remove two 260.10 "CAMU" definitions

Amend "Remediation waste" definition

"Remediation waste" means all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments), and debris that are managed for implementing cleanup. (12/93, 8/00)

Amend paragraph 261.2(c)(3)to delete repetitive phrase
261.2(c)(3) Reclaimed. Materials noted with an "x" in column 3 of Table 1 are solid wastes when reclaimed (except as provided under 261.4(a)(17)). Materials noted with a "---" in column 3 of Table 1 are not solid wastes when reclaimed. (11/99; 8/00).

Remove irrelevant language in 261.3(c)(2)(i); add reclamation option
261.3(c) Unless and until it meets the criteria of paragraph (d) of this part:
(1) A hazardous waste will remain a hazardous waste.
(2) (i) Except as otherwise provided in paragraph (c)(2)(ii), (g) or (h), any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash emission control dust, or leachate (but not including precipitation run-off) is a hazardous waste. (However, materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under this provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.) (6/02)

Add new paragraph 261.3(g)(4) regarding mixture
261.3(g)(4) Any mixture of a solid waste excluded from regulation under 261.4(b)(7) and a hazardous waste listed in Subpart D solely because it exhibits one or more of the characteristics of ignitability, corrosivity, or

reactivity as regulated under paragraph (a)(2)(iv) is not a hazardous waste, if the mixture no longer exhibits any characteristic of hazardous waste identified in Subpart C for which the hazardous waste listed in Subpart D was listed.

Amend 261.4(a)(17) Exclusions to Solid Wastes; amend (a)(17)(i) through (iv) regarding eligible wastes

261.4 Exclusions.

(a) Materials which are not solid wastes. The following materials are not solid wastes for the purpose of this part:

(17) Spent materials (as defined in 261.1) (other than hazardous wastes listed in subpart D of this part) generated within the primary mineral processing industry from which minerals, acids, cyanide, water, or other values are recovered by mineral processing or by beneficiation, provided that: (11/99; 8/00)

(i) The spent material is legitimately recycled to recover minerals, acids, cyanide, water or other values;

(ii) The spent material is not accumulated speculatively;

(iii) Except as provided in paragraph (a)(17)(iv) of this section, the spent material is stored in tanks, containers, or buildings meeting the following minimum integrity standards: a building must be an engineered structure with a floor, walls, and a roof all of which are made of non-earthen materials providing structural support (except smelter buildings may have partially earthen floors provided the secondary material is stored on the non-earthen portion), and have a roof suitable for diverting rainwater away from the foundation; a tank must be free standing, not be a surface impoundment (as defined in 260.10), and be manufactured of a material suitable for containment of its contents; a container must be free standing and be manufactured of a material suitable for containment of its contents. If tanks or containers contain any particulate which may be subject to wind dispersal, the owner/operator must operate these units in a manner which controls fugitive dust. Tanks, containers, and buildings must be designed, constructed and operated to prevent significant releases to the environment of these materials. (8/00)

(iv) The Department may make a site-specific determination, after public review and comment, that only solid mineral processing spent material may be placed on pads rather than tanks, containers, or buildings. Solid mineral processing spent materials do not contain any free liquid. The decision-maker must affirm that pads are designed, constructed and operated to prevent significant releases of the secondary material into the environment. Pads must provide the same degree of containment afforded by the non-RCRA tanks, containers and buildings eligible for exclusion.

Amend 261.4(a)(17)(iv)(B)

261.4(a)(17)(iv)(B): Pads must meet the following minimum standards: be designed of non-earthen material that is compatible with the chemical nature of the mineral processing spent material, capable of withstanding physical stresses associated with placement and removal, have run on/runoff controls, be operated in a manner which controls fugitive dust, and have integrity assurance through inspections and maintenance programs.

Amend 261.4(a)(17)(v) to edit and to report wastes in land-based units

261.4(17)(v) The owner or operator provides notice to the Department, providing the following information: the types of materials to be recycled; the type and location of the storage units and recycling processes; and the annual quantities expected to be placed in land-based units. This notification must be updated when there is a change in the type of materials recycled or the location of the recycling process. (8/00)

Amend 261.4(a)(17)(vi) Exclusions to Solid Wastes; amend cross reference

261.4(a)(17)(vi): For purposes of 261.4(a)(7) mineral processing spent materials must be the result of mineral processing and may not include any listed hazardous wastes. Listed hazardous wastes and characteristic hazardous wastes generated by non-mineral processing industries are not eligible for the conditional exclusion from the definition of solid waste.

Amend 261.4(b)(15)(i) and (v) to accommodate additional K listings

261.4(b)(15) Leachate or gas condensate collected from landfills where certain solid wastes have been disposed, provided that: (8/00)

(i) The solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K169, K170, K171, K172, K174, K175, K176, K177, and K178, if these wastes had been generated after the effective date of the listing;

261.4(b)(15)(v) As of February 13, 2001, leachate or gas condensate derived from K169-K172 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. After November 21, 2003, leachate or gas condensate derived from K176, K177, and K178 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation (e.g., shutdown of wastewater treatment system), provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of this paragraph after the emergency ends.

Change numbering of 261.6(a)(3)(iv) to (iii), (v) to (vi), delete (vi), and move (iii) to (vi)

261.6(a)(3) The following recyclable materials are not subject to regulation under 262 through 266~~,~~ or 268, 270 or 124 and are not subject to the notification requirements of section 3010 RCRA and the notification requirements of the South Carolina Hazardous Waste Management Act (11/90; 12/92):

(i) Industrial ethyl alcohol that is reclaimed except that, unless provided otherwise in an international agreement as specified in 262.58:****

(ii) Scrap metal that is not excluded under 261.4(a)(13). (10/01);

(iii) Fuels produced from the refining of oil-bearing hazardous waste along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices (this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, where such recovered oil is already excluded under 261.4(a)(12); (10/01)

(iv) (A) Hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production, or transportation practices, or produced from oil reclaimed from such hazardous wastes, where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under R. 61-79.266.40(e) and so long as no other hazardous wastes are used to produce the hazardous waste fuel; (12/92; 5/96)***

(v) US Filter Recovery Services XL waste (Subpart O)

(vi) Used oil that exhibits one or more of the characteristics of hazardous waste but is recycled in some other manner than being burned for energy recovery (2/92, 8/00, 9/01, 6/03)

Amend 261.24(a) to exclude manufactured gas plant waste

261.24 Toxicity characteristic (11/90).

(a) A solid waste (except manufactured gas plant waste) exhibits the characteristic of toxicity if, using the Toxicity Characteristic Leaching Procedure, test Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 260.11, the extract from a representative sample of the waste contains any of the contaminants listed in Table I at the concentration equal to or greater than the respective value given in that table. Where the waste contains less than 0.5 percent filterable solids, the waste itself, after filtering using the methodology outlined in Method 1311, is considered to be the extract for the purpose of this section. (12/92; 12/93; 12/94)

261.32 Table under Inorganic Chemicals, add in alphanumeric order: K176-K178

HAZARDOUS WASTES FROM SPECIFIC SOURCES

Industry and EPA hazardous waste No.		Hazardous Waste
Inorganic chemicals:		
K176	Baghouse filters from the production of antimony oxide, including filters from the production of intermediates (e.g., antimony metal or crude antimony oxide).	(E)
K177	Slag from the production of antimony oxide that is speculatively accumulated or disposed, including slag from the production of intermediates (e.g., antimony metal or crude antimony oxide).	(T)
K178	Residues from manufacturing and manufacturing site storage of ferric chloride from acids formed during the production of titanium dioxide using the chloride-ilmenite process	(T)

*****

261 Appendix VII Add three K-listed wastes in alphanumeric order:

Basis for listing hazardous waste:

EPA hazardous waste No.	Hazardous constituents for which listed
K176	Arsenic, Lead.
K177	Antimony.
K178	Thallium.

Amend 264.340(b) citations in (1); add new (4); add (1) & (2) under (c)

264.340(b) Integration of the MACT standards. (9/01)

(1) Except as provided by paragraphs (b)(2), (b)(3), and (b)(4), the standards of this part no longer apply when an owner or operator demonstrates compliance with the maximum achievable control technology (MACT) requirements of 40 CFR part 63, Subpart EEE, by conducting a comprehensive performance test and submitting to the Department a Notification of Compliance under 40 CFR 63.1207(j) and 63.1210(b) documenting compliance with the requirements of 40 CFR part 63, Subpart EEE,. Nevertheless, even after this demonstration of compliance with the MACT standards, RCRA permit conditions that were based on the standards of this part will continue to be in effect until they are removed from the permit or the permit is terminated or revoked, unless the permit expressly provides otherwise. (7/02) ***

(4) The following requirements remain in effect for startup, shutdown, and malfunction events if you elect to comply with 270.235(a)(1)(i) to minimize emissions of toxic compounds from these events:

(i) 264.345(a) requiring that an incinerator operate in accordance with operating requirements specified in the permit; and

(ii) 264.345(c) requiring compliance with the emission standards and operating requirements during startup and shutdown if hazardous waste is in the combustion chamber, except for particular hazardous wastes.

(c) After consideration of the waste analysis included with Part B of the permit application, the Department, upon demonstration by the owner or operator, must exempt the applicant from all requirements of this Subpart except 264.341 (Waste Analysis) and 264.351 (Closure),

(1) If the Department finds that the waste to be burned is:

(i) Listed as a hazardous waste in part 261, Subpart D, solely because it is ignitable (Hazard Code I), corrosive (Hazard Code C), or both; or

(ii) Listed as a hazardous waste in part 261, Subpart D, solely because it is reactive (Hazard Code R) for characteristics other than those listed in 261.23(a)(4) and (5), and will not be burned when other hazardous wastes are present in the combustion zone; or

(iii) A hazardous waste solely because it possesses the characteristic of ignitability, corrosivity, or both, as determined by the test for characteristics of hazardous wastes under part 261, Subpart C,; or

(iv) A hazardous waste solely because it possesses any of the reactivity characteristics described by 261.23(a)(1), (2), (3), (6), (7), and (8), and will not be burned when other hazardous wastes are present in the combustion zone; and

(2) If the waste analysis shows that the waste contains none of the hazardous constituents listed in part 261, Appendix VIII, which would reasonably be expected to be in the waste. ***

Retitle and renumber Subpart S as 264.550; add new (a) and (b).

Subpart S Special Provisions for Cleanup

264.550Applicability of Corrective Action Management Unit (CAMU) Regulations.

(a) Except as provided in paragraph (b) of this section, CAMUs are subject to the requirements of 264.552.

(b) CAMUs that were approved before April 22, 2002, or for which substantially complete applications (or equivalents) were submitted to the Agency on or before November 20, 2000, are subject to the requirements in 264.551 for grandfathered CAMUs; CAMU waste, activities, and design will not be subject to the standards in 264.552, so long as the waste, activities, and design remain within the general scope of the CAMU as approved.

Retitle and renumber 264.552 as .551; amend (a) & (e)

264.551Grandfathered Corrective Action Management Units (CAMUs).

(a) To implement remedies under 264.101 or RCRA Section 3008(h), or to implement remedies at a permitted facility that is not subject to 264.101, the owner or operator may designate an area at the facility as a corrective action management unit under the requirements of this section. Corrective action management unit means an area within a facility that is used only for managing remediation wastes for implementing corrective action or cleanup at the facility. A CAMU must be located within the contiguous property under the control of the owner or operator where the wastes to be managed in the CAMU originated. This request is subject to approval by the Department. One or more CAMUs may be designated at a facility. (8/00) ***

(e) The Department shall specify, in the permit, requirements for CAMUs to include the following: The owner or operator shall specify in the permit application the following information for each CAMU:****

Insert new 264.552 on CAMUs

264.552Corrective Action Management Units (CAMU).

(a) To implement remedies under 264.101 or RCRA Section 3008(h), or to implement remedies at a permitted facility that is not subject to 264.101, the Department may designate an area at the facility as a corrective action management unit under the requirements in this section. Corrective action management unit means an area within a facility that is used only for managing CAMU-eligible wastes for implementing corrective action or cleanup at the facility. A CAMU must be located within the contiguous property under the control of the owner or operator where the wastes to be managed in the CAMU originated. One or more CAMUs may be designated at a facility.

(1) CAMU-eligible waste means:

(i) All solid and hazardous wastes, and all media (including ground water, surface water, soils, and sediments) and debris, that are managed for implementing cleanup. As-generated wastes (either hazardous or non-hazardous) from ongoing industrial operations at a site are not CAMU-eligible wastes.

(ii) Wastes that would otherwise meet the description in paragraph (a)(1)(i) are not "CAMU-Eligible Wastes" where:

(A) The wastes are hazardous wastes found during cleanup in intact or substantially intact containers, tanks, or other non-land-based units found above ground, unless the wastes are first placed in the tanks, containers or non-land-based units as part of cleanup, or the containers or tanks are excavated during the course of cleanup; or

(B) The Department exercises the discretion in paragraph (a)(2) to prohibit the wastes from management in a CAMU.

(iii) Notwithstanding paragraph (a)(1)(i), where appropriate, as-generated non-hazardous waste may be placed in a CAMU where such waste is being used to facilitate treatment or the performance of the CAMU.

(2) The Department may prohibit, where appropriate, the placement of waste in a CAMU where the Department has or receives information that such wastes have not been managed in compliance with applicable land disposal treatment standards of part 268, or applicable unit design requirements, or applicable unit design requirements of part 265, or that non-compliance with other applicable requirements likely contributed to the release of the waste.

(3) Prohibition against placing liquids in CAMUs.

(i) The placement of bulk or noncontainerized liquid hazardous waste or free liquids contained in hazardous waste (whether or not sorbents have been added) in any CAMU is prohibited except where placement of such wastes facilitates the remedy selected for the waste.

(ii) The requirements in 264.314(d) for placement of containers holding free liquids in landfills apply to placement in a CAMU except where placement facilitates the remedy selected for the waste.

(iii) The placement of any liquid which is not a hazardous waste in a CAMU is prohibited unless such placement facilitates the remedy selected for the waste or a demonstration is made pursuant to 264.314(f).

(iv) The absence or presence of free liquids in either a containerized or a bulk waste must be determined in accordance with 264.314(c). Sorbents used to treat free liquids in CAMUs must meet the requirements of 264.314(e).

(4) Placement of CAMU-eligible wastes into or within a CAMU does not constitute land disposal of hazardous wastes.

(5) Consolidation or placement of CAMU-eligible wastes into or within a CAMU does not constitute creation of a unit subject to minimum technology requirements.

(b) (1) The Department may designate a regulated unit (as defined in 264.90(a)(2)) as a CAMU, or may incorporate a regulated unit into a CAMU, if:

(i) The regulated unit is closed or closing, meaning it has begun the closure process under 264.113 or 265.113; and

(ii) Inclusion of the regulated unit will enhance implementation of effective, protective and reliable remedial actions for the facility.

(2) The Subpart F, G, and H requirements and the unit-specific requirements 264 or part 265 that applied to the regulated unit will continue to apply to that portion of the CAMU after incorporation into the CAMU.

(c) The Department shall designate a CAMU that will be used for storage and/or treatment only in accordance with paragraph (f). The Department shall designate all other CAMUs in accordance with the following:

(1) The CAMU shall facilitate the implementation of reliable, effective, protective, and cost-effective remedies;

(2) Waste management activities associated with the CAMU shall not create unacceptable risks to humans or to the environment resulting from exposure to hazardous wastes or hazardous constituents;

(3) The CAMU shall include uncontaminated areas of the facility, only if including such areas for the purpose of managing CAMU-eligible waste is more protective than management of such wastes at contaminated areas of the facility;

(4) Areas within the CAMU, where wastes remain in place after closure of the CAMU, shall be managed and contained so as to minimize future releases, to the extent practicable;

(5) The CAMU shall expedite the timing of remedial activity implementation, when appropriate and practicable;

(6) The CAMU shall enable the use, when appropriate, of treatment technologies (including innovative technologies) to enhance the long-term effectiveness of remedial actions by reducing the toxicity, mobility, or volume of wastes that will remain in place after closure of the CAMU; and

(7) The CAMU shall, to the extent practicable, minimize the land area of the facility upon which wastes will remain in place after closure of the CAMU.

(d) The owner/operator shall provide sufficient information to enable the Department to designate a CAMU in accordance with the criteria in this section. This must include, unless not reasonably available, information on:

(1) The origin of the waste and how it was subsequently managed (including a description of the timing and circumstances surrounding the disposal and/or release);

(2) Whether the waste was listed or identified as hazardous at the time of disposal and/or release; and

(3) Whether the disposal and/or release of the waste occurred before or after the land disposal requirements of part 268 were in effect for the waste listing or characteristic.

(e) The Department shall specify, in the permit, requirements for CAMUs to include the following:

(1) The areal configuration of the CAMU.

(2) Except as provided in paragraph (g), requirements for CAMU-eligible waste management to include the specification of applicable design, operation, treatment and closure requirements.

(3) Minimum design requirements. CAMUs, except as provided in paragraph (f), into which wastes are placed must be designed in accordance with the following:

(i) Unless the Department approves alternate requirements under (e)(3)(ii), CAMUs that consist of new, replacement, or laterally expanded units must include a composite liner and a leachate collection system that is designed and constructed to maintain less than a 30-cm depth of leachate over the liner. For purposes, composite liner means a system consisting of two components; the upper component must consist of a minimum 30-mil flexible membrane liner (FML), and the lower component must consist of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than $1x10^{-7}$ cm/sec. FML components consisting of high density polyethylene (HDPE) must be at least 60 mil thick. The FML component must be installed in direct and uniform contact with the compacted soil component;

(ii) Alternate requirements. The Department may approve alternate requirements if:

(A) The Department finds that alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents into the ground water or surface water at least as effectively as the liner and leachate collection systems in (e)(3)(i); or

(B) The CAMU is to be established in an area with existing significant levels of contamination, and the Department finds that an alternative design, including a design that does not include a liner, would prevent migration from the unit that would exceed long-term remedial goals.

(4) Minimum treatment requirements: Unless the wastes will be placed in a CAMU for storage and/or treatment only in accordance with (f), CAMU-eligible wastes that, absent this section, would be subject to the treatment requirements of part 268, and that the Department determines contain principal hazardous constituents must be treated to the standards specified in (e)(4)(iii)of this section.

(i) Principal hazardous constituents are those constituents that the Department determines pose a risk to human health and the environment substantially higher than the cleanup levels or goals at the site.

(A) In general, the Department will designate as principal hazardous constituents:

(1) Carcinogens that pose a potential direct risk from ingestion or inhalation at the site at or above 10^{-3}; and

(2) Non-carcinogens that pose a potential direct risk from ingestion or inhalation at the site an order of magnitude or greater over their reference dose.

(B) The Department will also designate constituents as principal hazardous constituents, where appropriate, when risks to human health and the environment posed by the potential migration of constituents in wastes to ground water are substantially higher than cleanup levels or goals at the site; when making such a designation, the Department may consider such factors as constituent concentrations, and fate and transport characteristics under site conditions.

(C) The Department may also designate other constituents as principal hazardous constituents that the Department determines pose a risk to human health and the environment substantially higher than the cleanup levels or goals at the site.

(ii) In determining which constituents are "principal hazardous constituents," the Department must consider all constituents which, absent this section, would be subject to the treatment requirements in part 268.

(iii) Waste that the Department determines contains principal hazardous constituents must meet treatment standards determined in accordance with (e)(4)(iv) or (e)(4)(v):

(iv) Treatment standards for wastes placed in CAMUs.

(A) For non-metals, treatment must achieve 90 percent reduction in total principal hazardous constituent concentrations, except as provided by (e)(4)(iv)(C).

(B) For metals, treatment must achieve 90 percent reduction in principal hazardous constituent concentrations as measured in leachate from the treated waste or media (tested according to the TCLP) or 90 percent reduction in total constituent concentrations (when a metal removal treatment technology is used), except as provided by (e)(4)(iv)(C)of this section.

(C) When treatment of any principal hazardous constituent to a 90 percent reduction standard would result in a concentration less than 10 times the Universal Treatment Standard for that constituent, treatment to achieve constituent concentrations less than 10 times the Universal Treatment Standard is not required. Universal Treatment Standards are identified in 268.48 Table UTS.

(D) For waste exhibiting the hazardous characteristic of ignitability, corrosivity or reactivity, the waste must also be treated to eliminate these characteristics.

(E) For debris, the debris must be treated in accordance with 268.45, or by methods or to levels established under s (e)(4)(iv)(A) through (D) or (e)(4)(v), whichever the Department determines is appropriate.

(F) Alternatives to TCLP. For metal bearing wastes for which metals removal treatment is not used, the Department may specify a leaching test other than the TCLP (SW846 Method 1311, 260.11(11)) to measure treatment effectiveness, provided the Department determines that an alternative leach testing protocol is appropriate for use, and that the alternative more accurately reflects conditions at the site that affect leaching.

(v) Adjusted standards. The Department may adjust the treatment level or method in (e)(4)(iv) to a higher or lower level, based on one or more of the following factors, as appropriate. The adjusted level or method must be protective of human health and the environment:

(A) The technical impracticability of treatment to the levels or by the methods in (e)(4)(iv);

(B) The levels or methods in (e)(4)(iv) would result in concentrations of principal hazardous constituents (PHCs) that are significantly above or below cleanup standards applicable to the site (established either site-specifically, or promulgated under state or federal law);

(C) The views of the affected local community on the treatment levels or methods in (e)(4)(iv) as applied at the site, and, for treatment levels, the treatment methods necessary to achieve these levels;

(D) The short-term risks presented by the on-site treatment method necessary to achieve the levels or treatment methods in (e)(4)(iv);

(E) The long-term protection offered by the engineering design of the CAMU and related engineering controls:

(1) Where the treatment standards in (e)(4)(iv) are substantially met and the principal hazardous constituents in the waste or residuals are of very low mobility; or

(2) Where cost-effective treatment has been used and the CAMU meets the Subtitle C liner and leachate collection requirements for new land disposal units at 264.301(c) and (d); or

(3) Where, after review of appropriate treatment technologies, the Department determines that cost-effective treatment is not reasonably available, and the CAMU meets the Subtitle C liner and leachate collection requirements for new land disposal units at 264.301(c) and (d); or

(4) Where cost-effective treatment has been used and the principal hazardous constituents in the treated wastes are of very low mobility; or

(5) Where, after review of appropriate treatment technologies, the Department determines that cost-effective treatment is not reasonably available, the principal hazardous constituents in the wastes are of very low mobility, and either the CAMU meets or exceeds the liner standards for new, replacement, or laterally expanded CAMUs in (e)(3)(i)and (ii), or the CAMU provides substantially equivalent or greater protection.

(vi) The treatment required by the treatment standards must be completed prior to, or within a reasonable time after, placement in the CAMU.

(vii) For the purpose of determining whether wastes placed in CAMUs have met site-specific treatment standards, the Department may, as appropriate, specify a subset of the principal hazardous constituents in the waste as analytical surrogates for determining whether treatment standards have been met for other principal hazardous constituents. This specification will be based on the degree of difficulty of treatment and analysis of constituents with similar treatment properties.

(5) Except as provided in (f), requirements for ground water monitoring and corrective action that are sufficient to:

(i) Continue to detect and to characterize the nature, extent, concentration, direction, and movement of existing releases of hazardous constituents in ground water from sources located within the CAMU; and

(ii) Detect and subsequently characterize releases of hazardous constituents to ground water that may occur from areas of the CAMU in which wastes will remain in place after closure of the CAMU; and

(iii) Require notification to the Department and corrective action as necessary to protect human health and the environment for releases to ground water from the CAMU.

(6) Except as provided in (d), closure and post-closure requirements:

(i) Closure of corrective action management units shall:

(A) Minimize the need for further maintenance; and

(B) Control, minimize, or eliminate, to the extent necessary to protect human health and the environment, for areas where wastes remain in place, post-closure escape of hazardous wastes, hazardous constituents, leachate, contaminated runoff, or hazardous waste decomposition products to the ground, to surface waters, or to the atmosphere.

(ii) Requirements for closure of CAMUs shall include the following, as appropriate and as deemed necessary by the Department for a given CAMU:

(A) Requirements for excavation, removal, treatment or containment of wastes; and

(B) Requirements for removal and decontamination of equipment, devices, and structures used in CAMU-eligible waste management activities within the CAMU.

(iii) In establishing specific closure requirements for CAMUs under (e), the Department shall consider the following factors:

(A) CAMU characteristics;

(B) Volume of wastes which remain in place after closure;

(C) Potential for releases from the CAMU;

(D) Physical and chemical characteristics of the waste;

(E) Hydrological and other relevant environmental conditions at the facility which may influence the migration of any potential or actual releases; and

(F) Potential for exposure of humans and environmental receptors if releases were to occur from the CAMU.

(iv) Cap requirements:

(A) At final closure of the CAMU, for areas in which wastes will remain after closure of the CAMU, with constituent concentrations at or above remedial levels or goals applicable to the site, the owner or operator must cover the CAMU with a final cover designed and constructed to meet the following performance criteria, except as provided in (e)(6)(iv)(B):

(1) Provide long-term minimization of migration of liquids through the closed unit;

(2) Function with minimum maintenance;

(3) Promote drainage and minimize erosion or abrasion of the cover;

(4) Accommodate settling and subsidence so that the cover's integrity is maintained; and

(5) Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

(B) The Department may determine that modifications to (e)(6)(iv)(A) are needed to facilitate treatment or the performance of the CAMU (e.g., to promote biodegradation).

(v) Post-closure requirements as necessary to protect human health and the environment, to include, for areas where wastes will remain in place, monitoring and maintenance activities, and the frequency

with which such activities shall be performed to ensure the integrity of any cap, final cover, or other containment system.

(f) CAMUs used for storage and/or treatment only are CAMUs in which wastes will not remain after closure. Such CAMUs must be designated in accordance with all of the requirements, except as follows.

(1) CAMUs that are used for storage and/or treatment only and that operate in accordance with the time limits established in the staging pile regulations at 264.554(d)(1)(iii), (h), and (i) are subject to the requirements for staging piles at 264.554(d)(1)(i) and (ii), 264.554(d)(2), 264.554(e) and (f), and 264.554(j) and (k) in lieu of the performance standards and requirements for CAMUs in this section at (c) and (e)(3) through (6).

(2) CAMUs that are used for storage and/or treatment only and that do not operate in accordance with the time limits established in the staging pile regulations at 264.554(d)(1)(iii), (h), and (i):

(i) Must operate in accordance with a time limit, established by the Department, that is no longer than necessary to achieve a timely remedy selected for the waste, and

(ii) Are subject to the requirements for staging piles at 264.554(d)(1)(i) and (ii), 264.554(d)(2), 264.554(e) and (f), and 264.554(j) and (k) in lieu of the performance standards and requirements for CAMUs in this section at (c) and (e)(4) and (6).

(g) CAMUs into which wastes are placed where all wastes have constituent levels at or below remedial levels or goals applicable to the site do not have to comply with the requirements for liners at (e)(3)(i), caps at (e)(6)(iv), ground water monitoring requirements at (e)(5) or, for treatment and/or storage-only CAMUs, the design standards at (f).

(h) The Department shall provide public notice and a reasonable opportunity for public comment before designating a CAMU. Such notice shall include the rationale for any proposed adjustments under (e)(4)(v) of this section to the treatment standards in (e)(4)(iv).

(i) Notwithstanding any other provision, the Department may impose additional requirements as necessary to protect human health and the environment.

(j) Incorporation of a CAMU into an existing permit must be approved by the Department according to the procedures for Department-initiated permit modifications under 270.41, or according to the permit modification procedures of 270.42.

(k) The designation of a CAMU does not change the Department's existing authority to address clean-up levels, media-specific points of compliance to be applied to remediation at a facility, or other remedy selection decisions.

Insert 264.554 (1) after current (a); add and reserve (2)

264.554Staging piles. (8/00)

(a)[these additions to follow existing (a)] (1) For the purposes of this section, storage includes mixing, sizing, blending, or other similar physical operations as long as they are intended to prepare the wastes for subsequent management or treatment.

(2) [Reserved]

Add new 264.555 Disposal of CAMU-eligible wastes in permitted landfills

264.555Disposal of CAMU-eligible wastes in permitted hazardous waste landfills.

(a) The Department with regulatory oversight at the location where the cleanup is taking place may approve placement of CAMU-eligible wastes in hazardous waste landfills not located at the site from which the waste originated, without the wastes meeting the requirements of RCRA part 268, if the conditions in (a)(1) through (3) are met:

(1) The waste meets the definition of CAMU-eligible waste in 264.552(a)(1) and (2).

(2) The Department with regulatory oversight at the location where the cleanup is taking place identifies principal hazardous constitutes in such waste, in accordance with 264.552(e)(4)(i) and (ii), and requires that such principal hazardous constituents are treated to any of the following standards specified for CAMU-eligible wastes:

(i) The treatment standards under 264.552(e)(4)(iv); or

(ii) Treatment standards adjusted in accordance with 264.552(e)(4)(v)(A), (C), (D) or (E)(1); or

(iii) Treatment standards adjusted in accordance with 264.552(e)(4)(v)(E)(2), where treatment has been used and that treatment significantly reduces the toxicity or mobility of the principal hazardous constituents in the waste, minimizing the short-term and long-term threat posed by the waste, including the threat at the remediation site.

(3) The landfill receiving the CAMU-eligible waste must have a RCRA hazardous waste permit, meet the requirements for new landfills in Subpart N, and be authorized to accept CAMU-eligible wastes; for the purposes of this requirement, "permit" does not include interim status.

(b) The person seeking approval shall provide sufficient information to enable the Department with regulatory oversight at the location where the cleanup is taking place to approve placement of CAMU-eligible waste in accordance with (a). Information required by 264.552(d)(1) through (3) for CAMU applications must be provided, unless not reasonably available.

(c) The Department with regulatory oversight at the location where the cleanup is taking place shall provide public notice and a reasonable opportunity for public comment before approving CAMU eligible waste for placement in an off-site permitted hazardous waste landfill, consistent with the requirements for CAMU approval at 264.552(h). The approval must be specific to a single remediation.

(d) Applicable hazardous waste management requirements in this part, including recordkeeping requirements to demonstrate compliance with treatment standards approved under this section, for CAMU-eligible waste must be incorporated into the receiving facility permit through permit issuance or a permit modification, providing notice and an opportunity for comment and a hearing. Notwithstanding 270.4(a), a landfill may not receive hazardous CAMU-eligible waste under this section unless its permit specifically authorizes receipt of such waste.

(e) For each remediation, CAMU-eligible waste may not be placed in an off-site landfill authorized to receive CAMU-eligible waste in accordance with (d) until the following additional conditions have been met:

(1) The landfill owner/operator notifies the Department responsible for oversight of the landfill and persons on the facility mailing list, maintained in accordance with 124.10(c)(1)(ix), of his or her intent to receive CAMU-eligible waste in accordance with this section; the notice must identify the source of the remediation waste, the principal hazardous constituents in the waste, and treatment requirements.

(2) Persons on the facility mailing list may provide comments, including objections to the receipt of the CAMU-eligible waste, to the Department within 15 days of notification.

(3) The Department may object to the placement of the CAMU-eligible waste in the landfill within 30 days of notification; the Department may extend the review period an additional 30 days because of public concerns or insufficient information.

(4) CAMU-eligible wastes may not be placed in the landfill until the Department has notified the facility owner/operator that he or she does not object to its placement.

(5) If the Department objects to the placement or does not notify the facility owner/operator that he or she has chosen not to object, the facility may not receive the waste, notwithstanding 270.4(a), until the objection has been resolved, or the owner/operator obtains a permit modification in accordance with the procedures of 270.42 specifically authorizing receipt of the waste.

(6) As part of the permit issuance or permit modification process of (d), the Department may modify, reduce, or eliminate the notification requirements of this as they apply to specific categories of CAMU-eligible waste, based on minimal risk.

(f) Generators of CAMU-eligible wastes sent off-site to a hazardous waste landfill under this section must comply with the requirements of 268.7(a)(4); off-site facilities treating CAMU-eligible wastes to comply with this section must comply with the requirements of 268.7(b)(4), except that the certification must be with respect to the treatment requirements of (a)(2) of this section.

(g) For the purposes of this section only, the "design of the CAMU" in 264.552(e)(4)(v)(E) means design of the permitted Subtitle C landfill.

Edit 265.340(a), add new (b) about MACT standards; reletter old (b) to (c) and edit

265.340Applicability.

(a) The regulations of this Subpart apply to owners and operators of hazardous waste incinerators (as defined in 260.10 of this chapter), except as 265.1 provides otherwise.

The following facility owners or operators are considered to incinerate hazardous waste: (12/93)

(1) Owners or operators of hazardous waste incinerators (as defined in R. 61-79.260.10 of this chapter).

(2) Owners or operators who burn hazardous waste in boilers or in industrial furnaces in order to destroy them, or who burn hazardous waste in boilers or in industrial furnaces for any recycling purpose and elect to be regulated under this regulation.

(b) Integration of the MACT standards.

(1) Except as provided by (b)(2) and (b)(3), the standards no longer apply when an owner or operator demonstrates compliance with the maximum achievable control technology (MACT) requirements of 40 CFR part 63, Subpart EEE, by conducting a comprehensive performance test and submitting to the Department a Notification of Compliance under 63.1207(j) and 63.1210(b) documenting compliance with the requirements of part 63, Subpart EEE,.

(2) The following requirements continue to apply even where the owner or operator has demonstrated compliance with the MACT requirements of part 63, Subpart EEE: 265.351 (closure) and the applicable requirements of Subparts A through H, BB and CC.

(3) Section 265.345 generally prohibiting burning of hazardous waste during startup and shutdown remains in effect if you elect to comply with 270.235(a)(1)(i) to minimize emissions of toxic compounds from startup and shutdown.

(c) Owners and operators of incinerators burning hazardous waste are exempt from all of the requirements of this Subpart, except 265.351 (Closure), provided that the owner or operator has documented, in writing, that the waste would not reasonably be expected to contain any of the hazardous constituents listed in part 261, Appendix VIII, of this chapter, and such documentation is retained at the facility, if the waste to be burned is:

Add and reserve 265.353 - 265.369

265.353-265.369 [Reserved]

Add new 266.100 (b); reletter previous (b) through (f) as new (c) through (g); amend new (d)(1) with new citation and reference to (h)

266.100Applicability.

(a) The regulations of this Subpart apply to hazardous waste burned or processed in a boiler or industrial furnace (as defined in 260.10) for the purpose of burning or processing, for energy recovery or for materials recovery as an ingredient, except as provided by paragraphs (b), (c), (d), and (f) of this section. If the purpose of burning or processing is for destruction or disposal, the boiler or industrial furnace shall be regulated under Subpart O of 264 or 265. The emissions standards of 266.104, 266.105, 266.106, and 266.107 apply to facilities operating under interim status or under a permit as specified in R. 61-79.266.102 and 266.103. The following hazardous wastes and facilities are not subject to regulation under this Subpart: (12/93; 5/96, 9/01)

(1) Used oil burned for energy recovery that is also a hazardous waste solely because it exhibits a characteristic of hazardous waste identified in Subpart C of part 261 of this chapter. Such used oil is subject to regulation under Subpart E of part 266 rather than this Subpart;

(2) Gas recovered from hazardous or solid waste landfills when such gas is burned for energy recovery;

(3) Hazardous wastes that are exempt from regulation under 261.4 and 261.6(a)(3) (iii) and (vi), and hazardous wastes that are subject to the special requirements for conditionally exempt small quantity generators under 261.5;(5/96, 8/00) and

(4) Coke ovens, if the only hazardous waste burned is EPA Hazardous Waste No. K087, decanter tank tar sludge from coking operations.

(b) Integration of the MACT standards.

(1) Except as provided by (b)(2), the standards no longer apply when an affected source demonstrates compliance with the maximum achievable control technology (MACT) requirements of 40 CFR part 63, Subpart EEE, by conducting a comprehensive performance test and submitting to the Department a Notification of Compliance under 63.1207(j) and 63.1210(d) documenting compliance with the requirements of part 63, Subpart EEE,. Nevertheless, even after this demonstration of compliance with the MACT standards, RCRA permit conditions that were based on the standards will continue to be in effect until they are removed from the permit or the permit is terminated or revoked, unless the permit expressly provides otherwise.

(2) The following standards continue to apply:

(i) If you elect to comply with 270.235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events, 266.102(e)(1) requiring operations in accordance with the operating requirements specified in the permit at all times that hazardous waste is in the unit, and 266.102(e)(2)(iii) requiring compliance with the emission standards and operating requirements during startup and shutdown if hazardous waste is in the combustion chamber, except for particular hazardous wastes. These provisions apply only during startup, shutdown, and malfunction events;

(ii) The closure requirements of 266.102(e)(11) and 266.103(l);

(iii) The standards for direct transfer of 266.111;

(iv) The standards for regulation of residues of 266.212; and

(v) The applicable requirements of Subparts A through H, BB and CC of parts 264 and 265.

(c) The following hazardous wastes and facilities are not subject to regulation under this Subpart: (9/01)

(1) Used oil burned for energy recovery that is also a hazardous waste solely because it exhibits a characteristic of hazardous waste identified in Subpart C of 261. Such used oil is subject to regulation under Subpart E of part 266 rather than this Subpart;

(2) Gas recovered from hazardous or solid waste landfills when such gas is burned for energy recovery;

(3) Hazardous wastes that are exempt from regulation under 261.4 and 261.6(a)(3)(iii) and (vi), and hazardous wastes that are subject to the special requirements for conditionally exempt small quantity generators under 261.5; (5/96, 8/00) and

(4) Coke ovens, if the only hazardous waste burned is EPA Hazardous Waste No. K087, decanter tank tar sludge from coking operations.

Amend 266.100(d)(1) to accommodate lead recovery facilities

(d) Owners and operators of smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, sintering machines, roasters, and foundry furnaces, but not including cement kilns, aggregate kilns, or halogen acid furnaces burning hazardous waste) that process hazardous waste solely for metal recovery are conditionally exempt from regulation under this Subpart, except for 266.101 and 266.112. (9/01)

(1) To be exempt from 266.102 through 266.111, an owner or operator of a metal recovery furnace or mercury recovery furnace must comply with the following requirements, except that an owner or operator of a lead or a nickel-chromium recovery furnace, or a metal recovery furnace that burns baghouse bags used to capture metallic dusts emitted by steel manufacturing, must comply with the requirements of (d)(3), and owners or operators of lead recovery furnaces that are subject to regulation under the Secondary Lead Smelting NESHAP must comply with the requirements of (h). **

Edit 266.100(d)(2)(i)&(ii) cross references

266.100(d)(2)(i)The hazardous waste has a total concentration of organic compounds listed in part 261, Appendix VIII, of this chapter exceeding 500 ppm by weight, as-fired, and so is considered to be burned for destruction. The concentration of organic compounds in a waste as-generated may be reduced to the 500 ppm limit by bona fide treatment that removes or destroys organic constituents. Blending for dilution to meet the 500 ppm limit is prohibited and documentation that the waste has not been impermissibly diluted must be retained in the records required by (d)(1)(iii); or (12/93)**

(ii) The hazardous waste has a heating value of 5,000 Btu/lb or more, as-fired, and so is considered to be burned as fuel. The heating value of a waste as-generated may be reduced to below the 5,000 Btu/lb limit by bona fide treatment that removes or destroys organic constituents. Blending for dilution to meet the 5,000 Btu/lb limit is prohibited and documentation that the waste has not been impermissibly diluted must be retained in the records required by (d)(1)(iii).

Edit 266.100(d)(3), amend (3)(i) (3)(i)(D) cross references

(3) To be exempt from 266.102 through 266.111, an owner or operator of a lead or nickel-chromium or mercury recovery furnace (except for owners or operators of lead recovery furnaces subject to regulation under the Secondary Lead Smelting NESHAP) or a metal recovery furnace that burns baghouse bags used to capture metallic dusts emitted by steel manufacturing, must provide a one-time written notice to the Department

identifying each hazardous waste burned and specifying whether the owner or operator claims an exemption for each waste under this paragraph or paragraph (d)(1). The owners or operator must comply with the requirements of paragraph (d)(1) of this section for those wastes claimed to be exempt under that paragraph and must comply with the requirements below for those wastes claimed to be exempt under this paragraph (d)(3)(i). (12/93, 5/96)

(i) The hazardous wastes listed in Appendices XI, XII, and XIII, part 266, and baghouse bags used to capture metallic dusts emitted by steel manufacturing are exempt from the requirements of paragraph (d)(1) of this section, provided that: (12/93; 5/96)

266.100(d)(3)(i)(D) The owner or operator certifies in the one-time notice that hazardous waste is burned under the provisions of (d)(3) of this section and that sampling and analysis will be conducted or other information will be obtained as necessary to ensure continued compliance with these requirements. Sampling and analysis shall be conducted according to (d)(1)(ii) of this section and records to document compliance with (d)(3) of this section shall be kept for at least three years. **

Reletter 266.100 previous (d) through (f) as new (e) through (g); add new (h)

(e) The standards for direct transfer operations under 266.111 apply only to facilities subject to the permit standards of 266.102 or the interim status standards of 266.103.(9/01)

(f) The management standards for residues under 266.112 apply to any boiler or industrial furnace burning hazardous waste.

(g) Owners and operators of smelting, melting and refining furnaces (including pyrometallurgical devices such as cupolas, sintering machines, roasters, and foundry furnaces) that process hazardous waste for recovery of economically significant amounts of the precious metals gold, silver, platinum, palladium, iridium, osmium, rhodium, or ruthenium, or any combination of these are conditionally exempt from regulation under this subpart, except for 266.112. To be exempt from 266.101 through 266.111 an owner or operator must: (12/93, 9/01) **

(h) Starting June 23, 1997, owners or operators of lead recovery furnaces that process hazardous waste for recovery of lead and that are subject to regulation under the Secondary Lead Smelting NESHAP, are conditionally exempt from regulation under this subpart, except for 266.101. To be exempt, an owner or operator must provide a one-time notice to the Department identifying each hazardous waste burned and specifying that the owner or operator claims an exemption under this paragraph. The notice also must state that the waste burned has a total concentration of non-metal compounds listed in part 261 Appendix VIII of less than 500 ppm by weight, as fired and as provided in paragraph (d)(2)(i), or is listed in Appendix XI.

Amend 266.101(c) to accommodate treatment facilities

266.101Management prior to burning

(c) Storage and Treatment Facilities. (9/01)

(1) Owners and operators of facilities that store or treat hazardous waste that is burned in a boiler or industrial furnace are subject to the applicable provisions of parts 264, 265, and 270 of this chapter, except as provided by paragraph (c)(2) of this section. These standards apply to storage and treatment by the burner as well as to storage and treatment facilities operated by intermediaries (processors, blenders, distributors, etc.) between the generator and the burner. (12/93, 9/01)

Add sentence at end of 266.112(b)(1) on analyses for polychlorinated wastes;

266.112(b)(1) Comparison of waste-derived residue with normal residue. The waste-derived residue must not contain Appendix VIII, part 261 constituents (toxic constituents) that could reasonably be attributable to the hazardous waste at concentrations significantly higher than in residue generated without burning or processing of hazardous waste, using the following procedure. Toxic compounds that could reasonably be attributable to burning or processing the hazardous waste (constituents of concern) include toxic constituents in the hazardous waste, and the organic compounds listed in Appendix VIII that may be generated as products of incomplete combustion. Sampling and analyses shall be in conformance with procedures prescribed in Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, incorporated by reference in 260.11(a) of this chapter. For polychlorinated dibenzo-p-dioxins and polychlorinated dibenzo-furans, analyses must be performed to determine

specific congeners and homologues, and the results converted to 2,3,7,8-TCDD equivalent values using the procedure specified in section 4.0 of Appendix IX.

Edit 266.112 (b)(2)(i) to accommodate methods and add waste treatment standards at end of (i); add Note.
266.112(b)(2) Comparison of waste-derived residue concentrations with health-based limits

(i) Nonmetal constituents. The concentration of each nonmetal toxic constituent of concern (specified in paragraph (b)(1) of this section) in the waste-derived residue must not exceed the health-based level specified in Appendix VII, or the level of detection (using analytical procedures prescribed in SW-846), whichever is higher. If a health-based limit for a constituent of concern is not listed in Appendix VII, then a limit of 0.002 micrograms per kilogram or the level of detection (using analytical procedures contained in SW-846, or other appropriate methods), whichever is higher, must be used. The levels specified in Appendix VII (and the default level of 0.002 micrograms per kilogram or the level of detection for constituents as identified in Note 1 of Appendix VII) are administratively stayed under the condition, for those constituents specified in paragraph (b)(1) of this section, that the owner or operator complies with alternative levels defined as the land disposal restriction limits specified in 268.43 for F039 nonwastewaters. In complying with those alternative levels, if an owner or operator is unable to detect a constituent despite documenting use of best good-faith efforts as defined by applicable Department guidance or standards, the owner or operator is deemed to be in compliance for that constituent. Until new guidance or standards are developed, the owner or operator may demonstrate such good-faith efforts by achieving a detection limit for the constituent that does not exceed an order of magnitude above the level provided by 268.43 for F039 nonwastewaters. In complying with the 268.43 F039 nonwastewater levels for polychlorinated dibenzo-p-dioxins and polychlorinated dibenzo-furans, analyses must be performed for total hexachlorodibenzo-p-dioxins, total hexachlorodibenzofurans, total pentachlorodibenzo-p-dioxins, total pentachlorodibenzofurans, total tetrachlorodibenzo-p-dioxins, and total tetrachlorodibenzofurans.

Note to this paragraph: The administrative stay, under the condition that the owner or operator complies with alternative levels defined as the land disposal restriction limits specified in 268.43 for F039 nonwastewaters, remains in effect until further administrative action is taken and notice is published in the Federal Register. (12/93; 12/94, 8/00)

Amend 266 Appendix VIII title; add two polychlorinated waste streams. Add footnote 1 and note
266 Appendix VIII - Organic Compounds for Which Residues Must Be Analyzed

PICs Found in Stack Effluents

Volatiles	Semivolatiles
Benzene	Bis(2-ethylhexyl)phthalate
Toluene	Naphthalene
Carbon tetrachloride	Phenol
Chloroform	Diethyl phthalate
Methylene chloride	Butyl benzyl phthalate
Trichloroethylene	2,4-Dimethylphenol
Tetrachloroethylene	o-Dichlorobenzene
1,1,1-Trichloroethane	m-Dichlorobenzene
Chlorobenzene	p-Dichlorobenzene
cis-1,4-Dichloro-2-butene	Hexachlorobenzene
Bromochloromethane	2,4,6-Trichlorophenol
Bromodichloromethane	Fluoranthene
Bromoform	o-Nitrophenol
Bromomethane	1,2,4-Trichlorobenzene
Methylene bromide	o-Chlorophenol
Methyl ethyl ketone	Pentachlorophenol
	Pyrene
	Dimethyl phthalate
	Mononitrobenzene
	2,6-Toluene diisocyanate

Polychlorinated dibenzo-p-dioxins polychlorinated dibenzo-furans[1]	

[1] Analyses for polychlorinated dibenzo-p-dioxins and poly-chlorinated dibenzo-furans are required only for residues collected from areas downstream of the combustion chamber (e.g., ductwork, boiler tubes, heat exchange surfaces, air pollution control devices, etc.).
NOTE TO TABLE: Analysis is not required for those compounds that do not have an established F039 nonwastewater concentration limit.

Add new 268.36, including (a) through (c)

268.36 Waste specific prohibitions - inorganic chemical wastes

(a) Effective May 20, 2002, the wastes specified in part 261 as EPA Hazardous Wastes Numbers K176, K177, and K178, and soil and debris contaminated with these wastes, radioactive wastes mixed with these wastes, and soil and debris contaminated with radioactive wastes mixed with these wastes are prohibited from land disposal.

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

(1) The wastes meet the applicable treatment standards specified in Subpart D of this part;

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under 268.6, with respect to those wastes and units covered by the petition;

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

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

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

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

Add K176 through K178 in alphanumeric order to 268.40 Table

268.40 Applicability of treatment standards.

TREATMENT STANDARDS FOR HAZARDOUS WASTES Note: NA means not applicable					
WASTE CODE	Waste Description and Treatment/Regulatory Subcategory[1]	Regulated Hazardous Constituent		Wastewaters	Nonwastewaters
		Common Name	CAS[2]Number	Concentration in mg/L[3], or Technology Code[4]	Concentration in mg/kg[5] unless noted as "mg/L TCLP", or Technology Code
* * * * *	**				
K176	Baghouse filters from the production of antimony oxide, including filters from the production of intermediates (e.g., antimony metal or crude antimony oxide).	Antimony	7440-36-0	1.9	1.15 mg/L TCLP
		Arsenic	7440-38-2	1.4	5.0 mg/L TCLP
		Cadmium	7440-43-9	0.69	0.11 mg/L TCLP
		Lead	7439-92-1	0.69	0.75 mg/L TCLP
		Mercury	7439-97-6	0.15	0.025 mg/L TCLP
K177	Slag from the production of antimony oxide that is speculatively accumulated or disposed, including slag from the production of intermediates (e.g., antimony metal or crude antimony oxide).	Antimony	7440-36-0	1.9	1.15 mg/L TCLP
		Arsenic	7440-38-2	1.4	5.0 mg/L TCLP
		Lead	7439-92-1	0.69	0.75 mg/L TCLP
K178	Residues from manufacturing and manufacturing-site storage of ferric chloride from acids formed during the production of titanium dioxide using the chloride-ilmenite process.	1,2,3,4,6,7,8-Heptachlorodibenzo-*p*-dioxin (1,2,3,4,6,7,8-HpCDD)	35822-39-4	0.000035 or CMBST[11]	0.0025 or CMBST[11]
		1,2,3,4,6,7,8- Heptachlorodibenzofuran (1,2,3,4,6,7,8-HpCDF)	67562-39-4	0.000035 or CMBST[11]	0.0025 or CMBST[11]
		1,2,3,4,7,8,9-Heptachlorodibenzofuran (1,2,3,4,7,8,9-HpCDF)	55673-89-7	0.000035 or CMBST[11]	0.0025 or CMBST[11]

TREATMENT STANDARDS FOR HAZARDOUS WASTES Note: NA means not applicable					
		Regulated Hazardous Constituent		Wastewaters	Nonwastewaters
		HxCDDs (All Hexachlorodibenzo-*p*-dioxins)	34465-46-8	0.000063 or CMBST[11]	0.001 or CMBST[11]
		HxCDFs (All Hexachlorodibenzofurans)	55684-94-1	0.000063 or CMBST[11]	0.001 or CMBST[11]
		1,2,3,4,6,7,8,9-Octachlorodibenzo-*p*-dioxin (OCDD)	3268-87-9	0.000063 or CMBST[11]	0.005 or CMBST[11]
		1,2,3,4,6,7,8,9-Octachlorodibenzofuran (OCDF)	39001-02-0	0.000063 or CMBST[11]	0.005 or CMBST[11]
		PeCDDs (All Pentachlorodibenzo-*p*-dioxins)	36088-22-9	0.000063 or CMBST[11]	0.001 or CMBST[11]
		PeCDFs (All Pentachlorodibenzofurans)	30402-15-4	0.000035 or CMBST[11]	0.001 or CMBST[11]
		TCDDs (All tetrachlorodi-benzo-*p*-dioxins)	41903-57-5	0.000063 or CMBST[11]	0.001 or CMBST[11]
		TCDFs (All tetrachlorodibenzofurans)	55722-27-5	0.000063 or CMBST[11]	0.001 or CMBST[11]
		Thallium	7440-28-0	1.4	0.20 mg/L TCLP
* * * * *	* *				

* * * * *

Amend 270.19 intro with new cross reference; add new (e)

270.19 Specific Part B information requirements for incinerators.

Except as 264.340 and 270.19(e) provide otherwise, owners and operators of facilities that incinerate hazardous waste must fulfill the requirements of (a), (b), or (c).

(e) When an owner or operator demonstrates compliance with the air emission standards and limitations in 40 CFR part 63, Subpart EEE, (i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance), 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) and 270.32(b)(2).

Amend 270.22 (a) with significant additional language; introductory paragraph prior to (a) and (1) and (2) following (a) are retained

270.22 Specific Part B information requirements for boilers and industrial furnaces burning hazardous waste(12/94) .

(a) Trial burns. When an owner or operator of a cement or lightweight aggregate kiln demonstrates compliance with the air emission standards and limitations in 40 CFR part 63, Subpart EEE, (i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance), the requirements do not apply, except those provisions the Department determines are necessary to ensure compliance with 266.102(e)(1) and 266.102(e)(2)(iii) 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) and 270.32(b)(2). [note introductory paragraph prior to (a) is retained and (1)&(2) follow]

Amend 270.42(b)(1)(iv) cross references

270.42(b)(1)(iv)Provides the applicable information required by 270.13 through 270.21, 270.62, and 270.63.

Amend 270.42(g)(1)(ii) regarding permit modification due date

270.42(g)(1)(ii) The permittee submits a Class 1 modification request on or before the date on which the waste or unit becomes subject to the new requirements;

Amend 270.42(j)(1) effective date

270.42 (j)(1) Facility owners or operators must comply with the Notification of Intent to Comply (NIC) requirements of 40 CFR 63.121 that were in effect prior to Oct 11, 2000, in order to request a permit modification under this section.

APPENDIX I TO 270.42 - CLASSIFICATION OF PERMIT MODIFICATION; ADD A.8.

Modifications	Class
A. General Permit Provisions	
8. Changes to remove permit conditions that are no longer applicable (i.e., because the standards upon which they are based are no longer applicable to the facility).	[1]1

Add new 270.62 introductory paragraph on incinerator permits; retain (a)&(b)

270.62 Hazardous waste incinerator permits(5/93).

When an owner or operator demonstrates compliance with the air emission standards and limitations in 40 CFR part 63, Subpart EEE, (i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance), 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) and 270.32(b)(2). [Note insert leadin (a) & (b) follow]

Add new 270.66 introductory paragraph on BIF permits; retain (a)&(b), etc.

270.66 Permits for boilers and industrial furnaces burning hazardous waste (12/95; 5/96)

When an owner or operator of a cement or lightweight aggregate kiln demonstrates compliance with the air emission standards and limitations in 40 CFR part 63, Subpart EEE, (i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance), the requirements do not apply, except those provisions the Department determines are necessary to ensure compliance with 266.102(e)(1) and 266.102(e)(2)(iii) 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) and 270.32(b)(2). [insert as leadin, (a)&(b) follow]***

Add new 270 Subpart I on integration with MACT standards

Subpart I - Integration with Maximum Achievable Control Technology (MACT) Standards

270.235Options for incinerators and cement and lightweight aggregate kilns to minimize emissions from startup, shutdown, and malfunction events.

(a) Facilities with existing permits.

(1) Revisions to permit conditions after documenting compliance with MACT. The owner or operator of a RCRA-permitted incinerator, cement kiln, or lightweight aggregate kiln may request that the Department address permit conditions that minimize emissions from startup, shutdown, and malfunction events under any of the following options when requesting removal of permit conditions that are no longer applicable according to 264.340(b) and 266.100(b):

(i) Retain relevant permit conditions. Under this option, the Department will:

(A) Retain permit conditions that address releases during startup, shutdown, and malfunction events, including releases from emergency safety vents, as these events are defined in the facility's startup, shutdown, and malfunction plan required under 63.1206(c)(2); and

(B) Limit applicability of those permit conditions only to when the facility is operating under its startup, shutdown, and malfunction plan.

(ii) Revise relevant permit conditions.

(A) Under this option, the Department will:

(1) Identify a subset of relevant existing permit requirements, or develop alternative permit requirements, that ensure emissions of toxic compounds are minimized from startup, shutdown, and malfunction events, including releases from emergency safety vents, based on review of information including the source's startup, shutdown, and malfunction plan, design, and operating history.

(2) Retain or add these permit requirements to the permit to apply only when the facility is operating under its startup, shutdown, and malfunction plan.

(B) Changes that may significantly increase emissions.

(1) You must notify the Department in writing of changes to the startup, shutdown, and malfunction plan or changes to the design of the source that may significantly increase emissions of toxic compounds from startup, shutdown, or malfunction events, including releases from emergency safety vents. You must notify the Department of such changes within five days of making such changes. You must identify in the notification recommended revisions to permit conditions necessary as a result of the changes to ensure that emissions of toxic compounds are minimized during these events.

(2) The Department may revise permit conditions as a result of these changes to ensure that emissions of toxic compounds are minimized during startup, shutdown, or malfunction events, including releases from emergency safety vents either:

(i) Upon permit renewal, or, if warranted;

(ii) By modifying the permit under 270.41(a) or 270.42.

(iii) Remove permit conditions. Under this option:

(A) The owner or operator must document that the startup, shutdown, and malfunction plan required under 63.1206(c)(2) has been approved by the Department under 40 CFR 63.1206(c)(2)(ii)(B); and

(B) The Department will remove permit conditions that are no longer applicable according to 264.340(b) and 266.100(b).

(2) Addressing permit conditions upon permit reissuance. The owner or operator of an incinerator, cement kiln, or lightweight aggregate kiln that has conducted a comprehensive performance test and submitted to the Department a Notification of Compliance documenting compliance with the standards of 40 CFR part 63, Subpart EEE, may request in the application to reissue the permit for the combustion unit that the Department control emissions from startup, shutdown, and malfunction events under any of the following options:

(i) RCRA option A.

(A) Under this option, the Department will:

(1) Include, in the permit, conditions that ensure compliance with 264.345(a) and 264.345(c) or 266.102(e)(1) and 266.102(e)(2)(iii) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events, including releases from emergency safety vents; and

(2) Specify that these permit requirements apply only when the facility is operating under its startup, shutdown, and malfunction plan; or

(ii) RCRA option B.

(A) Under this option, the Department will:

(1) Include, in the permit conditions, that ensure emissions of toxic compounds are minimized from startup, shutdown, and malfunction events, including releases from emergency safety vents, based on review of information including the source's startup, shutdown, and malfunction plan, design, and operating history; and

(2) Specify that these permit requirements apply only when the facility is operating under its startup, shutdown, and malfunction plan.

(B) Changes that may significantly increase emissions.

(1) You must notify the Department in writing of changes to the startup, shutdown, and malfunction plan or changes to the design of the source that may significantly increase emissions of toxic compounds from startup, shutdown, or malfunction events, including releases from emergency safety vents. You must notify the Department of such changes within five days of making such changes. You must identify in the notification recommended revisions to permit conditions necessary as a result of the changes to ensure that emissions of toxic compounds are minimized during these events.

(2) The Department may revise permit conditions as a result of these changes to ensure that emissions of toxic compounds are minimized during startup, shutdown, or malfunction events, including releases from emergency safety vents either:

(i) Upon permit renewal, or, if warranted;

(ii) By modifying the permit under 270.41(a) or 270.42; or

(iii) CAA option. Under this option:

(A) The owner or operator must document that the startup, shutdown, and malfunction plan required under 40 CFR 63.1206(c)(2) has been approved by the Department under 63.1206(c)(2)(ii)(B); and

(B) The Department will omit from the permit conditions that are not applicable under 264.340(b) and 266.100(b).

(b) Interim status facilities.

(1) Interim status operations. In compliance with 265.340 and 266.100(b), the owner or operator of an incinerator, cement kiln, or lightweight aggregate kiln that is operating under the interim status standards of part 265 or 266 may control emissions of toxic compounds during startup, shutdown, and malfunction events under either of the following options after conducting a comprehensive performance test and submitting to the Department a Notification of Compliance documenting compliance with the standards of 40 CFR part 63, Subpart EEE:

(i) RCRA option. Under this option, the owner or operator continues to comply with the interim status emission standards and operating requirements of part 265 or 266 relevant to control of emissions

from startup, shutdown, and malfunction events. Those standards and requirements apply only during startup, shutdown, and malfunction events; or

(ii) CAA option. Under this option, the owner or operator is exempt from the interim status standards of part 265 or 266 relevant to control of emissions of toxic compounds during startup, shutdown, and malfunction events upon submission of written notification and documentation to the Department that the startup, shutdown, and malfunction plan required under 63.1206(c)(2) has been approved by the Department under 63.1206(c)(2)(ii)(B).

(2) Operations under a subsequent RCRA permit. When an owner or operator of an incinerator, cement kiln, or lightweight aggregate kiln that is operating under the interim status standards of parts 265 or 266 submits a RCRA permit application, the owner or operator may request that the Department control emissions from startup, shutdown, and malfunction events under any of the options provided by (a)(2)(i), (a)(2)(ii), or (a)(2)(iii).

Statement Of Need And Reasonableness

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

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

Purpose: The purpose of this amendment is to meet compliance requirements of the United States Environmental Protection Agency (EPA), which promulgates amendments to 40 CFR 124, 260 through 266, 268, 270, and 273 throughout each calendar year by publication in the Federal Register.

Recent amendments include: a clarifying revision to the Mixture and Derived-From Rules; new listings for three inorganic chemical manufacturing wastes including additional toxic constituents and treatment standards for the wastes; amendments to the Corrective Action Management Unit rule to facilitate cleanup; and deletion of regulatory language vacated by two federal court actions for some mineral processing secondary materials and the application of the Toxicity Characteristic Leaching Procedure to manufactured gas plant wastes.

In addition, the Bureau will make amendments to the Hazardous Air Pollutant Standards for Combustors. In September 2000 the Bureau began the adoption process for the Hazardous Air Pollutant Standards for Combustors promulgated by EPA. However, a federal appeals court struck down the EPA standards on July 24, 2001. At the September 13, 2001 Board meeting, staff recommended that those portions of the proposed federal compliance standards regarding combustion not be adopted. The Board concurred. On February 13, 2002, EPA developed interim standards and will develop final standards by June 14, 2005. The Bureau proposes to adopt the interim standards and those portions of the combustor standards that have not been vacated. Minor errors will be corrected to achieve conformity with federal regulations. These rules and other amendments have been published in the Federal Register between September 30, 1999, and June 30, 2002.

These amendments appeared at: 64 FR 52828, September 30, 1999; 64 FR63209, November 19, 1999; 65 FR 42292, July 10, 2000; 66 FR 24270, May 14, 2001; 66 FR 35087, July 3, 2001; 66 FR 50332, October 3, 2001; 66 FR 58258, November 20, 2001; 67 FR 2962, December 3, 2001; January 22, 2002; 67 FR 6792, February 13, 2002; 67 FR 6968, February 14, 2002; 67 FR 11251, March 13, 2002; and 67 FR 17119, April 9, 2002.

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

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

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

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

The MACT rules are already in force through the Bureau of Air Quality programs, the other rules have very minor impact or are required in response to vacatur. Therefore, the rules have little or no economic impact on the Department or the regulated community.

UNCERTAINTIES OF ESTIMATES: No known uncertainties.

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

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

Resubmitted March 25, 2003

Document No. 2784
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
Statutory Authority: §§44-7-260 and 44-87-370(A), S.C. Code of Laws, 1976, as amended (2000)

R.61-91. *Standards for Licensing Ambulatory Surgical Facilities*

Synopsis:

South Carolina Code Section 1-23-120 directs that staff of State agencies review their regulations every five years and update them if necessary. R.61-91 was last amended June 24, 1983. Since that time there have been certain exceptions, guidelines, directives, interpretations, policies, and changes in applicable law, changes in building standards, and other considerations that have evolved from DHEC inspections and provider input through the years. This amendment will bring the regulation current and will replace R.61-91 in entirety. The revision includes a change in licensing fees.

Discussion of Regulation

SECTION 100 includes definitions, references, and licensing requirements

SECTION 200 addresses methods used in enforcing regulations, *i.e.*, investigations, inspections, and consultations.

SECTION 300 references the types of enforcement actions that may be taken by the Department, the classifications of violations, range of monetary penalty amounts, and the appeal process.

SECTION 400 includes requirements that the agency maintain policies and procedures that include descriptions of how the standards in this regulation will be achieved.

SECTION 500 addresses general staff requirements including staff training, qualifications, and numbers to comply with applicable federal, state, and local laws, and in accordance with professional organizational standards; medical director, medical staff, nursing staff, staff health status.

SECTION 600 provides reporting requirements to the Department.

SECTION 700 addresses patient record content and maintenance.

SECTION 800 provides requirements for care, procedures, treatment, surgery, and services to patients.

SECTION 900 includes facility identification of patient rights and assurances.

SECTION 1000 addresses medication management.

SECTION 1100 addresses meal service.

SECTION 1200 addresses emergency procedures/disaster preparedness.

SECTION 1300 includes fire prevention, i.e., arrangements for fire department response/protection, tests and inspections, fire drills.

SECTION 1400 addresses maintenance.

SECTION 1500 addresses infection control including staff practices which promote the prevention of the spread of infectious, contagious disease, and tuberculin skin testing, per Centers for Disease Control and Prevention (CDC) and the Department's TB Control requirements; vaccinations; sterilization procedures; the handling of infectious waste; housekeeping; and clean/soiled linen and surgical clothing.

SECTION 1600 includes the quality improvement program.

SECTION 1700 addresses design and construction.

SECTION 1800 addresses general construction requirements.

SECTION 1900 includes hazardous elements of construction.

SECTION 2000 addresses exits.

SECTION 2100 addresses fire protection equipment and systems.

SECTION 2200 includes water supply/hygiene.

SECTION 2300 addresses electrical.

SECTION 2400 includes heating, ventilation, and air conditioning and ventilation requirements.

SECTION 2500 addresses specifics for the physical plant, i.e., administrative areas, surgical suites, clinical facilities doors, elevators, corridors, ramps, screens, telephone service, handrails/guardrails, landings, windows, janitor's closet, storage areas, location, and telephone service.

SECTION 2600 includes a severability clause that indicates that if a court of competent jurisdiction determines that part of the regulation is invalid or otherwise unenforceable then the remainder of the regulation will not be affected and will still be in force.

SECTION 2700 includes "general" that refers to any conditions that have not been addressed in the regulation.

Instructions:

Replace R.61-91 in its entirety by this amendment.

Text:

REGULATION 61-91. STANDARDS FOR AMBULATORY SURGICAL FACILITIES

SECTION 100 - DEFINITIONS, REFERENCES, AND LICENSE REQUIREMENTS
101. Definitions
102. References
103. License Requirements

SECTION 200 - ENFORCING REGULATIONS
201. General
202. Inspections/Investigations

SECTION 300 - ENFORCEMENT ACTIONS
301. General
302. Violation Classifications

SECTION 400 - POLICIES AND PROCEDURES
401. General

SECTION 500 - STAFF
501. General
502. Administrator
503. Medical Director
504. Medical Staff
505. Nursing Staff
506. Advanced Cardiac Life Support
507. Inservice Training
508. Health Status

SECTION 600 - REPORTING
601. Incidents/Accidents
602. Fire/Disasters
603. Communicable Diseases
604. Administrator Change
605. Joint Annual Report
606. Accounting of Controlled Substances

607. Facility Closure
608. Zero Census

SECTION 700 - PATIENT RECORDS
701. Content
702. Authentication
703. Record Maintenance

SECTION 800 - CARE/TREATMENT/PROCEDURES/SURGERY/SERVICES
801. General
802. Physical Examination
803. Surgical Services
804. Anesthesia Services
805. Laboratory Services
806. Radiology Services
807. Adverse Conditions
808. Patient Instruction

SECTION 900 - RIGHTS AND ASSURANCES
901. General

SECTION 1000 - MEDICATION MANAGEMENT
1001. General
1002. Medication Orders
1003. Administering Medication
1004. Pharmacy Services
1005. Medication Containers
1006. Medication Storage
1007. Disposition of Medications

SECTION 1100 - MEAL SERVICE
1101. General
1102. Food Storage
1103. Food Equipment and Utensils
1104. Ice and Drinking Water
1105. Equipment
1106. Refuse Storage and Disposal

SECTION 1200 - EMERGENCY PROCEDURES/DISASTER PREPAREDNESS
1201. Emergency Services
1202. Disaster Preparedness
1203. Emergency Call Numbers
1204. Continuity of Essential Services

SECTION 1300 - FIRE PREVENTION
1301. Arrangements for Fire Department Response/Protection
1302. Tests and Inspections
1303. Fire Response Training
1304. Fire Drills

SECTION 1400 - MAINTENANCE
1401. General
1402. Equipment

1403. Preventive Maintenance of Life Support Equipment

SECTION 1500 - INFECTION CONTROL AND ENVIRONMENT
1501. Staff Practices
1502. Vaccinations
1503. Live Animals
1504. Sterilization Procedures
1505. Tuberculin Skin Testing
1506. Housekeeping
1507. Infectious Waste
1508. Clean/Soiled Linen and Surgical Clothing

SECTION 1600 - QUALITY IMPROVEMENT PROGRAM
1601. General

SECTION 1700 - DESIGN AND CONSTRUCTION
1701. General
1702. Local and State Codes and Standards
1703. Applicable Code Editions
1704. Submission of Plans and Specifications

SECTION 1800 - GENERAL CONSTRUCTION REQUIREMENTS
1801. Height and Area Limitations
1802. Fire-Resistive Rating
1803. Vertical Openings
1804. Wall and Partition Openings
1805. Ceiling Openings
1806. Firewalls
1807. Windows/Mirrors
1808. Floor and Wall Finishes
1809. Ceilings

SECTION 1900 - HAZARDOUS ELEMENTS OF CONSTRUCTION
1901. Furnaces and Boilers
1902. Dampers
1903. Incinerators
1904. Furnishings/Equipment

SECTION 2000 - EXITS
2001. General

SECTION 2100 - FIRE PROTECTION EQUIPMENT AND SYSTEMS
2101. Firefighting Equipment
2102. Fire Alarms
2103. Smoke Detectors
2104. Flammable Liquids
2105. Gases

SECTION 2200 - WATER SUPPLY/HYGIENE
2201. Design & Construction
2202. Disinfection of Water Lines
2203. Temperature
2204. Stop Valves

SECTION 100 - DEFINITIONS, REFERENCES, AND LICENSE REQUIREMENTS

101. Definitions

For the purpose of these standards, the following definitions shall apply:

A. Administrator. The individual designated by the facility licensee to have the authority and responsibility to manage the facility.

B. Administering Medication. The direct application of a single dose of a medication to the body of a patient by injection, ingestion, or any other means.

C. Advance Directive. A written statement such as a living will, a durable power of attorney for health care, or a do-not-resuscitate order relating to the provision of health care when the individual is incapacitated. The exercise by a patient of self-determination that encompasses making choices regarding life-sustaining treatment (including resuscitative services).

D. Advanced Practice Registered Nurse. An individual who has official recognition as such by the S.C. State Board of Nursing.

E. Ambulatory Surgical Facility. A distinct, freestanding, self-contained entity that is organized, administered, equipped, and operated exclusively for the purpose of performing surgical procedures or related care, treatment, procedures, and/or services, *e.g.*, endoscopy, for which patients are scheduled to arrive, receive surgery or related care, treatment, procedures, and/or services, and be discharged on the same day.

1. The owner or operator shall make the facility available to other providers who comprise an organized professional staff, *i.e.*, an open medical staff (see Section 101. CC).

2. This definition does not apply to any facility used as an office or clinic for the private practice of licensed healthcare professionals (see Section 101. KK).

F. Anesthesiologist's Assistant. An individual currently licensed as such by the S.C. Board of Medical Examiners.

G. Anesthesiologist. A physician who has completed a residency in anesthesiology.

H. Anesthetic Agent. Any drug or combination of drugs administered parenterally or inhaled with the purpose of creating conscious or deep sedation.

I. Certified Registered Nurse Anesthetist. A registered nurse who is authorized to practice as a certified registered nurse anesthetist by the S. C. State Board of Nursing.

J. Controlled Substance. A medication or other substance included in Schedule I, II, III, IV, and V of the Federal Controlled Substances Act and the S.C. Controlled Substances Act.

K. Consultation. A visit to a licensed facility by individuals authorized by the Department to provide information to facilities to enable facilities to better comply with the regulations.

L. Dentist. An individual currently licensed by the S.C. Board of Dentistry to practice dentistry.

M. Department. The S.C. Department of Health and Environmental Control (DHEC).

N. Direct Care Staff Member. An individual who provides care, treatment, surgery, and/or services, or performs procedures for a patient.

O. Endoscopy. Visual inspection of any cavity of the body by means of an endoscope.

P. Existing Facility. A facility that was in operation and/or one that began the construction or renovation of a building, for the purpose of operating the facility, prior to the promulgation of this regulation. The licensing standards governing new facilities apply if and when an existing facility is not continuously operated and licensed under this regulation.

Q. Facility. An ambulatory surgical facility licensed by the Department.

R. Health Assessment. An evaluation of the health status of a staff member or volunteer by a physician, physician's assistant, or advanced practice registered nurse, or by a registered nurse, pursuant to standing orders approved by a physician, as evidenced by the physician's signature in accordance with facility policy.

S. Inspection. A visit by authorized individuals to a facility or to a proposed facility for the purpose of determining compliance with this regulation.

T. Investigation. A visit by authorized individuals to a licensed or unlicensed entity for the purpose of determining the validity of allegations received by the Department relating to this regulation.

U. Initial License. A license granted to a new facility.

V. Legally Authorized Healthcare Provider. An individual authorized by law and currently licensed in S.C. to provide specific medical care, treatment, procedures, surgery, and/or services to patients. Examples of individuals who may be authorized by law to provide the aforementioned care, treatment, procedures, surgery, and/or services may include, but are not limited to, advanced practice registered nurses, and physician's assistants.

W. Legend Drug.

1. A drug required by federal law to be labeled with any of the following statements prior to being dispensed or delivered:

a. "Caution: Federal law prohibits dispensing without prescription";

b. "Rx only."

2. A drug required by federal or state law to be dispensed pursuant to a prescription drug order or restricted to use by practitioners only;

3. Any drug products designated by the S.C. Board of Pharmacy to be a public health threat; or

4. Any prescribed compounded prescription within the meaning of the Pharmacy Act.

X. License. A certificate issued by the Department to a facility to provide care, treatment, procedures, surgery, and/or services.

Y. Licensed Nurse. An individual currently licensed by the S.C. State Board of Nursing as a registered nurse or licensed practical nurse.

Z. Licensee. The individual, corporation, organization, or public entity that has received a license to provide care, treatment, procedures, surgery, and/or services at a facility and with whom rests the ultimate responsibility for compliance with this regulation.

AA. New Facility. All buildings or portions of buildings, new and existing, that are:

1. Being licensed for the first time;

2. Providing a different service that requires a change in the type of license;

3. Being licensed after the previous licensee's license has been revoked, suspended, or after the previous licensee has voluntarily surrendered the license and the facility has not continuously operated.

BB. Open Medical Staff. Members of the medical staff, which includes physicians, dentists, or podiatrists, of an ambulatory surgical facility, that have individually submitted application to the facility, and subsequently been approved to perform surgery/procedures in accordance with criteria established by the facility for approving qualified applicants.

CC. Operating Room. A room in which surgery is performed.

DD. Nonlegend Medication. A medication that may be sold without a prescription and that is labeled for use by the consumer in accordance with the requirements of the laws of this State and the federal government.

EE. Pharmacist. An individual currently registered as such by the S.C. Board of Pharmacy.

FF. Physical Examination. An examination of a patient by a physician that addresses those issues identified in Section 802 of this regulation.

GG. Physician. An individual currently licensed as such by the S.C. Board of Medical Examiners.

HH. Physician's Assistant. An individual currently licensed as such by the S.C. Board of Medical Examiners.

II. Podiatrist. An individual currently licensed as such by the S.C. Board of Podiatry Examiners.

JJ. Private Practice. An individually-licensed physician or group of licensed physicians who practice together at a certain location/address in a legally-constituted professional corporation, association, or partnership; patient encounters in the office or clinic are for the purpose of diagnosis and treatment, and not limited primarily to the performance of surgery and related care, treatment, procedures, and/or services.

KK. Procedure Room. A room where procedures not requiring general anesthesia can be safely performed.

LL. Quality Improvement Program. The process used by a facility to examine its methods and practices of providing care, treatment, procedures, surgery, and/or services, identify the ways to improve its performance, and take actions that result in higher quality of care, treatment, procedures, surgery, and/or services for the facility's patients.

MM. Recovery Area. An area used for the recovery of patients.

NN. Registered Nurse Anesthetist. A registered nurse who is authorized to practice as a registered nurse anesthetist by the S. C. State Board of Nursing.

OO. Repeat Violation. The recurrence of a violation cited under the same section of the regulation within a 36-month period. The time-period determinant of repeat violation status is not interrupted by ownership changes.

PP. Responsible Party. A person who is authorized by law to make decisions on behalf of a patient, including, but not limited to, a court-appointed guardian or conservator, or person with a health care power of attorney or other durable power of attorney.

QQ. Revocation of License. An action by the Department to cancel or annul a license by recalling, withdrawing, or rescinding its authority to operate.

RR. Same Day. That period of time between 12:01 a.m. and 11:59 p.m. on a calendar date.

SS. Staff Member. An adult who is a compensated employee of the facility on either a full or part-time basis.

TT. Surgery. Treatment of conditions by operative means involving incision, whether with a scalpel or a laser, followed by removal or repair of an organ or other tissue.

UU. Surgical Suite. An area that includes one or more operating rooms and a recovery area.

VV. Suspension of License. An action by the Department requiring a facility to cease operation for a period of time or to require a facility to cease admitting patients until such time as the Department rescinds that restriction.

102. References

The following publications/standards are referenced in this regulation:

A. Departmental:

1. R.61-4, *Controlled Substances*;

2. R.61-12, *Standards for Licensing Abortion Clinics*;

3. R.61-16, *Standards for Licensing Hospitals and Institutional General Infirmaries*;

4. R.61-20, *Communicable Diseases*;

5. R.61-25, *Retail Food Establishments*;

6. R.61-58, *State Primary Drinking Water Regulations*;

7. R.61-63, *Title A, Rules and Regulations for Radioactive Materials*;

8. R.61-64, *X-Rays, (Title B)*;

9. R.61-67, *Standards for Wastewater Facility Construction*;

10. R.61-105, *Infectious Waste Management Regulations*;

11. Guidelines for Prevention and Control of Antibiotic Resistant Organisms in Health Care Settings.

B. Non-Departmental:

1. American Association of Blood Banks;

2. American National Standards Institute (ANSI);

3. American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE);

4. Bloodborne Pathogens Standards, Occupational Safety and Health Act (OSHA) of 1970;

5. Civil Rights Act of 1964;

6. Centers for Disease Control and Prevention (CDC);

7. International Building Code (IBC);

8. National Fire Protection Association (NFPA);

9. Standard Building Code (SBC).

103. License Requirements (II)

A. License. No person, private or public organization, political subdivision, or governmental agency shall establish, operate, maintain, or represent itself (advertise/market) as an ambulatory surgical facility in S.C. without first obtaining a license from the Department. The provision of care, treatment, procedures, surgery, and/or services to patients prior to the effective date of licensure is a violation of § 44-7-260(A)(6) of the S.C. Code Ann. (2002). When it has been determined by the Department that care, treatment, procedures, surgery, and/or services are being provided at a location, and the owner has not been issued a license from the Department to provide such care, treatment, procedures, surgery, and/or services, the owner shall cease operation immediately and ensure the safety, health, and well-being of the patients. Current and previous violations of the S.C. Code and/or Department regulations may jeopardize the issuance of a license for the facility or the licensing of any other facility, or addition to an existing facility that is owned or operated by the licensee. (I)

B. Compliance. An initial license shall not be issued to a proposed facility that has not been previously and continuously licensed under Department regulations until the licensee has demonstrated to the Department that the proposed facility is in substantial compliance with the licensing standards. In the event a licensee who already has a facility/activity licensed by the Department makes application for another facility or increase in licensed capacity, the currently licensed facility/activity shall be in substantial compliance with the applicable standards prior to the Department issuing a license to the proposed facility or an amended license to the existing facility. A copy of the licensing standards shall be maintained at the facility and accessible to all staff members. Facilities shall comply with applicable local, state, and federal laws, codes, and regulations.

C. Compliance with Structural Standards. Facilities licensed at the time of promulgation of this regulation (existing facilities), and proposed facilities for which the licensee has received written approval from the Department to construct the proposed facility:

1. Shall be allowed to continue utilizing the previously-licensed structure without modification, and are not required to modify square footage of operating/procedure rooms;

2. Shall comply with the remainder of the standards within this regulation.

D. Compliance with Structural Standards upon Change of Licensee. When changes in licensee occur, the new licensee shall, through coordination with the Department's Division of Health Facilities Construction, formulate a plan for the facility to be in compliance with current building and fire and life safety codes within 24 months of the date of the licensee change, unless specific standards are exempted by the Department. Should other changes in licensee occur within the 24-month period, the new licensee shall comply with the original plan approved by the Division of Health Facilities Construction by the end of the 24-month period which began with the date of the original licensee change. Facilities are not required to modify square footage of operating/procedure rooms.

E. Licensed Capacity. No facility that has been licensed for a set number of operating rooms or procedure rooms shall exceed that number of operating or procedure rooms or establish new care, treatment, procedures, surgery, and/or services without first obtaining authorization from the Department. (I)

F. Issuance and Terms of License.

1. A license is issued by the Department and shall be posted in a conspicuous place in a public area within the facility.

2. The issuance of a license does not guarantee adequacy of individual care, treatment, procedures, surgery, and/or services, personal safety, fire safety, or the well-being of any patient or occupant of a facility.

3. A license is not assignable or transferable and is subject to revocation at any time by the Department for the licensee's failure to comply with the laws and regulations of this State.

4. A license shall be effective for a specified facility, at a specific location(s), for a specified period following the date of issue as determined by the Department. A license shall remain in effect until the Department notifies the licensee of a change in that status.

5. Facilities owned by the same entity but not located on the same adjoining or contiguous property shall be separately licensed. Roads or local streets, except limited access, *e.g.*, interstate highways, shall not be considered as dividing otherwise adjoining or contiguous property.

6. Separate licenses are not required, but may be issued, for separate buildings on the same or adjoining grounds where a single level or type of care is provided.

7. Multiple types of facilities on the same premises shall be licensed separately even though owned by the same entity.

8. A facility shall provide only the care, treatment, procedures, surgery, and/or services of which it is capable and equipped to provide, and has been authorized by the Department to provide pursuant to the definition in Section 101.E of this regulation.

9. Abortions shall not be performed in an ambulatory surgical facility unless it is also licensed as an abortion clinic pursuant to R.61-12.

G. Facility Name. No proposed facility shall be named nor shall any existing facility have its name changed to the same or similar name as any other facility licensed in S.C. The Department shall determine if names are similar. If the facility is part of a "chain operation" it shall then have the geographic area in which it is located as part of its name.

H. Application. Applicants for a license shall submit to the Department a completed application on a form prescribed and furnished by the Department prior to initial licensing and periodically thereafter at intervals determined by the Department. The application includes the applicant's oath, assuring that the contents of the application are accurate and true, and that the applicant will comply with this regulation. The application shall be signed by the owner(s) if an individual or partnership; in the case of a corporation, by two of its officers; or in the case of a governmental unit, by the head of the governmental department having jurisdiction. The application shall set forth the full name and address of the facility for which the license is sought and of the owner in the event his or her address is different from that of the facility, and the names of the persons in control of the facility. The Department may require additional information, including affirmative evidence of the applicant's ability to comply with these regulations. Corporations or partnerships shall be registered with the S.C. Office of the Secretary of State.

I. Licensing Fees. The initial and annual license fee shall be $150.00 per operating/procedure room or $600.00, whichever is greater. Such fee shall be made payable by check or money order to the Department and is not refundable. The Department may charge an additional amount, if necessary, to cover the cost of inspection or investigation.

J. Late Fee. Failure to submit a renewal application after the license expiration date may result in a late fee of 25% of the licensing fee amount, in addition to the licensing fee. Continual failure to submit completed and

accurate renewal applications and/or fees by the time-period specified by the Department may result in an enforcement action.

K. License Renewal. To renew a license, an applicant shall file an application with the Department and pay a license fee. If the license renewal is delayed due to enforcement action, the renewal license shall be issued only when the matter has been resolved satisfactorily by the Department or when the adjudicatory process is completed, whichever is applicable. If an application is denied, a portion of the fee shall be refunded based upon the remaining months of the licensure year.

L. Change of License.

1. A facility shall request issuance of an amended license by application to the Department prior to any of the following circumstances:

a. Change of ownership;

b. Reallocation of types of operating or procedure rooms as shown on the license;

c. Change of facility location from one geographic site to another;

d. The addition or replacement of a surgical suite or any part thereof, or the deletion of operating or procedure rooms.

2. Changes in facility name or address (as notified by the post office) shall be accomplished by application or by letter from the licensee.

M. An ambulatory surgical facility license shall not be required for, nor shall such a license be issued to:

1. Facilities operated by the federal government;

2. Ambulatory surgical services or procedures provided in licensed hospitals (such services remain within the purview of R.61-16);

3. Private practices (see Section 101. KK).

N. Exceptions to Licensing Standards. The Department has the authority to make exceptions to these standards where it is determined that the health, safety, and well-being of the patients are not compromised, and provided the standard is not specifically required by statute.

SECTION 200 - ENFORCING REGULATIONS

201. General

The Department shall utilize inspections, investigations, consultations, and other pertinent documentation regarding a proposed or licensed facility in order to enforce this regulation.

202. Inspections/Investigations

A. An inspection shall be conducted prior to initial licensing of a facility and subsequent inspections conducted as deemed appropriate by the Department. Other regulatory-related inspections may be considered in

determining the appropriateness of Department inspections, e.g., Joint Commission on Accreditation of Health Care Organizations (JCAHO), Accreditation Association for Ambulatory Health Care (AAAHC) inspections.

B. All facilities are subject to inspection or investigation at any time without prior notice by individuals authorized by the Department.

C. Individuals authorized by the Department shall be granted access to all properties and areas, objects, and records, and have the authority to require the facility to make photocopies of those documents required in the course of inspections or investigations. Photocopies shall be used for purposes of enforcement of regulations and confidentiality shall be maintained except to verify the identity of individuals in enforcement action proceedings. (II)

D. A facility found noncompliant with the standards of this regulation shall submit an acceptable written plan of correction to the Department that shall be signed by the administrator and returned by the date specified on the report of inspection or investigation. The written 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);

3. The actual or expected completion dates of those actions.

E. Reports of inspections or investigations conducted by the Department, including the facility response, shall be made available upon written request with the redaction of the names of those individuals in the report as provided by §44-7-310 and 315 of the S.C. Code Ann. (2002).

SECTION 300 - ENFORCEMENT ACTIONS

301. General

When the Department determines that a facility is in violation of any statutory provision, rule, or regulation relating to the operation or maintenance of such facility, the Department, upon proper notice to the licensee, may impose a monetary penalty and/or deny, suspend, and/or revoke its license.

302. Violation Classifications

Violations of standards in this regulation are classified as follows:

A. Class I violations are those that the Department determines to present an imminent danger to the health, safety, or well-being of the persons in the facility or a substantial probability that death or serious physical harm could result therefrom. A physical condition or one or more practices, means, methods or operations in use in a facility may constitute such a violation. The condition or practice constituting a Class I violation shall be abated or eliminated immediately unless a fixed period of time, as stipulated by the Department, is required for correction. Each day such violation exists after expiration of this time established by the Department may be considered a subsequent violation.

B. Class II violations are those, other than Class I violations, that the Department determines to have a negative impact on the health, safety, or well-being of persons in the facility. The citation of a Class II violation may specify the time within which the violation is required to be corrected. Each day such violation exists after expiration of this time may be considered a subsequent violation.

C. Class III violations are those that are not classified as Class I or II in these regulations or those that are against the best practices as interpreted by the Department. The citation of a Class III violation may specify the

time within which the violation is required to be corrected. Each day such violation exists after expiration of this time may be considered a subsequent violation.

D. The notations "(I)" or "(II)", placed within sections of this regulation, indicate that those standards are considered Class I or II violations, if they are not met, respectively. Standards not so annotated are considered Class III violations.

E. In arriving at a decision to take enforcement actions, the Department shall consider the following factors: specific conditions and their impact or potential impact on health, safety, or well-being of the patients; efforts by the facility to correct cited violations; behavior of the licensee that reflects negatively on the licensee's character, such as illegal or illicit activities; overall conditions; history of compliance; and any other pertinent factors that may be applicable to current statutes and regulations.

F. When a decision is made to impose monetary penalties, the following schedule shall be used as a guide to determine the dollar amount:

Frequency of violation of standard within a 36-month period:

MONETARY PENALTY RANGES

FREQUENCY	CLASS I	CLASS II	CLASS III
1st	$ 500 - 1,500	$300 - 800	$100 - 300
2nd	1,000 - 3,000	500 - 1,500	300 - 800
3rd	2,000 - 5,000	1,000 - 3,000	500 - 1,500
4th	5,000	2,000 - 5,000	1,000 - 3,000
5th	7,500	5,000	2,000 - 5,000
6th	10,000	7,500	5,000

G. Any enforcement action taken by the Department may be appealed in a manner pursuant to the Administrative Procedures Act, §1-23-310, *et seq.*, S.C. Code Ann. (2002).

SECTION 400 - POLICIES AND PROCEDURES

401. General (II)

A. Policies and procedures addressing each section of this regulation regarding care, treatment, procedures, surgery, and/or services, rights, and the operation of the facility shall be developed and implemented, and revised as required in order to accurately reflect actual facility operation. The licensee shall establish a time-period for review of all policies and procedures. These policies and procedures shall be accessible in each facility at all times, either by hard copy or electronically.

B. Policies and procedures shall describe the means by which the facility shall assure that the standards described in this regulation that the licensee has agreed to meet, as confirmed by signature on the application for licensing, will be met (see Section 1601.B).

SECTION 500 - STAFF

501. General (II)

A. Appropriate staffing in sufficient numbers and training, in all facilities, shall be provided in order to:

1. Effectively meet the needs and condition of the patients, to include the demands of effective emergency on-site action that might arise;

2. Properly operate equipment in accordance with the equipment manufacturer's recommendations;

3. Adhere to current professional organizational standards;

4. Comply with all local, state, and federal laws.

B. Additional staff members shall be provided if it is determined by the Department that the facility staff on duty is inadequate to provide appropriate care, treatment, procedures, surgery, and/or services to the patients of a facility.

C. All staff members shall be assigned duties and responsibilities in accordance with the individual's capability that shall be in writing and be reviewed on an annual basis by the staff member and supervisor.

D. There shall be accurate current information maintained regarding all staff members of the facility, to include at least an address, phone number, and health and personal/work/training background. For those staff members who are licensed/certified, a copy of the license/certificate shall be available for review.

E. Direct care staff members of the facility shall not have a prior conviction or have pled no contest (nolo contendere) within the last 10 years for child or adult abuse, neglect, exploitation, or mistreatment, or for sexual assault or assault with a deadly weapon. Facilities may take certain considerations into account regarding criminal records when making hiring decisions, *i.e.*, discretion may be exercised regarding convictions/nolo contendere pleas occurring more than 10 years ago and may determine that an applicant, who would otherwise be disqualified, could be hired. (I)

F. A staff member shall not have an active dependency on a psychoactive substance(s) that would impair his or her ability to perform assigned duties. (I)

502. Administrator (II)

A. The facility shall have an administrator who shall be capable of meeting the responsibilities of operating the facility to ensure that it is in compliance with these regulations, and shall demonstrate adequate knowledge of these regulations. An administrator appointed subsequent to the promulgation of this regulation shall be a registered nurse or shall have a baccalaureate or associate degree with at least three years experience in a health-related field within the past five years.

B. A staff member shall be designated, by name or position, in writing, to act in the absence of the administrator.

503. Medical Director (II)

A. There shall be a medical director of the facility who is a physician.

B. The administrator and medical director may be the same individual.

504. Medical Staff (I)

A. Physicians, dentists, and podiatrists performing surgery and/or procedures shall be appropriately licensed to perform these functions as well as adequately trained in any special requirements that are necessary to perform such surgery/procedures.

B. Privileges for each physician, dentist, and podiatrist performing surgery/procedures shall be in accordance with criteria that the facility has established and approved.

C. There shall be a roster of medical staff having surgery, procedures, and anesthesia privileges at the facility, specifying the privileges and limitations of each and a current listing of all types of surgery and/or procedures offered by the facility.

D. A physician shall be physically present or available within 30 minutes until all patients have departed the premises.

E. There shall be at least one physician on staff who has admitting privileges at one or more local hospitals.

505. Nursing Staff (I)

A. An adequate number of licensed nurses shall be on duty to meet the total nursing needs of patients.

B. At least one registered nurse shall be on duty whenever patients are present in the facility.

C. Nursing staff shall be assigned to duties consistent with their scope of practice as determined through their licensure and educational preparation..

506. Advanced Cardiac Life Support (I)

An individual who possesses a valid Advanced Cardiac Life Support credential shall be on duty in the facility whenever patients are present in the facility.

507. Inservice Training (II)

A. Training for the tasks each staff member performs shall be conducted in order to provide the care, treatment, procedures, surgery, and/or services delineated in Sections 501.A and 800.

B. The following training shall be provided to staff members by appropriate resources, *e.g.*, licensed or registered persons, video tapes, books, *etc.*, to all staff members in context with their job duties and responsibilities, prior to patient contact and at a frequency determined by the facility, but at least annually:

1. Cause, effect, transmission, prevention, and elimination of infections, to include management and care of persons with contagious and/or communicable disease, *e.g.*, hepatitis, tuberculosis, HIV infection;

2. OSHA standards regarding bloodborne pathogens;

3. Confidentiality of patient information and records and the protection of patient rights;

4. Emergency procedures and disaster preparedness within 24 hours of their first day on the job in the facility (see Section 1200).

5. Fire response training within 24 hours of their first day on the job in the facility (see Section 303);

6. Aseptic techniques such as handwashing and scrubbing practices, proper gowning and masking, dressing care techniques, disinfecting and sterilizing techniques, and the handling and storage of equipment and supplies.

C. All licensed nurses shall possess a valid cardio-pulmonary resuscitation (CPR) certificate within three months from the first day on the job in the facility; a staff member with a valid CPR certificate shall be on duty whenever patients are present in the facility.

D. All newly-hired staff members shall be oriented to acquaint them with the facility organization and physical plant, specific duties and responsibilities of staff members, and patients' needs.

508. Health Status (I)

A. All staff members who have contact with patients shall have, within 12 months prior to initial patient contact, a health assessment as defined in Section 101.S

B. The health assessment shall include a tuberculin skin test as described in Section 1505.

C. If a staff member is working at multiple facilities operated by the same licensee, copies of records for tuberculin skin testing and the pre-employment health assessment shall be acceptable at each facility. (II)

SECTION 600 - REPORTING

601. Incidents/Accidents (II)

A. A record of each incident and/or accident, involving patients or staff members, occurring in the facility or on the facility grounds, shall be retained.

1. Serious incidents/accidents and/or medical conditions as defined below and any illness resulting in death or inpatient hospitalization shall be reported via telephone to the next-of-kin or responsible party immediately and in writing to the Department's Division of Health Licensing within 10 days of the occurrence.

2. Serious medical conditions shall be considered as, but not limited to: major permanent loss of function, hemolytic transfusion reaction involving administration of blood or blood products, surgery on the wrong patient or wrong body part, fractures of major limbs or joints, severe burns, lacerations, or hematomas, and actual or suspected abuse or mistreatment of patients.

B. Reports made to the Division of Health Licensing shall contain at a minimum: facility name, patient age and sex, date of incident/accident, location, extent/type of injury, and how treated, *e.g.*, hospitalization.

C. Significant medication errors and significant adverse medication reactions that require intervention shall be reported immediately to the patient or next-of-kin or responsible party, prescriber, supervising staff member, and administrator. Significant medication errors and significant adverse medication reactions shall be considered as: unintended, undesirable, and unexpected effects of prescribed medications, or of medication errors that require discontinuing a medication or modifying the dose; require hospitalization; result in disability; require treatment with a prescription medication; result in cognitive deterioration or impairment; are life-threatening; or result in death.

D. Changes in the patient's condition, to the extent that serious health concerns are evident, *e.g.*, heart attack, shall be reported immediately to the attending physician, the next-of-kin or responsible party, and the administrator. (I)

602. Fire/Disasters (II)

A. The Department's Office of Fire and Life Safety and the Division of Health Licensing shall be notified immediately via telephone or facsimile regarding any fire in the facility, and followed by a complete written report, to include fire department reports, if any, to be submitted within a time-period determined by the facility, but not to exceed 72 hours from the occurrence of the fire.

B. Any natural disaster that requires displacement of the patients or jeopardizes or potentially jeopardizes the safety of the patients, shall be reported to the Department's Division of Health Licensing via telephone or facsimile immediately, with a complete written report submitted within a time-period as determined by the facility, but not to exceed 72 hours.

603. Communicable Diseases (I)

All cases of diseases that are required to be reported to the appropriate county health department shall be accomplished in accordance with R.61-20.

604. Administrator Change

The Department's Division of Health Licensing shall be notified in writing by the licensee within 10 days of any change in administrator. The notice shall include at a minimum the name of the newly-appointed individual, documented qualifications as required by Section 502, and the effective date of the appointment.

605. Joint Annual Report

Facilities shall complete and return a "Joint Annual Report" to the Department's Planning and Certificate of Need Division within the time-period specified by that division.

606. Accounting of Controlled Substances (I)

Any facility registered with the Department's Bureau of Drug Control and the federal Drug Enforcement Agency shall report any theft or loss of controlled substances to local law enforcement and to the Bureau of Drug Control within three working days of the discovery of the loss/theft. Any facility permitted by the S.C. Board of Pharmacy shall report the loss or theft of drugs or devices within three working days of the discovery of the loss/theft.

607. Facility Closure

A. Prior to the permanent closure of a facility, the Department's Division of Health Licensing shall be notified in writing of the intent to close and the effective closure date. Within 10 days of the closure, the facility shall notify the Division of Health Licensing of the provisions for the maintenance of the records. On the date of closure, the current original license shall be returned to the Division of Health Licensing.

B. In instances where a facility temporarily closes, the Division of Health Licensing shall be given written notice within a reasonable time in advance of closure. At a minimum this notification shall include, but not be limited to: the reason for the temporary closure, the manner in which the records are being stored, and the anticipated date for reopening. The Department shall consider, upon appropriate review, the necessity of inspecting and determining the applicability of current construction standards to the facility prior to its reopening. If the facility is closed for a period longer than one year, and there is a desire to re-open, the facility shall re-apply

to the Department and shall be subject to all licensing requirements at the time of that application, including construction-related requirements for a new facility.

608. Zero Census

In instances when there have been no patients in a facility for any reason, for a period of 90 days or more, the facility shall notify in writing the Department's Division of Health Licensing no later than the 100th day following the date of the last procedure/surgery performed. If the facility has no patients for a period longer than one year, and there is a desire to re-open, the facility shall re-apply to the Department and shall be subject to all licensing requirements at the time of that application, including construction-related requirements for a new facility.

SECTION 700 - PATIENT RECORDS

701. Content (II)

A. The facility shall initiate and maintain an organized record for each patient. The record shall contain: sufficient documented information to identify the patient; the person responsible for each patient; the description of the diagnosis and the care, treatment, procedures, surgery, and/or services provided, to include the course of action taken and results; and the response and reaction to the care, treatment, procedures, surgery, and/or services provided. All entries shall be indelibly written, authenticated by the author, and dated.

B. Specific entries/documentation shall include at a minimum:

1. Consultations by physicians or other legally authorized healthcare providers;

2. Physical examination report, including pertinent medical history;

3. Orders and recommendations for all care, treatment, procedures, surgery, and/or services from physicians or other legally authorized healthcare providers, completed prior to, or at the time of patient arrival at the facility, and subsequently, as warranted;

4. Care, treatment, procedures, surgery, and/or services provided;

5. Record of administration of each dose of medication;

6. Medications administered and procedures followed if an error is made;

7. Special procedures and preventive measures performed, *e.g.*, isolation for symptoms of tuberculosis;

8. Notes of observation during recovery, to include vital signs pre- and post-operative;

9. Discharge summary, including condition at discharge or transfer, instructions for self-care and instructions for obtaining postoperative emergency care;

10. Special information, *e.g.*, allergies, *etc.* Documentation regarding organ donation shall be included in the record at the patient's request;

11. Signed informed consent;

12. If applicable, anesthesia records of pertinent preoperative and postoperative reports including pre-anesthesia evaluation, type of anesthesia, technique and dosage used, and post-anesthesia follow-up note;

13. Operative report (dictated or written into the record after surgery/procedure) to include at least:

a. Description of findings;

b. Techniques utilized to perform procedure/surgery;

c. Specimens removed, if applicable;

d. Primary surgeon and assistants.

14. Reports of all laboratory, radiological, and diagnostic procedures along with tests performed and the results appropriately authenticated.

C. Except as required by law, patient records may contain written and interpretative findings and reports of diagnostic studies, tests, and procedures, *e.g.*, interpretations of imaging technology and video tapes without the medium itself.

702. Authentication

A. Each document generated by a user shall be separately authenticated.

B. Written signatures or initials and electronic signatures or computer-generated signature codes are acceptable as authentication.

C. In order for a facility to employ electronic signatures or computer-generated signature codes for authentication purposes, staff shall be identified who are authorized to authenticate patient records utilizing electronic or computer-generated signatures.

1. At a minimum, authentication safeguards shall be provided to insure confidentiality, including, but not limited to, the following:

a. Each user shall be assigned a unique identifier that is generated through a confidential code;

b. The facility shall certify in writing that each identifier is kept strictly confidential. This certification shall include a user's commitment to terminate his or her use of an assigned identifier if it is found that the identifier has been misused, meaning that the user has allowed another person(s) to use his or her personally-assigned identifier, or that the identifier has otherwise been inappropriately utilized;

c. The user shall certify in writing that he or she is the only person with access to the identifier and the only person authorized to use the signature code.

2. The authentication system shall include a verification process to insure that the content of authenticated entries is accurate. The verification process shall include, at a minimum, the following provisions:

a. Blanks, gaps, obvious contradictory statements, or other documentation that require the attention of the authorized user shall be considered authenticated until reviewed and corrected by the user and a revised report issued;

b. Opportunity shall be provided for the user to verify that the document is accurate and that the signature has been properly recorded.

3. A user may terminate authorization for use of electronic or computer-generated signature upon written notice to the individual responsible for the maintenance of patient records.

D. The use of rubber stamp signature is acceptable under the following conditions:

1. The individual whose signature the rubber stamp represents shall be the only individual who has possession of and utilizes the stamp;

2. The individual places in the administrative offices of the facility a signed statement indicating that he or she is the only individual who has possession of and shall utilize the stamp;

3. Rubber stamp signatures are not permitted on orders for medications listed as "controlled substances" pursuant to R.61-4.

703. Record Maintenance

A. The licensee shall provide accommodations, space, supplies, and equipment adequate for the protection, security, and storage of patient records.

B. When a patient is transferred to an emergency facility, a transfer summary to include, at a minimum, the diagnosis and medication administration record, shall accompany the patient to the receiving facility at the time of transfer or forwarded immediately after the transfer. Documentation of the information forwarded shall be maintained in the facility's patient record. (I)

C. The patient record is confidential. Records containing protected or confidential health information shall be made available only to individuals granted access to that information, in accordance with state and federal laws. The facility shall have a written policy designating the persons allowed to access confidential patient information. (II)

D. Records generated by organizations or individuals contracted by the facility for care, treatment, procedures, surgery, and/or services shall be maintained by the facility that has admitted the patient. Appropriate information shall be provided to assure continuity of care.

E. The facility shall determine the medium in which information is stored. The information shall be readily retrievable and accessible by facility staff, as needed, and for regulatory compliance inspections.

F. Upon discharge of a patient, the record shall be completed within 60 days and filed in an inactive/closed file maintained by the licensee. Prior to the closing of a facility for any reason, the licensee shall arrange for preservation of records to ensure compliance with these regulations and other applicable law. The licensee shall notify the Department's Division of Health Licensing, in writing, describing these arrangements and the location of the records.

G. Records of patients shall be maintained for at least six years following the discharge of the patient. Other documents required by the regulation, *e.g.*, fire drills, shall be retained at least 12 months or until the next Division of Health Licensing inspection, whichever is longer.

H. Patient records are the property of the facility; the original record shall not be removed without court order. (II)

SECTION 800 - CARE/TREATMENT/PROCEDURES/SURGERY/SERVICES

801. General (I)

A. Care, treatment, procedures, surgery, and/or services shall be provided, given, or performed effectively and safely in accordance with orders from physicians or other legally authorized healthcare providers, and precautions shall be taken for patients with special conditions, *e.g.*, pacemakers, pregnancy, Alzheimer's disease, *etc.,* and/or for those who may be susceptible to deleterious effects as a result of the treatment.

B. The facility shall comply with all current federal, state, and local laws and regulations related to patient care, treatment, procedures, surgery, and/or services, and protection.

C. When a facility engages a source other than the facility to provide services normally provided by the facility, *e.g.*, staffing, training, food service, maintenance, housekeeping, there shall be a written agreement with the source that describes how and when the services are to be provided, the exact services to be provided, and a statement that these services are to be provided by qualified individuals. The source shall comply with this regulation in regard to patient care, treatment, procedures, surgery, and/or services, confidentiality, and rights. (II)

802. Physical Examination (I)

A. A preoperative history and physical examination, pertaining to the procedure to be performed, shall be completed by a physician no earlier than 14 days prior to surgery/procedure, or 30 days prior to surgery/procedure with the condition that, on the day of surgery/procedure, the physician documents no notable changes in the original history and physical examination. If notable changes are discovered at that time, a history and physical examination shall be completed. A discharge summary from a health care facility that includes a history and physical examination may be acceptable as the preoperative history and physical examination, provided the summary is within the time requirements of this section, and is reviewed by the physician performing the surgery/procedure.

B. If a patient or potential patient has a communicable disease, a physician or other legally authorized healthcare provider shall insure that the facility has the capability to provide adequate care and prevent the spread of the disease, and that the staff members are adequately trained and qualified to manage the patient, or transfer the patient to an appropriate facility, if necessary.

803. Surgical Services (If Provided)

A. A current listing of all types of surgical services offered by the facility shall be available.

B. The facility shall maintain a chronological register of all surgical services performed. This shall include patient identification, preoperative diagnosis, type of procedure performed, type of anesthesia utilized, and any unusual occurrence.

804. Anesthesia Services (If Provided) (I)

A. Anesthesia shall be administered only by:

1. An anesthesiologist;

2. A physician, other than an anesthesiologist, or dentist, or podiatrist who is qualified to administer anesthesia pursuant to the S.C. Code of Laws;

3. A certified registered nurse anesthetist;

4. A registered nurse anesthetist;

5. An anesthesiologist's assistant.

B. After the administration of a general anesthetic, a patient shall be attended by a physician until the patient may be safely placed under post-operative/procedure supervision by the nursing staff who shall then attend the patient until he or she has regained full consciousness, or until the effects of the anesthetic have sufficiently subsided for the patient to be able to summon aid when needed.

805. Laboratory Services (II)

A. Each facility shall provide or make arrangements for obtaining laboratory services required in connection with the surgery/procedure to be performed.

B. Should the facility conduct tests that involve human specimens by utilizing any laboratory equipment such as finger-stick glucose, hemoglobin, monitoring devices, *etc.*, for the purpose of providing information for the diagnosis, prevention, or treatment of disease or impairment, or assessment of health, the facility shall obtain a Certificate of Waiver from the Clinical Laboratories Improvement Amendments (CLIA) Program through the Department's CLIA Program.

C. Laboratory supplies shall not be expired.

D. A pathologist shall examine all surgical specimens except for those types of specimens that the medical staff has determined and documented do not require examination.

806. Radiology Services (II)

A. Each facility shall have the capability of providing or obtaining diagnostic radiology services in connection with the surgery/procedure to be performed.

B. Those facilities where radiological equipment and materials are used shall be in compliance with R.61-63 and R.61-64.

807. Adverse Conditions (I)

Patients in whom any adverse condition exists or in whom a complication is known or suspected to have occurred during or after the performance of the operative procedure shall remain in the facility until the condition/complication is eliminated, as determined by the physician, and the patient is stabilized. Patients requiring care for periods in excess of those set forth in Section 101.RR shall be transferred to a hospital.

808. Patient Instruction (I)

Written instructions shall be issued to all patients upon discharge and shall include, at a minimum, the following:

A. Signs and symptoms of possible complications;

B. Telephone number of the facility or the attending physician or other knowledgeable professional staff member from the facility should any complication occur or question arise;

C. An emergency telephone number should any complication occur. It shall be the responsibility of the attending physician to arrange for needed care;

D. Limitations regarding activities, foods, *etc*.;

E. Date for follow-up or return visit, if applicable.

SECTION 900 - RIGHTS AND ASSURANCES

901. General (II)

A. The facility shall comply with all current federal, state, and local laws and regulations concerning patient care, treatment, procedures, surgery, and/or services, patient rights and protections, and privacy and disclosure requirements, *e.g.*, §44-81-10, *et seq.*, S.C. Code Ann. (2002).

B. The facility shall comply with all relevant federal, state, and local laws and regulations concerning discrimination, *e.g.*, Title VII, Section 601 of the Civil Rights Act of 1964, and insure that there is no discrimination with regard to source of payment in the recruitment, location of patient, acceptance or provision of services to patients or potential patients, provided that payment offered is not less than the cost of providing services.

C. The facility shall develop and post in a conspicuous place in a public area of the facility a grievance/complaint procedure to be exercised on behalf of the patients that includes the address and phone number of the Department's Division of Health Licensing and a provision prohibiting retaliation should the grievance right be exercised.

D. Care, treatment, procedures, surgery, and/or services provided by the facility, and the charges for such, shall be delineated in writing. Patients shall be made aware of such charges and services, as verified by the signature of the patient or responsible party.

E. Patients shall be permitted to use the telephone and allowed privacy when making calls.

F. Adequate safeguards shall be provided for protection and storage of patients' personal belongings.

G. Patient rights shall be guaranteed, prominently displayed, and the facility shall inform the patient of these rights, to include, at a minimum:

1. The care, treatment, procedures, surgery, and/or services to be provided;

2. Informed consent for care, treatment, procedures, surgery, and/or services;

3. Respect for the patient's property;

4. Freedom from mental and physical abuse and exploitation;

5. Privacy while being treated and while receiving care;

6. Respect and dignity in receiving care, treatment, procedures, surgery, and/or services;

7. Refusal of treatment. The patient shall be informed of the consequences of refusal of treatment, and the reason shall be reported to the physician and documented in the patient record;

8. Refusal of experimental treatment and drugs. The patient's written consent for participation in research shall be obtained and retained in his or her patient record;

9. Confidentiality and privacy of records. Written consent by the patient shall be obtained prior to release of information except to persons authorized by law. If the patient is mentally incompetent, written consent is required from the patient's responsible party. The facility shall establish policies to govern access and duplication of the patient's record.

H. Except in emergencies, documentation regarding informed consent shall be properly executed prior to surgery/procedure.

SECTION 1000 - MEDICATION MANAGEMENT

1001. General (I)

A. Medications, including controlled substances, medical supplies, intravenous solutions, and those items necessary for the rendering of first aid shall be properly managed in accordance with local, state, and federal laws and regulations, to include the securing, storing, and administering of medications, medical supplies, first aid supplies, biologicals and their disposal when discontinued or expired, or at discharge, death, or transfer of a patient.

B. Non-legend medications that can be obtained without a prescription may be retained and labeled as stock in the facility for administration as ordered by a physician or other legally authorized healthcare provider.

C. If controlled substances are to be used, a controlled substances registration from the Department's Bureau of Drug Control and a controlled substance registration from the federal Drug Enforcement Administration (DEA) shall be obtained. The registration(s) shall be displayed in a conspicuous location within the facility.

D. Each facility shall maintain, upon the advice and written approval of the Medical Director or consultant pharmacist, an emergency kit/cart of lifesaving medicines and equipment for the use of physicians or other legally authorized healthcare providers in treating the emergency needs of patients.

1. The kit/cart shall be sealed and stored in such a manner as to prevent unauthorized access and to ensure a proper environment for preservation of the medications within, but in such a manner as to allow immediate access.

2. The exterior of each emergency medication kit/cart shall have displayed the following information:

   a. "For Emergency Use Only";

   b. Name, address, and telephone number of the consultant pharmacist.

3. Whenever the kit/cart is opened, it shall be restocked and resealed within a reasonable time to prevent risk of harm to a patient.

4. Medications used from the kit/cart shall be replaced pursuant to orders from a physician or other legally authorized healthcare provider according to facility policy.

5. Contents of each section of the kit/cart shall be listed and maintained on or in the kit/cart, and shall correspond to the list. Documentation of monthly checks of expiration dates of medications and supplies is to be retained by the facility for a period of two years or until the Department's Division of Health Licensing's next inspection, whichever is longer.

E. Medications shall not be expired.

F. Applicable reference materials published within the previous year shall be available at the facility in order to provide staff members with adequate information concerning medications.

1002. Medication Orders (I)

A. Medications, to include oxygen, shall be administered in the facility to patients only upon orders of a physician or other legally authorized healthcare provider.

B. All orders (including verbal) shall be received only by licensed nurses or authorized healthcare providers, and shall be authenticated and dated by a physician or other legally authorized healthcare provider pursuant to the facility's policies and procedures, but no later than 72 hours after the order is given. Verbal orders received shall include the time of receipt of the order, description of the order, and identification of the physician or other legally authorized healthcare provider and the individual receiving the order.

C. Medications and medical supplies ordered for a specific patient shall not be provided to or administered to any other patient.

1003. Administering Medication (I)

A. Each medication dose administered shall be properly recorded in the patient's record as the medication is administered. The medication administration record shall include the name of the medication, dosage, mode of administration, date, time, and the signature of the individual administering the medication. Initials may be utilized when recording administration, provided identification of the individual's initials is located within the record.

B. Expired medications shall not be administered to patients.

1004. Pharmacy Services (I)

Facilities that maintain stocks of legend medications and biologicals for patient use within the facility shall obtain and maintain from the S.C. Board of Pharmacy a valid, current, nondispensing drug outlet permit, displayed in a conspicuous location in the facility, and have a consultant pharmacist on-call during facility operating hours.

1005. Medication Containers (I)

Medications for each patient shall be dispensed from their original container(s), to include unit dose systems. There shall be no transferring between containers or opening blister packs to remove medications for destruction or adding new medications for administration, except by direction of a pharmacist.

1006. Medication Storage (I)

A. Medications shall be stored under proper conditions of sanitation, temperature, light, moisture, ventilation, segregation, safety and security. Medications shall be stored in accordance with manufacturer's directions and in accordance with all applicable state and federal laws and regulations.

B. Medications shall be properly stored and safeguarded to prevent access by unauthorized persons. Expired or discontinued medications shall not be stored with current medications. Storage areas shall be of sufficient size for clean and orderly storage, and shall be locked when not under direct observation by a licensed healthcare provider. Storage areas shall not be located near sources of heat, humidity, or other hazards that may negatively impact medication effectiveness or shelf-life.

C. Medications requiring refrigeration shall be stored in a refrigerator at the temperature established by the U. S. Pharmacopia (36 - 46 degrees F.). Food and drinks shall not be stored in the same refrigerator in which medications and biologicals are stored. Blood and blood products may be stored in the same refrigerator with medications and biologicals if stored in a separate compartment from the medications and biologicals.

D. Medications shall be stored:

1. Separately from poisonous substances, blood, or body fluids;

2. In a manner that provides for separation between oral and topical medications;

3. Separately from food.

E. Records shall be maintained of all stock controlled substances that indicate an accounting of all items received and/or administered in such a manner that the disposition of each dose of any particular item may be readily traced. Records shall be maintained for a minimum of two years or until the next inspection by the Department's Division of Health Licensing, whichever is longer.

F. Review of medication storage areas shall be conducted by the consultant pharmacist or his or her designee on at least a monthly basis. Records of such reviews shall be retained by the facility for at least two years or until the Department's Division of Health Licensing's next inspection, whichever is longer.

1007. Disposition of Medications (I)

A. Medications shall not be retained in stock after the expiration date on the label and no contaminated or deteriorated medications shall be maintained. Expired, damaged, or deteriorated medications and biologicals shall be disposed of in the following manner:

1. When noncontrolled legend medications are destroyed, the following shall be documented: date of destruction, medication name, strength, quantity, mode of destruction, and the names of the individual performing the destruction and a witness. (This shall not be applicable to partial unused doses of medications.) The medications may also be disposed of by returning them to the dispensing pharmacy and obtaining a receipt from the pharmacy.

2. The destruction of controlled substances shall be accomplished pursuant to the requirements of R.61-

B. Destruction records shall be retained by the facility for at least two years or until the Department's Division of Health Licensing's next inspection, whichever is longer.

SECTION 1100 - MEAL SERVICE

1101. General (II)

A. All facilities that prepare food on-site shall be approved by the Department's Division of Health Licensing, and shall be regulated, inspected, and graded pursuant to R.61-25.

B. When meals or snacks are catered to a facility, such meals shall be obtained from a food service establishment graded by the Department, pursuant to R.61-25, and there shall be a written executed contract with the food service establishment.

1102. Food Storage (II)

A. All food items shall be stored at a minimum of six inches above the floor on clean surfaces and in such a manner as to be protected from splash and other contamination.

B. Food stored in the refrigerator or freezer shall be covered, labeled, and dated. Prepared food shall not be stored in the refrigerator for more than 72 hours.

1103. Food Equipment and Utensils (II)

The equipment and utensils utilized, and the cleaning, sanitizing, and storage of such shall be in accordance with R.61-25.

1104. Ice and Drinking Water (II)

A. Ice from a water system that is in accordance with R.61-58, shall be available and precautions taken to prevent contamination. The ice scoop shall be stored in a sanitary manner outside of the ice container.

B. Potable drinking water shall be available and accessible to patients at all times.

C. The use of common drinking cups shall be prohibited.

D. Ice delivered to patient areas in bulk shall be in nonporous, covered containers that shall be cleaned after each use.

1105. Equipment (II)

A. Liquid or powder soap in dispensers and sanitary paper towels shall be available at each food service handwash lavatory.

B. A separate handwash sink shall be provided, convenient to serving, food preparation, and dishwashing areas.

C. All walk-in refrigerators and freezers shall be equipped with opening devices that will permit opening of the door from the inside at all times. (I)

1106. Refuse Storage and Disposal (II)

Refuse storage and disposal shall be in accordance with R.61-25.

SECTION 1200 - EMERGENCY PROCEDURES/DISASTER PREPAREDNESS

1201. Emergency Services (I)

A. Appropriate equipment and services shall be provided to render emergency resuscitative and life-support procedures pending transfer to a hospital.

B. The facility shall have the capability of obtaining blood and blood products to meet emergency situations.

1202. Disaster Preparedness (II)

A facility that participates in a community disaster plan shall establish plans, based on its capabilities, to meet its responsibilities for providing emergency care.

1203. Emergency Call Numbers (I)

Although the facility may have access to "911," emergency call data shall be immediately available and shall include, at a minimum, the telephone numbers of fire and police departments, ambulance service, and the Poison Control Center. Other emergency call information shall be available, to include the names, addresses, and telephone numbers of staff members to be notified in case of emergency.

1204. Continuity of Essential Services (II)

There shall be a written plan to be implemented to assure the continuation of essential patient support services for reasons such as power outage, water shortage, or in the event of the absence of any portion of the staff resulting from inclement weather or other causes.

SECTION 1300 - FIRE PREVENTION

1301. Arrangements for Fire Department Response/Protection (I)

A. Each facility shall develop, in coordination with its supporting fire department and/or disaster preparedness agency, suitable written plans for actions to be taken in the event of fire, *i.e.*, fire plan and evacuation plan.

B. Facilities located outside a service area or range of a public fire department shall arrange for the nearest fire department to respond in case of fire by written agreement with that fire department. A copy of the agreement shall be kept on file in the facility.

1302. Tests and Inspections (I)

A. Fire protection and suppression systems shall be maintained and tested in accordance with NFPA 10, 13, 14, 15, 25, 70, 72, and 96.

B. Fire alarm systems shall be maintained in a safe, operable condition in accordance with NFPA 70 and 99 and shall be inspected at least annually.

1303. Fire Response Training (I)

A. Each staff member shall receive training within 24 hours of his or her first day of employment in the facility and at least annually thereafter, addressing at a minimum, the following:

1. Fire plan;

2. Reporting a fire;

3. Use of the fire alarm system, if applicable;

4. Location and use of fire-fighting equipment;

5. Methods of fire containment;

6. Specific responsibilities, tasks, or duties of each staff member.

B. A plan for the evacuation of patients, staff members, and visitors, to include evacuation routes and procedures in case of fire or other emergencies, shall be established and posted in conspicuous public areas throughout the facility.

1304. Fire Drills (I)

A. An unannounced fire drill shall be conducted at least quarterly for all shifts. Each staff member shall participate in a fire drill at least once each year. Records of drills shall be maintained at the facility, indicating the date, time, shift, description and evaluation of the drill, and the names of staff members directly involved in responding to the drill. If fire drill requirements are mandated by statute or regulation, the provisions of the statute or regulation shall be complied with and shall supersede the requirements of this section.

B. Drills shall be designed and conducted in consideration of and reflecting the content of the fire response training described in Section 1303 above.

SECTION 1400 - MAINTENANCE

1401. General (II)

A. The structure, including its component parts and equipment, shall be properly maintained to perform the functions for which it is designed.

B. Noise, dust, and other related patient intrusions shall be minimized when construction or renovation activities are underway.

1402. Equipment (II)

A. Equipment used in the provision of care, treatment, procedures, surgery, and/or services shall meet appropriate specifications and calibrations and shall be monitored and operated in accordance with the manufacturer's guidelines and with local, state, and federal laws.

B. If utilized, all equipment for the administration of anesthesia shall be readily available, clean or sterile, and operating properly.

1. Anesthesia apparatus shall be equipped with a device to measure the oxygen component of the gas being inhaled by the patient. The device shall emit audible and visual alarms should the proportion of oxygen fall below a safe level. (I)

2. Inspections shall be made prior to each use of the anesthesia equipment, as well as a record of all service and repair performed on all anesthesia machines, vaporizers, and ventilators, shall be maintained and retained for a minimum of two years or until the next Department's Division of Health Licensing inspection, whichever is longer.

1403. Preventive Maintenance of Life Support Equipment (II)

A. A written preventive maintenance program shall be developed and implemented for all life support equipment, to include, but not be limited to:

1. Patient monitoring equipment;

2. Isolated electrical systems;

3. Patient ground systems;

4. Medical gas systems.

B. This equipment shall be calibrated, if applicable, and/or tested at periodic intervals, but not less than annually, to insure proper operation. After repairs and/or alterations are made to any equipment or system, thorough testing for proper operation shall be accomplished prior to returning it to service. (I)

C. Records shall be maintained on all life support equipment to indicate its history of testing and maintenance.

SECTION 1500 - INFECTION CONTROL AND ENVIRONMENT

1501. Staff Practices (I)

Staff and volunteer practices shall promote conditions that prevent the spread of infectious, contagious, or communicable diseases and provide for the proper disposal of toxic and hazardous substances. These preventive measures and practices shall be in compliance with applicable guidelines of the Bloodborne Pathogens Standard of the Occupational Safety and Health Act (OSHA) of 1970; the Centers for Disease Control and Prevention (CDC) Immunization of Health-Care Workers: Recommendations of the Advisory Committee on Immunization Practices and the Hospital Infection Control Practices Advisory Committee; the Department's *Guidelines For Prevention and Control of Antibiotic Resistant Organisms in Health Care Settings*, and R.61-105; and other applicable federal, state, and local laws and regulations.

1502. Vaccinations (I)

A. Hepatitis B.

1. All direct care staff who perform tasks involving contact with blood, blood-contaminated body fluids, other body fluids, or sharps shall have the hepatitis B vaccination series unless the vaccine is contraindicated or an individual is offered the series and declines. In either case the decision shall be documented.

2. Each staff member who elects vaccination shall have completed the initial dose of the three-dose series within 30 days of employment.

B. Influenza. All direct care staff shall have an annual influenza vaccination unless contraindicated or offered and declined. In either case the decision shall be documented.

C. MMR and Varicella. All direct care staff shall have been vaccinated or have evidence of immunity for measles, rubella, and varicella prior to patient contact unless contraindicated or offered and declined. In either case the decision shall be documented. Immunity to mumps is recommended.

1503. Live Animals

Live animals shall not be permitted in facilities.

EXCEPTION: This standard does not apply to patrol dogs accompanying security or police officers, guide dogs, or other service animals accompanying individuals with disabilities.

1504. Sterilization Procedures (I)

A. Sterilizing equipment of appropriate type shall be available and of adequate capacity to properly sterilize instruments and operating room materials as well as laboratory equipment and supplies. The sterilizing equipment shall have approved control and safety features. The accuracy of instrumentation and equipment shall be tested at least quarterly; periodic calibration and/or preventive maintenance shall be provided as necessary and a history of testing and service maintained.

B. The dates of sterilization and expiration shall be marked on all supplies sterilized in the facility.

EXCEPTION: Facilities may utilize "event-related" methodologies for determining sterile integrity in lieu of "time-related" methods provided there is an established policy and procedure.

C. The facility shall provide for appropriate storage and distribution of sterile supplies and equipment pursuant to facility policies and procedures.

D. Cleaning and disinfection, as needed, of equipment used and/or maintained in each area, appropriate to the area and the equipment's purpose or use, shall be accomplished. A recognized method of monitoring disinfectant performance shall be employed. Disinfectants, *e.g.*, glutraldehyde, Cidex, Sporox, hydrogen peroxide, shall be tested and maintained according to manufacturer's instructions and shall include, at a minimum, a record of readings/testings and change dates of the disinfectant solution.

1505. Tuberculin Skin Testing (I)

A. Tuberculin skin testing, utilizing a two-step intradermal (Mantoux) method of five tuberculin units of stabilized purified protein derivative (PPD), is a procedure recommended by the CDC Guidelines for Preventing Transmission of Mycobacterium Tuberculosis in Health Care Facilities to establish baseline status. The two-step procedure involves one initial tuberculin skin test with a negative result, followed 7-21 days later by a second test. It is permissible for a licensed nurse to perform the tuberculin screening.

B. Testing Procedures.

1. Direct care staff members shall be required to have evidence of a two-step tuberculin skin test within three months prior to patient contact. If there is a documented negative tuberculin skin test (at least single-step) within the previous 12 months, the individual shall be required to have only one tuberculin skin test to establish a baseline status. If two-step testing is indicated, it is acceptable for staff and volunteers who are asymptomatic for TB to begin patient contact after completion of the first skin test with a documented negative result.

2. Individuals with negative test results from the initial two-step procedure shall be required to have an annual one-step skin test.

C. Positive Reactions/Exposure.

1. Individuals with tuberculin skin test reactions of 10mm or more of induration and known human immunodeficiency virus (HIV)-positive individuals with tuberculin skin test reactions of 5mm or

more of induration shall be referred to a physician or other legally authorized healthcare provider for appropriate evaluation.

2. All persons who are known or suspected to have tuberculosis (TB) shall be evaluated by a physician or other legally authorized healthcare provider. These individuals shall not be allowed to return to work until they have been declared noncontagious.

3. Patients with symptoms of TB shall be isolated and/or treated or referred as necessary by a physician or other legally authorized healthcare provider, and documented in the patient record.

4. Individuals who have a prior history of TB shall be required to have a chest radiograph and certification within one month prior to employment by a physician or other legally authorized healthcare provider that they are not contagious.

5. If an individual who was previously documented as skin test negative has an exposure to a documented case of TB, the facility shall immediately contact the local county health department or the Department's TB Control Division for consultation.

6. An individual with TB infection who remains asymptomatic shall not be required to have a chest radiograph but shall have an annual documented assessment by a physician or other legally authorized healthcare provider for symptoms suggestive of TB, *e.g.*, cough, weight loss, night sweats, fever, *etc.*

D. Treatment.

1. Preventive treatment of individuals who are new positive reactors is recommended unless specifically contraindicated.

2. Individuals who complete treatment either for disease or infection are exempt from further treatment unless they develop symptoms of TB.

1506. Housekeeping (II)

The facility and its grounds shall be neat, uncluttered, clean, and free of vermin and offensive odors.

A. Interior housekeeping shall at a minimum include:

1. Cleaning each specific area of the facility (dry sweeping and dusting shall be prohibited in restricted areas as identified in facility policies and procedures);

2. Cleaning of operating/procedure rooms in accordance with established written procedures after each operation/procedure.

B. Exterior housekeeping shall at a minimum include:

1. Cleaning of all exterior areas, *e.g.*, porches and ramps, and removal of safety impediments such as snow and ice;

2. Keeping facility grounds free of weeds, rubbish, overgrown landscaping, and other potential breeding sources for vermin.

1507. Infectious Waste (I)

Accumulated waste, including all contaminated sharps, dressings, and/or similar infectious waste, shall be disposed of in a manner compliant with OSHA Bloodborne Pathogens Standard, the Department's Guidelines For Prevention and Control of Antibiotic Resistant Organisms in Health Care Settings, and R.61-105.

1508. Clean/Soiled Linen and Surgical Clothing (II)

A. A supply of clean, sanitary linen/surgical clothing shall be available at all times. In order to prevent the contamination of clean linen/surgical clothing by dust or other airborne particles or organisms, it shall be stored and transported in a sanitary manner, *i.e.*, enclosed and covered. Linen/Surgical clothing storage rooms shall be used only for the storage of linen/surgical clothing. Clean linen/Surgical clothing shall not be stored with other items.

B. Soiled linen/Surgical clothing.

1. Provisions shall be made for collecting, transporting, and storing soiled linen and surgical clothing;

2. Soiled linen/Surgical clothing shall be kept in enclosed/covered containers.

SECTION 1600 - QUALITY IMPROVEMENT PROGRAM

1601. General (II)

A. There shall be a written, implemented quality improvement program that provides effective self-assessment and implementation of changes designed to improve the care, treatment, procedures, surgery, and/or services provided by the facility.

B. The quality improvement program, at a minimum, shall:

1. Establish desired outcomes and the criteria by which policy and procedure effectiveness is systematically, objectively, and regularly accomplished at a frequency as determined by the facility to ensure that policies and procedures and this regulation are met, but not less than every three months;

2. Identify, evaluate, and determine the causes of any deviation from the desired outcomes;

3. Identify the action taken to correct deviations and prevent future deviation, and the person(s) responsible for implementation of these actions;

4. Establish ways to measure the quality of patient care and staff performance as well as the degree to which the policies and procedures are followed;

5. Analyze the necessity of care, treatment, procedures, surgery, and/or services rendered;

6. Analyze the effectiveness of the fire plan;

7. Analyze all serious incidents and accidents, to include all patient deaths and significant medication errors;

8. Analyze any other unusual occurrences that threaten the health, safety, or well-being of the patients;

9. At least every three months, review an established percentage of patient records to verify the accuracy and integrity of the system, and take corrective action as needed;

10. Establish a systematic method of obtaining feedback from patients and other interested persons, *e.g.*, family members and peer organizations, as expressed by the level of satisfaction with care, treatment, procedures, surgery, and/or services received.

SECTION 1700 - DESIGN AND CONSTRUCTION

1701. General (II)

A facility shall be planned, designed, and equipped to provide and promote the health, safety, and well-being of each patient.

1702. Local and State Codes and Standards (II)

A. Buildings shall comply with pertinent local and state laws, codes, ordinances, and standards with reference to design and construction. No facility shall be licensed unless the Department has assurance that responsible local officials (zoning and building) have approved the facility for code compliance.

B. The Department utilizes the basic codes indicated in Section 102.B.

C. Buildings designed in accordance with the above-mentioned codes shall be acceptable to the Department provided the requirements set forth in this regulation are also met.

1703. Applicable Code Editions (II)

A. All buildings of facilities, new and existing, being licensed for the first time, or changing their license to provide a different service, shall meet the current codes and regulations.

B. Unless specifically required otherwise in writing by the Department's Division of Health Facilities Construction, all existing facilities shall meet the construction codes and regulations for the building and its essential equipment and systems in effect at the time the license was issued. Except for proposed facilities that have received a current and valid written approval to begin construction, current construction codes, regulations, and requirements shall apply to those facilities licensed after the date of promulgation of these regulations.

C. Any additions or renovations to an existing licensed facility shall meet the codes, regulations, and requirements for the building and its essential equipment and systems in effect at the time of the addition or renovation. When the cost of additions or renovations to the building exceeds 50% of the then market value of the existing building and its essential equipment and systems, the building shall meet the then current codes, regulations, and requirements.

D. Buildings of facilities under construction at the time of promulgation of these regulations shall meet the codes, regulations, and requirements in effect at the time of the plan's approval.

E. Any facility that closes, has its license revoked, or surrenders its license, and applies for re-licensure at the same site, shall be considered a new building and shall meet the current codes, regulations, and requirements for the building and its essential equipment and systems in effect at the time of application for re-licensing.

1704. Submission of Plans and Specifications

A. New Buildings, Additions, or Major Alterations to Existing Buildings.

1. Plans for all new construction or existing structures proposed to be licensed by the Department and specifications shall be submitted to the Department's Division of Health Facilities Construction for review and approval.

2. Where the current building code as listed in Section 102.B, or other regulations require fire-rated walls or other fire-rated structural elements, these plans and specifications shall be prepared by an architect and shall bear his or her seal.

3. The architect preparing plans and specifications for construction or interior modification of buildings 5000 square feet or more in total floor area or three stories or more in height, and involving construction of fire-rated assemblies, shall provide the Minimum Construction Administration Services, as defined in the *Code of Professional Ethics*, published by The Board of Architectural Examiners, S.C. Department of Labor, Licensing, and Regulation. The construction also shall comply with Section 1704.A.2 above.

4. When construction is contemplated for additions or alterations to existing licensed buildings, the facility shall contact the Division of Health Facilities Construction regarding code and regulatory requirements that apply to that project. Plans and specifications shall be submitted to that division for review.

5. All plans shall be drawn to scale with the title, location, and date indicated thereon.

6. Construction shall not begin until approval of the final drawings or written permission has been received from the Division of Health Facilities Construction. Any construction deviations from the approved documents shall be approved by the Division of Health Facilities Construction.

B. Plans and specifications shall be reviewed by the Division of Health Facilities Construction as necessary to obtain a set of approvable drawings showing all necessary information. These reviews may be, but are not required to be, in three stages: Preliminary, Design Development, and Final.

1. Preliminary submission shall include the following:

a. Plot plan showing:

(1) Size and shape of entire site;

(2) Footprint showing orientation and location of proposed building;

(3) Location and description of any existing structures, adjacent streets, highways, sidewalks, railroads, *etc.*, properly designated;

(4) Size, characteristics, and location of all existing public utilities, including information concerning water supply available for fire protection, *i.e.,* distance to nearest fire hydrant; parking; any hazardous areas, *e.g.*, cliffs, roads, hills, railroads, industrial and/or commercial sites, and bodies of water, *etc.*

b. Floor plans showing blocked spaces (areas) of approximate size and shape and their relationship to other spaces.

2. Design Development drawings shall indicate the following as well as the above:

a. Cover sheet:

(1) Title and location of the project;

(2) Index of drawings;

(3) Code analysis listing applicable codes (both local jurisdiction and state);

(4) Occupancy classification per the current building code as listed in Section 102.B;

(5) Type of construction per the current building code as listed in Section 102.B.

b. Floor plans:

(1) Overall dimensions of buildings;

(2) Locations, size, and purpose of all rooms including furniture layout plan;

(3) Location and size of doors, windows, and other openings with swing of doors properly indicated;

(4) Life Safety plan showing all fire walls, exits, exit calculations, locations of smoke barriers if required, fire-rated walls, locations of stairs, elevators, dumbwaiters, vertical shafts, and chimneys;

(5) Fixed equipment.

c. Outline specifications that include a general description of construction including interior finishes and mechanical systems.

3. Final submission shall include the above in addition to complete working drawings and contract specifications, including layouts for site preparation and landscaping, architectural, plumbing, electrical, mechanical, and complete fire protection.

4. If the start of construction is delayed for a period exceeding 12 months from the time of approval of final submission, a new evaluation and/or approval is required.

5. One complete set of "as-built" drawings shall be filed with the Division of Health Facilities Construction.

SECTION 1800 - GENERAL CONSTRUCTION REQUIREMENTS

1801. Height and Area Limitations (II)

Construction shall not exceed the allowable heights and areas provided by the current building code as listed in Section 102.B.

1802. Fire-Resistive Rating (I)

The fire-resistive ratings for the various structural components shall comply with the current building code as listed in Section 102.B. Fire-resistive ratings of various materials and assemblies not specifically listed in the current building code as listed in Section 102.B can be found in publications of recognized testing agencies such as *Underwriters Laboratories - Building Materials List* and *Underwriters Laboratories - Fire Resistance Directory*.

1803. Vertical Openings (I)

All vertical openings shall be protected in accordance with applicable sections of the current building code as listed in Section 102.B, State Fire Marshal Regulations, and NFPA 101.

1804. Wall and Partition Openings (I)

All wall and partition openings shall be protected in accordance with applicable sections of the current building code as listed in Section 102.B and NFPA 101.

1805. Ceiling Openings (I)

Openings into attic areas or other concealed spaces shall be protected by material consistent with the fire-rating of the assembly penetrated.

1806. Firewalls (I)

A. A building is defined by the outside walls and any interior four-hour firewalls and shall not exceed the height and area limitations set forth in the current building code as listed in Section 102.B for the type of construction.

B. An addition shall be separated from an existing building by a two-hour, fire-rated wall, unless the addition is of equal fire-resistive rating.

C. When an addition of a different type of construction from the existing building is planned, the type of construction and resulting maximum area and height limitations allowed by the current building code as listed in Section 102.B shall be determined by the lesser of the types of construction of the building.

D. If the addition is separated by a four-hour firewall, the addition is considered as a separate building, and the type of construction of the addition shall determine the maximum area and height limitations.

1807. Windows/Mirrors (II)

A. The window dimensions and maximum height from floor to sill shall be in accordance with the current building code as listed in Section 102.B and the Life Safety Code, as applicable.

B. Where clear glass is used in windows, with any portion of the glass being less than 18 inches from the floor, the glass shall be of "safety" grade, or there shall be a guard or barrier over that portion of the window. This guard or barrier shall be of sufficient strength and design so that it will prevent an individual from injuring him/herself by accidentally stepping into or kicking the glass.

1808. Floor and Wall Finishes (II)

A. Floor and wall coverings and finishes shall meet the requirements of the current building code as listed in Section 102.B.

B. All floors in operating and recovery areas shall be smooth resilient tile and be free from cracks and finished to facilitate effective cleaning.

C. Carpeting shall not be utilized as floor covering in operating and recovery areas.

D. All floor coverings and finishes shall be appropriate for use in each area of the facility and free of hazards, *e.g.*, slippery surfaces.

E. Floor finishes shall be composed of materials that are conducive to frequent cleaning, and when appropriate, disinfection.

F. Wall bases in operating rooms, soiled workrooms and other areas subject to frequent wet cleaning shall be installed and tightly sealed without voids that could harbor vermin. Walls shall be washable, and, in the immediate area of plumbing fixtures, the finish shall be smooth, moisture resistant, and easily cleaned.

G. Floor and wall penetrations by pipes, ducts, conduits, etc., and joints of structural elements shall be tightly sealed to minimize entry of rodents and insects.

H. Thresholds and expansion joint covers shall be made flush with the floor surface to facilitate use of wheelchairs and carts.

I. Manufacturers' certifications or documentation of treatment for flame-spread and other safety criteria for combustible finishes shall be maintained.

J. All restroom floors shall have an approved nonabsorbent covering. Wall surfaces shall be nonabsorbent and washable to the highest level of splash.

1809. Ceilings

A. Ceilings in operating rooms shall be washable and without crevices that can retain dirt particles.

B. Finished ceilings are not required in mechanical and equipment spaces, shops, general storage areas, and similar spaces, except where required for fire rating.

C. Rooms containing ceiling mounted equipment and those that have ceiling mounted surgical light fixtures shall have height required to accommodate the equipment or fixture. All other rooms shall have not less than 8-foot ceilings except that corridors, storage rooms, toilet rooms and other minor rooms shall not be less than 7 feet 8 inches. Suspended tracks, rails, pipe, *etc*., located in the path of normal traffic, shall be not less than 7 feet 6 inches above the floor.

SECTION 1900 - HAZARDOUS ELEMENTS OF CONSTRUCTION

1901. Furnaces and Boilers (I)

Furnaces and boilers shall be maintained in accordance with the applicable provisions of NFPA 31, 70, 85C, and 86.

1902. Dampers (I)

Smoke and fire dampers shall be installed on all heating, ventilating, and air conditioning systems as required by NFPA 90A and the current building code as listed in Section 102.B.

1903. Incinerators (I)

If an incinerator is provided, it shall conform to the requirements of the Department. When located within the licensed facility, incinerators shall be separated by construction having at least 2-hour fire-resistive rating with 1-1/2-hour fire-rated door(s) and frame(s).

1904. Furnishings/Equipment (I)

A. The physical plant shall be maintained free of fire hazards and impediments to fire prevention.

B. No portable electric or unvented fuel heaters shall be permitted in the facility except as permitted by the State Fire Marshal Regulations.

C. Wastebaskets, window dressings, portable partitions, cubicle curtains, mattresses, and pillows shall be noncombustible, inherently flame-resistant, or treated or maintained flame-resistant in accordance with NFPA 701, *Standard Methods of Fire Tests for Flame-Resistant Textiles and Films*.

EXCEPTION: Window blinds require no flame treatments or documentation thereof.

SECTION 2000 – EXITS

2001. General (I)

A. Exits, corridors, doors, stairs, ramp, and smoke partitions shall be provided, installed, and maintained in accordance with the provisions of NFPA 101 and the current building code as listed in Section 102.B.

B. Each operating/procedure room and each recovery room shall communicate directly with an approved exit corridor without passage through another occupied space or shall have an approved exit directly to the outside at grade level in an area of safety. (I)

C. Rooms and/or suites greater than 1000 square feet shall have at least two exit access doors remote from each other.

D. If exit doors and cross-corridor doors are locked, the requirements for Special Locking Arrangements in the current building code, as listed in Section 102.B, shall be met.

E. Halls, corridors and all other means of egress from the building shall be maintained free of obstructions.

SECTION 2100 - FIRE PROTECTION EQUIPMENT AND SYSTEMS

2101. Firefighting Equipment (I)

A. Firefighting equipment such as fire extinguishers, standpipes and automatic sprinklers shall be provided as required by the current building code as listed in Section 102.B.

B. Extinguishers shall be so located that an individual would not be required to travel more than 50 feet from any point within the facility to reach an extinguisher.

C. Extinguishers shall be sized, located, installed, and maintained in accordance with NFPA No. 10 except that portable fire extinguishers intended for use in patient recovery areas shall be the stored-pressure type water extinguisher.

D. Suitable fire extinguishers shall also be installed in the following hazardous areas: kitchen, laundry, furnace rooms, and any other area having an unusual fire hazard.

E. The kitchen(s) or food/snack preparation area(s) shall be equipped with a minimum of one K-type and one 20-BC-type fire extinguisher.

2102. Fire Alarms (I)

A. A fire alarm system shall be provided in accordance with provisions of NFPA 72 and the current building code as listed in Section 102.B. The fire alarm system shall at least meet the requirements of a "Partial System" as defined by NFPA 72.

B. The system shall be arranged to transmit an alarm automatically to the fire department by an approved method.

C. The alarm system shall notify by audible and visual alarm all areas and floors of the building.

D. The alarm system shall cause the central re-circulating ventilation fans that serve the area(s) of alarm origination to cease operation and to shut the associated smoke dampers.

E. Fire alarm pull-stations shall be placed at all exits in accordance with NFPA 72.

F. All fire, smoke, heat, sprinkler-flow, fire-sensing detectors, manual pull-stations, hold-open devices on fire-rated doors, alarming devices, or other fire-related systems shall be connected to and monitored by the main fire alarm system, and activate the general alarm when any of these devices are activated.

G. The fire alarm system shall have the main fire alarm located at a readily-accessible location. An audible/visual trouble indicator shall be located where it can be observed by staff members.

H. The fire alarm system shall be tested initially by an individual licensed to install fire alarms, and at least annually thereafter.

2103. Smoke Detectors (I)

Smoke detectors shall be installed in all exit access corridors 30 feet on center in accordance with NFPA 72 and the current building code as listed in Section 102.B. No smoke detectors shall be placed within three feet of a HVAC supply or return vent.

2104. Flammable Liquids (I)

The storage and handling of flammable liquids shall be in accordance with NFPA 30 and 99.

2105. Gases (I)

A. Gases, *i.e.*, flammable and nonflammable, shall be handled and stored in accordance with the provisions of NFPA 99 and 101.

B. Installation, maintenance, and testing of piped gas systems shall meet the provisions of NFPA 99.

C. Safety precautions shall be taken against fire and other hazards when oxygen is dispensed, administered, or stored. "No Smoking" signs shall be posted conspicuously inside the facility and on oxygen cylinders. All cylinders shall be properly secured in place.

SECTION 2200 - WATER SUPPLY/HYGIENE

2201. Design & Construction (II)

A. A water distribution system, provided by a public or private source, shall be approved by the Department's Bureau of Water before the facility can be constructed and/or placed into operation. (I)

B. Before the construction, expansion, or modification of a water distribution system, application shall be made to the Department for a Permit for Construction. The application shall include such engineering, chemical, physical, or bacteriological data as may be required by the Department and shall be accompanied by engineering plans, drawings, and specifications prepared by an engineer registered in S.C., and shall include his or her signature and official seal.

C. The design and construction of such systems shall be in accordance with standard engineering practices for such installations. The Department shall establish such rules, regulations, and/or procedures as may be necessary to protect the health of the public and to insure proper operation and functioning of the system. The facility's water system shall be in compliance with R.61-58 and other local, state, and federal laws and regulations.

D. Storage tanks shall be fabricated of corrosion-resistant metal or lined with noncorrosive material.

2202. Disinfection of Water Lines (I)

A. After construction, expansion, or modification, a water distribution system shall be disinfected in accordance with R.61-58.

B. Samples shall be taken from the water system and forwarded to an approved laboratory for bacteriological analysis in accordance with R.61-58. The water shall not be used as a potable supply until certified as satisfactory.

2203. Temperature (I)

A. Patient and staff handwashing lavatories and showers, if any, shall be supplied with hot and cold water at all times.

B. Plumbing fixtures that require hot water and which are accessible to patients shall be supplied with water that is thermostatically controlled to a temperature of at least 100 degrees F. and not to exceed 120 degrees F. at the fixture.

2204. Stop Valves

A. Each plumbing fixture shall have stop valves to permit repairs without disrupting service to other fixtures.

B. Each group of fixtures on a floor, each branch main, and each supply line shall be valved.

2205. Cross-connections (I)

A. There shall be no cross-connections in plumbing between safe and potentially unsafe water supplies.

B. Water shall be delivered at least two delivery pipe diameters above the rim or points of overflow to each fixture, equipment, or service unless protected against back-siphonage by approved vacuum breakers or other approved back-flow preventers.

C. A faucet or fixture to which a hose may be attached shall have an approved vacuum breaker or other approved back-flow preventer.

2206. Wastewater Systems (I)

A. A wastewater system, provided by a public or private source, shall be approved by the Department's Bureau of Water before the facility can be constructed and/or begins operation.

B. Plans, specifications, reports and studies, for the construction, expansion or alteration of a wastewater system shall be prepared by an engineer registered in S.C., and shall carry his or her signature and official seal.

C. The design and construction of wastewater systems shall be in accordance with standard engineering practice and R.61-67.

D. Liquid waste shall be disposed of in a wastewater system approved by the local authority, *e.g.*, sewage treatment facility.

SECTION 2300 - ELECTRICAL

2301. General (I)

A. Electrical installations shall be in accordance with NFPA 70 and 99.

B. Wiring in the facility shall be inspected at least once every two years by a licensed electrician, registered engineer, or certified building inspector.

C. All materials shall be listed as complying with available standards of Underwriters Laboratories, Inc. or other similarly established standards.

D. New systems shall be tested to indicate that the equipment is installed and operates as planned or specified.

2302. Panelboards (II)

A. Panelboards shall be installed and maintained in accordance with NFPA 70.

B. Panelboards serving lighting and appliance circuits shall be located on the same floor as the circuits served. (This requirement does not apply to life-safety system circuits.)

C. The panelboard directory shall be labeled to conform to the actual room designations.

D. Clear access to the panel shall be maintained, as per NFPA 70.

2303. Lighting

A. Spaces occupied by persons, machinery, equipment within buildings, approaches to buildings, and parking lots shall be lighted with adequate artificial light. (II)

B. Hallways, stairs, and other means of egress shall be lighted at all times in accordance with NFPA 101, *i.e.*, at a minimum, an average of one foot-candle at floor level. (I)

2304. Receptacles (II)

A. Recovery Area. Each bed in the recovery area shall have duplex grounding-type receptacles located per NFPA 70, to include one at the head of each bed.

B. Corridors. Duplex receptacles for general use shall be installed approximately 50 feet apart in all corridors and within 25 feet of the ends of corridors.

2305. Ground Fault Protection (I)

A. Ground fault circuit-interrupter protection shall be provided for all outside receptacles and restrooms in accordance with the provisions of NFPA 70.

B. Ground fault circuit-interrupter protection shall be provided for any receptacles within six feet of a sink or any other wet location. If the sink is an integral part of the metal splashboard grounded by the sink, the entire metal area is considered part of the wet location.

2306. Exit Signs (I)

A. Required exits and exit access passages shall be identified by electrically-illuminated exit signs bearing the words "Exit" in red letters, six inches in height, on a white background.

B. Changes in egress direction shall be marked with exit signs with directional arrows.

C. Exit signs in corridors shall be provided to indicate two directions of exit.

2307. Emergency Call System

A. An emergency call system shall be provided at each patient toilet fixture and patient change-room.

B. Activation shall be by a pull-cord that extends to within four inches above the floor.

C. This system will activate audio-visual signals in the recovery area work station.

D. The emergency call system shall be designed so that the audio-visual signal will remain activated until turned off at the patients' calling location (II)

2308. Emergency Electric Service (I)

A. Emergency electrical services shall be provided as required by the current building code as listed in Section 102.B, NFPA 101, and NFPA 110.

B. An emergency generator system shall be provided to provide electricity during an interruption of the normal electric supply. The emergency power system shall provide power for:

1. Illumination for means of egress;

2. Illumination for exit signs and exit directional signs;

3. Signal system;

4. Alarm systems;

EXCEPTION: In endoscopy facilities, batteries are an acceptable source of power for items 2308.B.1 through 4.

5. Illumination and selected receptacles in operating/procedure rooms and recovery areas, and in the vicinity of the generator set.

EXCEPTION: Endoscopy facilities shall not be required to provide emergency electrical power for Section 2308.B.5. If a generator is chosen to provide emergency electrical power, it must meet all of the requirements of Section 2308.

D. The generator system shall:

1. Be designed to meet the heating, ventilation, air conditioning (HVAC) requirements for operating/procedure rooms and recovery areas and other essential operational needs;

2. Have a minimum of 12 hours of fuel designed to operate at its rated load. The fuel quantity shall be based on its expected or known connected load consumption during power interruptions;

3. Provide emergency electrical power through an automatic transfer switch that shall automatically transfer the circuits to the emergency power source within 10 seconds of a power failure;

4. Be inspected and tested weekly for at least 30 minutes, and once each month, utilize actual load and operating temperature conditions, including automatic and manual transfer of equipment. A record shall be maintained for all inspections and tests and kept on file for a minimum of three years;

5. Have designated staff knowledgeable of generator operation.

D. An Uninterruptible Power System (UPS) is not acceptable as an alternative to the generator system.

E. In the event of natural disaster or electrical power failure, no new surgery/procedures shall commence, and surgery/procedures in progress shall be concluded as soon as possible.

SECTION 2400 -HEATING, VENTILATION, AND AIR CONDITIONING

2401. General (II)

A. Prior to licensure of the facility, all mechanical systems shall be tested, balanced and operated to demonstrate that the installation and performance of these systems conform to the requirements of the plans and specifications.

B. If used, clinical vacuum (suction) system installations shall be in accordance with the requirements of NFPA No. 99. (I)

2402. Heating, Ventilation, Air Conditioning

A. Heating, ventilation, and air conditioning (HVAC) systems shall comply with NFPA 90A and all other applicable codes.

B. The HVAC system shall be inspected at least once a year by a certified/licensed technician.

C. No HVAC supply or return grill shall be installed within three feet of a smoke detector. (I)

D. HVAC grills shall not be installed in floors.

E. Intake air ducts shall be filtered and maintained to prevent the entrance of dust, dirt, and other contaminating materials. The system shall not discharge in such a manner that would be an irritant to the patients/staff.

F. Each restroom shall have approved mechanical ventilation.

2403. Ventilation Requirements

A. The ventilation rates shown herein shall be considered as minimum acceptable rates and shall not be construed as precluding the use of higher ventilation rates for operating rooms.

B. Temperatures and humidity. HVAC systems shall be designed to provide the temperature and humidity shown below:

AREA DESIGNATION	TEMPERATURE		RELATIVE HUMIDITY
	FAHRENHEIT	CENTIGRADE	
Operating Rooms	70 - 76º	21 - 24º	50 - 60%
Recovery Areas	75 - 80º	24 - 27º	50 - 60%
Procedure Rooms; Other	72 - 78º	22 - 26º	50 - 60%

C. All air-supply and air-exhaust systems for the surgical suite shall be mechanically operated.

D. All fans serving exhaust systems shall be located at the discharge end of the system.

E. Outdoor intakes shall be located as far as practical from the exhausts from any ventilating system, combustion equipment, and plumbing vents and at least three feet above the ground or roof.

F. All air supplied to operating rooms shall be delivered at or near the ceiling of the area served and all exhaust from the area shall be removed near floor level.

G. At least two exhaust outlets shall be used in all operating rooms.

EXCEPTION: Only one exhaust outlet is required for facilities that perform endoscopy.

H. The bottom of any room supply air inlets, re-circulation, and exhaust air outlets shall be located not less than three inches above the floor.

I. All ventilation or air conditioning systems serving operating rooms shall have a minimum of two filter beds.

1. Filter bed #1 shall be located upstream of the air conditioning equipment and shall have a minimum efficiency of 25%.

2. Filter bed #2 shall be downstream of the supply fan and of recirculating spray water and water reservoir-type humidifiers. Filter bed #2 shall have a minimum efficiency of 90%.

3. All filter efficiencies shall be certified by an independent testing agency and shall be based on the atmospheric dust spot efficiency determination in accordance with ASHRAE Standard 52-68, except that the exhausts from all laboratory hoods in which infectious or radioactive materials are processed shall be equipped with filters having a 99% efficiency based on the DOP (dioctyophthalate) test method and there shall be equipment and/or procedure for the safe removal of contaminated filters.

4. Filter frames shall be durable and carefully dimensioned and shall provide an airtight fit with the enclosing duct-work. All joints between filter segments and the enclosing duct-work shall be gasketed or sealed to provide a positive seal against air leakage.

5. Each filter bed serving sensitive areas or central air systems shall have a manometer installed across each filter bed.

EXCEPTION: A single-step filter bed of 20% filters is required for endoscopy facilities.

J. All air supplied to soiled linen holding, janitor's closets or soiled workrooms shall be exhausted to the outside and shall not be re-circulated within the room. (II)

K. Air handling duct systems shall not have duct linings.

L. The ventilation systems shall be designed and balanced to provide the pressure relationship as shown in the table below:

AREA DESIGNATION	PRESSURE RELATION-SHIP TO ADJACENT AREAS	MINIMUM TOTAL AIR CHANGES PER HOUR SUPPLIED TO ROOM	ALL AIR EXHAUSTED DIRECTLY TO OUTDOORS	RE-CIRCULATED WITHIN ROOM UNITS
Operating Room	P	16	Optional	Only with approved filters
Recovery and Procedure Rooms	P	6	Optional	Only with approved filters
Soiled Workroom or Soiled Holding	N	10	Yes	No
Clean Workroom or Clean Holding	P	4	Optional	Optional

P = Positive N = Negative

SECTION 2500 - PHYSICAL PLANT

2501. Administrative Areas

A. The facility shall include:

1. Reception and information counter or desk;

2. Waiting space(s) that shall include:

a. Public toilet facilities;

b. Public telephone(s);

c. Drinking fountain(s).

3. Space(s) for private interviews relating to the procedure to be performed.

B. Secure storage areas for:

1. Patient records;

2. Patients' and staff's personal items.

2502. Surgical Suite(s)

The size and design of the surgical suite(s) shall be in accordance with individual programs. The following basic elements, designed to ensure no flow of through traffic, shall be incorporated in all facilities:

A. Operating/Procedure Room(s).

1. The number shall depend on the projected caseload and types of procedures to be performed. Rooms shall have adequate space to accommodate necessary equipment and staff.

2. Each operating room shall have a minimum clear area of 180 square feet exclusive of fixed and movable cabinets and shelves. The minimum width shall be 12 feet.

3. Each procedure room shall have a minimum clear area of 140 square feet exclusive of fixed and movable cabinets and shelves. The minimum width shall be 10 feet.

4. Additional clear area may be required as described in the narrative program to accommodate special functions in one or more of these rooms.

5. An emergency communication system connecting with the surgical suite work station shall be provided.

6. At least one x-ray film illuminator shall be provided in the facility.

EXCEPTION: Facilities performing endoscopy procedures are not required to have the illuminator.

7. A hard-wire clock shall be provided in each operating/procedure room.

8. Operating rooms using inhalation anesthetics shall be in accordance with current practices of NFPA 56A, *Standards for the Use of Inhalation Anesthetics*.

B. Surgery/Procedure and Recovery Equipment and Supplies

1. Each operating/procedure room shall be completely equipped and supplied for the types of procedures to be performed. (I)

2. Each recovery area shall be completely equipped and supplied for the proper care of post anesthesia recovery of surgical patients. (I)

3. The following equipment and supplies shall be accessible to staff in the facility: (I)

a. Cardio-pulmonary resuscitation drugs and intubation equipment;

b. Cardiac monitor;

c. Resuscitator, including oxygen and suction equipment;

d. Aspirator;

e. Defibrillator;

f. Tracheotomy set.

C. Surgical/Procedure Service Areas. The following services shall be provided:

1. A work station located to permit visual surveillance of persons entering the surgical/procedure areas and the recovery area;

2. Sterilizing equipment with autoclave(s) conveniently located to serve all operating rooms;

EXCEPTION: Sterilizing equipment is not required in endoscopy facilities; however, a high-level disinfection of equipment is required in such facilities.

3. A medication distribution station provided for storage and preparation of medication to be administered to patients;

4. Scrub facilities provided near the entrance to each operating room. Scrub facilities with foot or knee controls shall be arranged to minimize any incidental splatter on nearby staff or supply carts. At a minimum, the following shall be provided:

a. Scrub sink with knee, elbow, or foot controls;

b. Soap dispenser.

EXCEPTION: For endoscopy facilities, in lieu of scrub facilities, there shall be a handwash sink in each procedure room that is equipped with valves that can be operated without the use of hands.

5. A soiled workroom for the exclusive use of the surgical suite staff. The soiled workroom shall contain a clinical sink or equivalent flushing type fixture, waste receptacle, and covered soiled receptacle, unless there is a separate soiled linen storage room;

EXCEPTION: In endoscopy facilities, a designated soiled work area will suffice in lieu of a soiled workroom.

6. A system for appropriately managing, handling, storing, and transporting soiled linen.

7. A clean workroom when clean materials are assembled within the surgical suite prior to use. The workroom shall contain a work counter, a sink equipped for handwashing and space for clean and sterile supplies;

EXCEPTION: In endoscopy facilities, a designated clean work area will suffice in lieu of a clean workroom.

8. An area for cleaning, testing, and storing anesthesia equipment in accordance with accepted principles of aeseptic technique.

EXCEPTION: An anesthesia area is not required in endoscopy facilities**.**

9. Medical gas supply storage area pursuant to the storage requirements of NFPA 30 and 99;

10. Equipment storage room(s) for equipment and supplies used in surgical suite;

11. Staff change areas that shall contain adequate dressing space for changing of scrubs and shall contain lockers, showers, toilets, lavatories, and receptacles and facilities for the appropriate disposition of soiled scrubs; these areas shall be arranged to allow a restricted traffic pattern of authorized staff from outside the surgical suite to change into appropriate attire and enter the surgical suite;

EXCEPTION: Showers and areas for donning of scrub suits and boots are not required in endoscopy facilities.

12. Patient change areas that shall be of adequate size and maintained in a manner that assures privacy; provisions shall be made available for secure storage of belongings;

13. A storage area for transport devices, *e.g.*, stretchers, wheelchairs that shall be out of the path of exit travel;

14. An area for the emergency kit/cart located out of traffic and convenient to operating and recovery rooms;

15. Provisions for emergency eye-washing.

D. Recovery Area. The following shall be provided:

1. An area for recovery of patients;

2. Handwashing facilities, secured medication storage space, clerical work space, and sufficient storage space for supplies and equipment;

3. At least four feet between beds or stretchers (two feet if next to a wall) and adequate space at the foot of the bed or stretcher as needed for work and staff circulation;

4. Partitions, walls and/or cubicle curtains (on built-in tracks) to afford visual privacy for each patient;

5. Recovery beds or reclining type of vinyl upholstered chairs or recovery stretchers;

6. Equipment for oxygen, resuscitation, and suction**.**

2503. Clinical Facilities (If Provided)

A. Examination room(s). Room size shall be determined by functions to be performed and types of equipment to be used, but shall have a minimum floor area of 80 square feet, excluding such spaces as vestibule, toilet, closet, and work counter (whether fixed or movable). Arrangement shall permit at least four feet clearance at each side and at the foot of the examination table. A lavatory or sink equipped for handwashing and a space for writing shall be provided.

B. Treatment room(s) for minor and cast procedures. Rooms shall have a minimum floor area of 120 square feet, excluding such spaces as vestibule, toilet, closet and work counter (whether fixed or movable). The minimum room dimension shall be 10 feet. A lavatory or sink equipped for handwashing and a space for writing shall be provided. Treatment rooms may also be used as examination rooms.

2504. Doors (II)

A. Exit doors to stairwells and exit doors to the outside shall be at least 44 inches wide.

B. All doors subject to stretcher or bed passage shall be at least 44 inches wide.

C. The minimum width of doors for patient access to operating, procedure, examination, and treatment rooms shall be at least 34 inches.

D. Restroom door widths shall be at least 32 inches.

E. All exit doors shall swing in the direction of the nearest exit.

F. All operating and procedure rooms and recovery areas shall have at least one door opening to an exit access corridor meeting the requirements of Section 2504.B above. (I)

G. No doors shall swing into corridors in a manner that might obstruct traffic flow or reduce the required corridor width except doors to spaces such as small closets that are not subject to occupancy.

H. All restrooms shall have opaque doors for the purpose of privacy.

I. All glass doors, including sliding or patio type doors, shall have a contrasting or other indicator that causes the glass to be observable, *e.g.*, a decal located at eye level.

J. Doorways from exit-access passageways to the outside of the facility shall be at least 80 inches in height.

K. Doors that have locks shall be unlockable and openable with one action.

L. If patient operating, procedure, examination, or treatment room doors are lockable, there shall be provisions for emergency entry.

M. Any locked room door must be unlockable and openable from inside the room.

N. All patient examination, operating, procedure rooms shall have solid-core doors with closures.

O. Doorways shall not open directly upon a flight of stairs.

P. Soiled linen storage room(s) over 100 square feet shall have a 3/4-hour fire rated door.

2505. Corridors (II)

A. Corridors and passageways in all facilities shall be in accordance with the current building code as listed in Section 102.B.

B. Minimum public corridor width shall be five feet.

C. There shall be at least one corridor that is no less than eight feet clear width between doors from the recovery area and/or operating/procedure rooms and an exit door. In a one-story building or on the ground floor of a multi-story building, if there is less than eight feet clear width, the corridors shall be so arranged as to allow a stretcher to exit from the recovery area or operating rooms directly into the corridor without turning and move to the required exit without having to make a turn. Minimum width shall be five feet.

D. The location of items such as drinking fountains, telephone booths, vending machines, and portable equipment shall not restrict corridor traffic or reduce the required corridor width. (II)

2506. Ramps (II)

A. At least one exterior ramp, accessible by all patients, staff members, and visitors, shall be installed from the first floor to grade.

B. The ramp shall serve all portions of the facility where patients are located.

C. The surface of a ramp shall be of nonskid materials.

D. Ramps shall be constructed in a manner in compliance with ANSI 117.1, *i.e.*, for every inch of height, the ramp shall be at least one foot long.

E. Ramps shall be of noncombustible construction. (I)

F. Ramps shall discharge onto a surface that is firm and negotiable by persons who are physically challenged in all weather conditions and to a location accessible for loading into a vehicle.

2507. Landings (II)

Exit doorways that open upon a flight of stairs shall have a landing that is at least the width of the door and is the same elevation as the finished floor at the exit. (II)

2508. Handrails/Guardrails (II)

A. Handrails shall be provided on at least one side of each corridor/hallway, and on all stairways, ramps, and porches with two or more steps. Ends of all installed handrails shall return to the wall.

B. All porches, walkways, and recreational areas (such as decks, *etc.*) that are elevated 30 inches or more above grade shall have guardrails 42 inches high. Open guardrails shall have intermediate rails less than six inches apart.

2509. Restrooms (II)

A. There shall be an appropriate number of restrooms in the facility, to accommodate patients, staff, and visitors.

B. The restrooms shall be accessible during all operating hours of the facility.

C. A restroom(s) shall be equipped with at least one toilet fixture, toilet paper installed in a holder, a lavatory supplied with hot and cold running water, liquid or granulated soap, single-use disposable paper towels or electric air dryer, and a covered waste receptacle.

D. Restroom floor areas shall not be less than 15 square feet.

E. The waiting/lobby area must have at least one restroom.

F. Toilet fixtures in restrooms for patient use shall be provided in ample number, located within or adjacent to the recovery area. The minimum requirement is one toilet fixture for every surgical and procedure room. These toilet fixtures shall be located in at least two restrooms, one designated "male" and the other "female".

G. There shall be at least one lavatory per every two toilet fixtures located within a restroom.

H. All toilet fixtures used by patients shall have approved grab bars securely fastened in a usable fashion.

I. Privacy shall be provided at toilet fixtures and urinals.

J. Facilities for persons with disabilities shall be provided as required by codes, whether or not any of the staff or patients are classified as disabled.

K. All restroom floors shall be entirely covered with an approved nonabsorbent covering. Walls shall be nonabsorbent, washable surfaces to the highest level of splash.

2510. Sinks and Handwashing Fixtures

A. A sink shall be provided in each utility room.

B. Handwashing fixtures shall be provided in the recovery area and in restrooms (see Section 2509.C).

C. All handwashing fixtures shall be equipped with valves that can be operated without the use of hands.

D. Single-use towel dispensers or air dryers shall be provided at all handwashing fixtures, except scrub sinks.

E. Scrub sinks shall be provided in accordance with the number and arrangement of the operating rooms (see Section 2502.C).

2511. Janitor's Closets

A. A sufficient number of lockable janitor's closets shall be provided throughout the facility as required to maintain a clean and sanitary environment.

B. Each shall contain a floor receptor or service sink and storage space for housekeeping equipment and supplies, *e.g.,* mops.

2512. Storage Areas

A. Adequate general storage areas shall be provided for patient and staff/volunteer belongings, equipment, and supplies as well as clean linen, soiled linen, wheelchairs, and general supplies and equipment.

B. Soiled linen shall be stored in an enclosed room. This room may also be the soiled workroom (see Section 2502.C.5).

C. Areas used for storage of combustible materials and storage areas exceeding 100 square feet in area shall be provided with an NFPA-approved automatic sprinkler system. (I)

D. In storage areas provided with a sprinkler system, a minimum vertical distance of 18 inches shall be maintained between the top of stored items and the sprinkler heads. The tops of storage cabinets and shelves attached to or built into the perimeter walls may be closer than 18 inches below the sprinkler heads. In nonsprinklered storage areas, there shall be at least 24 inches of space from the ceiling. (I)

E. All ceilings, floor assemblies, and walls enclosing storage areas of 100 square feet or greater shall be composed of not less than one-hour fire-resistive construction. (I)

F. Storage buildings on the premises shall meet the requirements of the current building code as listed in Section 102.B regarding distance from the licensed building. Storage in buildings other than on the facility premises shall be secure and accessible. An appropriate controlled environment shall be provided if necessary for storage of items requiring such an environment.

G. In mechanical rooms used for storage, stored items shall be located away from mechanical equipment and shall not be a type of storage that might create a fire or other hazard. (I)

H. Supplies/Equipment shall not be stored directly on the floor. Supplies/Equipment susceptible to water damage/contamination shall not be stored under sinks or other areas with a propensity for water leakage.

I. Chemicals indicated as harmful on the product label, cleaning materials, and supplies shall be safely stored in cabinets or well-lighted closets/rooms.

2513. Elevators (II)

A. Elevators, if utilized, shall be installed and maintained in accordance with the provisions of the current building code as listed in Section 102.B, ANSI17.1, *Safety Code for Elevators and Escalators*, and NFPA 101, as applicable.

B. Elevators shall be inspected and tested upon installation, prior to first use, and annually thereafter by a certified elevator inspector.

2514. Telephone Service

At least one land-line telephone shall be available on each floor of the facility for use by patients and/or visitors for their private, discretionary use; pay phones for this purpose are acceptable

2515. Location

A. Transportation. The facility shall be served by roads that are passable at all times and are adequate for the volume of expected traffic.

B. Parking. The facility shall have a parking area to reasonably satisfy the needs of patients, staff members, and visitors.

C. Access to firefighting equipment. Facilities shall maintain adequate access to and around the building(s) for firefighting equipment. (I)

SECTION 2600 - SEVERABILITY

2601. General

In the event that any portion of these regulations 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 these regulations, and they shall remain in effect as if such invalid portions were not originally a part of these regulations.

SECTION 2700 - GENERAL

2701. General

Conditions that have not been addressed in these regulations shall be managed in accordance with the best practices as interpreted by the Department.

Fiscal Impact Statement:

There will be no cost to the state and its political subdivisions. There will be costs to the regulated community. See Statement of Need and Reasonableness below.

Statement of Need and Reasonableness:

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

DESCRIPTION OF REGULATION: R.61-91, *Standards For Licensing Ambulatory Surgical Facilities*.

Purpose of Regulation Amendment: The Department has conducted its five-year review of its regulations pursuant to S.C. Code, Section 1-23-120. R.61-91 has not been amended since 1983; it is necessary to amend the regulation to bring it current.

Legal Authority: Section 44-7-260 of the S.C. Code Ann. (2002).

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

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

R.61-91 was last amended in 1983. Section 1-23-120 of the Administrative Procedures Act requires state agencies to perform a review of its regulations every five years and update them if necessary.

The proposed amendment is needed and reasonable in order to update and improve the overall quality of the regulation.

The proposed amendment is needed and reasonable because it will clarify/add to the current regulation in a manner that will improve methods to provide quality care/treatment/services to patients.

The proposed amendment is needed and reasonable because it will update the current regulation by incorporating certain exceptions/guidances that the Department has implemented since the last revision.

The proposed amendment is needed and reasonable because it provides for special considerations unique to endoscopy facilities that were not addressed in the previous edition of the regulation.

DETERMINATION OF COSTS AND BENEFITS: There will be no cost to the state and its political subdivisions. There will be an additional cost to the regulated community in that there will be an increase in licensing fees in an attempt to recover increased licensing inspection/investigation operational costs. This will be the first increase since 1983 when there were three licensed ambulatory surgical facilities; there are currently 45 licensed ASF's.

UNCERTAINTIES OF ESTIMATES: None

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH: There will be no effect on the environment.

DETRIMENTAL EFFECT ON THE ENVIRONMENT IF THE REGULATION AMENDMENT IS NOT IMPLEMENTED: There will be no adverse effect on the public health if the revision of the regulation is not implemented; however, the public will not receive the benefit of improved/updated standards.

Statement of Rationale:

R.61-91 was last amended in 1983. Department staff determined during its review of R.61-91 that it was appropriate to revise the regulation. See the Statement of Need and Reasonableness above for more information regarding the factors influencing the Department staff decision to revise the regulation.

Document No. 2802
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 89
Statutory Authority: S.C. Code Sections 48-20-20, 48-20-30,
48-20-100, 48-20-120 48-20-210, and 48-20-240

R.89-10 through 89-350 Office of the Governor - Mining Council of South Carolina

Synopsis:

The South Carolina Mining Act charges the Department with the responsibility for administering the mining program. The Act also gives the Department the authority to assess and collect fees to assist with the costs of administering the provisions of the Act. The proposed amendment to Regulation 89-10 through 89-350 to increase fees will provide the necessary funds to enhance the mining program by providing additional staff to minimize application review times, increase mine inspections and provide educational outreach to the mining industry. The Act requires all mining in S.C. to include reasonable provisions for protection of the surrounding environment and for reclamation of the area of land affected by mining. These fees have not be increased since they were first included in the regulation in 1992. The increase in fees will provide the means to ensure that the usefulness, productivity, and scenic values of all lands and waters affected by mining in S.C. receive the greatest practical degree of protection and restoration. See Discussion of Proposed Revisions below and the State of Need and Reasonableness herein.

Discussion:

SECTION/CHANGE

89-340.A.(1) Increase in fee for mining permit application.

89-340.A.(2) Increase in fee for mining permit conversion.

89-340.A.(3) Increase in fee for mining permit substantial modification.

89-340.A.(4) Increase in fee for mining permit transfer.

89-340.A.(5) Increase in fee for certificate of exploration.

89-340.B.(1) Increase in mining annual operating fee.

Instructions: Amend R.89-10 through 89-350 pursuant to each individual instruction provided with the text below:

Text:

Replace 89-340.A.(1) through (5) to read:

89-340. Fee Schedule.

A. In accordance with Section 48-20-100 of the S. C. Mining Act (S. C. Code of Laws, 1976, as amended), the following mining and reclamation fee schedules are established:

(1) Mining permit application fee $600.

(2) Mining permit conversion fee $600. (In lieu of Permit Renewal)

(3) Mining permit substantial modification fee $600.

(4) Mining permit transfer fee $600.

(5) Certificate of Exploration fee $300.

Replace 89-340.B.(1) through (2) to read:

B. In accordance with Section 48-20-120 of the S. C. Mining Act (S. C. Code of Laws, 1976, as amended), the following Annual Operating Fee has been established:

(1) Mining Annual Operating Fee Per Mine $375.
(Included as part of Annual Reclamation Report)

(2) Mining Annual Operating Fee Late Penalty $50. per month;

Fiscal Impact Statement:

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

Statement of Need and Reasonableness:

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

DESCRIPTION OF REGULATION: Proposed Amendment of Regulation 89-10 through 89-350 Office of the Governor - Mining Council of South Carolina.

Purpose: The Department is charged with the responsibility for administering the provisions and requirements of the South Carolina Mining Act, S.C. Code Ann. Section 48-20-10, et seq. The proposed amendment to increase fees will provide the necessary funds to enhance the mining program by providing additional staff to minimize application review times, increase mine inspections and provide educational outreach to the mining industry to assist in complying with the regulatory requirements. This will provide the means to ensure that: the usefulness, productivity, and scenic values of all lands and waters involved in mining within S.C. receive the greatest practical degree of protection and restoration; no mining may be carried on in the State unless plans for the mining include reasonable provisions for protection of the surrounding environment and for reclamation of the area of land affected by mining; and, sufficient technical assistance is available for mining operations.

Authority: The South Carolina Mining Act, S.C. Code Ann. Sections 48-20-20, 48-20-30, 48-20-100, 48-20-120 48-20-210, and 48-20-240.

Plan for Implementation: The proposed regulation, as amended through public comment and Department response, and upon approval of the Board of Health and Environmental Control, the General Assembly and publication in the State Register, will be incorporated within R.89-10 through 89-350. Simultaneously, action will be initiated to amend the statute so that permitting, exploration and annual operating fees can be used by the program. (Administrative fees for deficiencies and civil penalties assessed through enforcement action will continue to be deposited in the general fund.) As soon as funding is available, two (2) positions will be filled.

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

The South Carolina Mining Act charges the Department with the responsibility of issuing mining permits, reviewing and approving reclamation plans, collecting reclamation performance bonds, conducting environmental appraisals, providing technical assistance to mine operators and the public, implementing research and demonstration projects, and inspecting all mining operations and reclamations.

The Act gives the Department the authority to assess and collect fees to assist with the costs of administering the provisions of the Act. This amendment is needed to enhance the present status of the program so that more technical assistance to mining operations is available, review of permit requests are expedited, and to ensure protection of public health and the environment.

This proposed amendment is reasonable because the mines that will pay the increases in fees will receive benefits from the enhancements made to the program. If the number of mines per inspector can be reduced, it will: allow staff more time for one-on-one technical assistance to mine operators; and, expedite reviews of proposed projects - all of which will benefit the mining operations and provide for better efficiency. The statute authorized fees in 1990. A fee schedule was included when the regulation was amended in 1992 and there has been no increase in the fee structure to date.

DETERMINATION OF COSTS AND BENEFITS. The increase in the fee structure will provide approximately $147,000 of new money. The amount of the increase is based upon the need for two technical positions in the mining program to provide enhanced service to the industry and public. Additionally, the money will be used to reestablish and develop an outreach program for small mine operators to provide them with educational and technical information.

The mine operators will benefit from the enhancement of the Department's mining program. The increased staff will allow the program director to spread the workload (i.e., inspections, application reviews, and compliance follow-ups) to greater number of staff; thus, reducing the number of mines per inspector to establish a more efficient workload. This will allow for quicker response in application reviews, increased mine inspections, and a quicker resolution to public inquires. Furthermore, increase in staff will allow for increased technical assistance to mine operators. This is particularly important for small mine operators that have minimal resources to keep abreast of regulatory changes and the technical means to stay in compliance.

UNCERTAINTIES OF ESTIMATES: There are no uncertainties of estimates relative to costs to the State or its political subdivisions. Refer to the above paragraph for cost estimates for the regulated community.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH: This amendment will help ensure protection of all lands and waters involved in mining in South Carolina and in turn provide protection of public health.

DETRIMENTAL EFFECTS ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION AMENDMENT IS NOT IMPLEMENTED: There could be a detrimental effect on the environment and public health if the regulation amendment is not implemented. The current number of program staff is inadequate to provide the services required by the South Carolina Mining Act. If more one-on-one technical assistance can be offered to small mining operations, the impact will be preventative in nature and will result in better protection of the environment and public health.

STATEMENT OF RATIONALE: This amendment is based on an administrative decision to raise fees to enhance service to the regulated community and increase environmental protection and decrease response times on application reviews. This program enhancement will increase educational outreach to the regulated community to assist them in complying with their regulatory obligations. These fees have not been increased since they were first initiated in 1992. See the State of Need and Reasonableness above for details.

Document No. 2803
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
Statutory Authority: S.C. Code Section 44-37-30 and Act 225 (May 1, 2002)

R.61-80. ***Neonatal Screening for Inborn Metabolic Errors and Hemoglobinopathies***

Synopsis:

The Department of Health and Environmental Control has substantially amended R.61-80, *Neonatal Screening for Inborn Metabolic Errors and Hemoglobinopathies*. The amendment incorporates legislative mandates regarding storage and use of blood specimens collected on filter paper for the purposes of neonatal screening for inborn metabolic errors and hemoglobinopathies and incorporates legislative mandates regarding the confidentiality of information obtained as a result of neonatal screening for inborn metabolic errors and hemoglobinopathies. It also updates language, which includes corrections to improve clarity and readability, as well as to strengthen, improve and codify standards and terminology for consistency with national and medical standards. The amendment also incorporates legislative mandates regarding forms and documentation.

Discussion of Revisions:

Regulation 61-80 is being revised substantially.

A table of contents is added.

Section A explains the purpose, scope and authority for this regulation. Section B, Authority, will be deleted and selected text from section B will be merged into this new section A.

Section B provides definitions. References to specific inborn errors of metabolism and hemoglobinopathies are deleted because other disorders may be detected in the routine course of newborn screening. More identifying information is added to the current requirements. These additions will provide DHEC with the demographic information needed to perform the screening tests in the most precise manner and to correctly identify a child who needs additional testing. The words "infant" or "infants" are changed to "child" or "children" in this section and throughout the remainder of the regulation. This change will make the language in the regulation consistent with the statute. Definitions for Community Based Programs and Genetic Centers are deleted because there is no reference to either of these groups in the remainder of the regulation. Other language is also updated and clarified in this section.

Section C provides for all screening tests for inborn metabolic errors and hemoglobinopathies. Minor word changes are made for consistency and clarity. References are updated to be consistent with national laboratory standards. The statement regarding the availability of laboratory analysis for confirmation and repeat specimen testing at no charge to patients suspected or diagnosed with one of the conditions identified through newborn screening is clarified to indicate that this only applies if the analysis is completed at the Laboratory.

Section D addresses collection of specimen. A requirement is added that the brochure produced by DHEC explaining newborn screening and blood specimen storage options be given to the parent or guardian of the child. The word "must" is changed to "shall" in this section and throughout the remainder of the regulation. Other minor word changes are made for consistency and clarity.

Section E addresses assurance of diagnosis and follow-up. Requirements on maintenance of confidentiality of information as a result of the screening process are added to provide consistency with the statute. The responsibility of the attending physician in notifying the Bureau of Maternal and Child Health when children are diagnosed with one of the conditions identified through screening is clarified to include only those children who are born in South Carolina. Minor word changes are made for consistency and clarity.

Section F is a new section added to the regulation and addresses storage of specimen. It requires persons who collect specimens for screening to inform parents or guardians of the child of the blood specimen storage options and to ensure that the parents' or guardians' choice is documented on the appropriate form as indicated. It requires DHEC to maintain the specimens based upon the parents' or guardians' documented choice if the parents or guardians do not agree to have their child's blood specimen stored and potentially released for scientific study.

Section G is a new section added to the regulation and addresses use of stored specimens. It allows DHEC to release specimens for confidential, anonymous scientific study unless prohibited based upon the wording in the statute. It requires DHEC to use the Institutional Review Board process to ensure that any proposed studies using the specimens meet established research standards. It also allows DHEC to confidentially notify affected parties if beneficial information is discovered as a part of any such research.

Section H, Forms, is added. The forms, as specified in statute, are added as Appendices A, B and C.

Section I, Enforcement Provision, provides for penalties and constitutionality.

Instructions: Replace R.61-80, *Neonatal Screening For Inborn Metabolic Errors and Hemoglobinopathies*, in its entirety by this amendment.

Text:

R.61-80. Neonatal Screening For Inborn Metabolic Errors and Hemoglobinopathies

Contents:

Section A- Purpose and Scope

This regulation establishes rules implementing provisions of Section 44-37-30 of the South Carolina Code of Laws, 1976, as amended, regarding testing of newborn children for inborn metabolic errors and hemoglobinopathies. The Department of Health and Environmental Control has been given the legislative mandate to promulgate rules and regulations for screening for inborn metabolic errors and hemoglobinopathies and to ensure compliance with the screening of every child born in South Carolina. The responsibilities of the various agencies, institutions and persons involved in the screening process are defined. Procedures for storage and use of blood specimens and maintenance of confidentiality are included.

Section B-Definitions

1. Inborn Metabolic Errors--shall mean inborn errors of metabolism.

2. Hemoglobinopathy--shall mean a hematologic disorder or carrier state caused by alteration in the genetically determined molecular structure of hemoglobin which may result in overt anemia as well as clinical and other laboratory abnormalities.

3. Identifying Information--shall mean child’s legal name, sex, race, birth date, time of birth, place of birth, birth weight, current weight, feeding type; parent's or legal guardian’s complete name, complete address and telephone number; mother’s Social Security Number.

4. Attending Physician--shall mean the physician who has entered into an agreement to provide care during and/or after delivery for the mother and/or her child. The physician listed on the laboratory form will be assumed to be the attending physician until notification to the contrary is received in accordance with Official Departmental Instructions.

5. Department—shall mean the South Carolina Department of Health and Environmental Control.

6. Laboratory--shall mean the South Carolina Department of Health and Environmental Control Bureau of Laboratories.

7. Bureau of Maternal and Child Health--shall mean an organizational unit of the South Carolina Department of Health and Environmental Control.

8. Official Departmental Instructions--shall mean detailed instructions approved by the Commissioner of the South Carolina Department of Health and Environmental Control or his designee under which the public and private health care providers, including hospitals, laboratories, clinics, physicians and their staffs screen all children born in South Carolina for designated Inborn Metabolic Errors and Hemoglobinopathies.

Section C-Testing

1. The Laboratory shall perform all screening tests for inborn metabolic errors and hemoglobinopathies using procedures compliant with the Clinical Laboratories Improvement Act of 1988, as amended, and approved by the Food and Drug Administration. If any result is abnormal, the appropriate test shall be repeated and confirmatory tests performed in accordance with Official Departmental Instructions.

2. The Laboratory, in conjunction with the Bureau of Maternal and Child Health, shall adopt standards for the quality assurance and interpretation of approved tests and for the collection of specimens.

3. Confirmation and repeat specimen testing are available from the Laboratory at no charge to patients suspected or diagnosed as having one of the diseases if the analysis is completed at the Laboratory.

4. Test results and identifying information are to be reported and recorded in accordance with Official Departmental Instructions.

Section D-Collection of Specimen

1. A specimen shall be collected from every child born in South Carolina for the purpose of screening for inborn metabolic errors and hemoglobinopathies.

2. Births in a Hospital

a. The attending physician is responsible for the collection of the specimen from every child born in the hospital in accordance with Official Departmental Instructions and is responsible for submission of the specimen to the Laboratory on the day of collection.

b. Under the direction of the attending physician, the specimen shall be collected under the most favorable conditions following the procedures specified in the Official Departmental Instructions. The brochure produced by the Department that explains newborn screening for inborn metabolic errors and hemoglobinopathies and blood specimen storage options shall be given to the parent or legal guardian of the child.

c. A specimen shall be collected from every child born in the hospital prior to release from the hospital (except when the parents object due to religious convictions) in accordance with the procedure specified in the Official Departmental Instructions. If the parent objects to the screening on the basis of religious convictions, the parent shall complete the procedure specified in the Official Departmental Instructions.

d. If for some reason the specimen is not collected at the hospital, the hospital shall then be responsible for notifying the Bureau of Maternal and Child Health as specified in the Official Departmental Instructions.

e. The Hospital shall review the patient record for each child born in the hospital no later than ten (10) days after delivery to ensure that a specimen was collected and submitted to the Laboratory.

3. Births Outside a Hospital

a. The attending physician is responsible for the collection of the specimen from every child in accordance with the Official Departmental Instructions and for submission of the specimen to the Laboratory on the day of collection.

b. Under the direction of the attending physician, the specimen shall be collected under the most favorable conditions following the procedure specified in the Official Departmental Instructions. The brochure produced by the Department that explains newborn screening for inborn metabolic errors and hemoglobinopathies and blood specimen storage options shall be given to the parent or legal guardian of the child.

c. If the parents object to the screening on the basis of religious convictions, the parents shall complete the procedure specified in the Official Departmental Instructions.

d. If for some reason the specimen is not collected within three (3) days of delivery by the attending physician, this physician shall notify the Bureau of Maternal and Child Health as specified in the Official Departmental Instructions.

e. If there is not an attending physician, then the person in attendance is responsible for the collection of the specimen. If there is no other person in attendance, then the parents or legal guardian shall notify the Health Department in the county in which the child resides within three (3) days of delivery so that a specimen may be collected.

Section E-Assurance of Diagnosis and Follow-up

1. Information obtained as a result of the tests conducted for screening for inborn metabolic errors and hemoglobinopathies is confidential and may be released only to the infant's physician or other staff acting under the direction of the physician, the child's parent or legal guardian, and the child when he/she is eighteen years of age or older.

2. Normal and abnormal test results will be forwarded by the Laboratory and/or Bureau of Maternal and Child Health to the attending physician who shall be responsible for informing the parents or legal guardian of test results.

3. If the child is not under the care of the attending physician, as specified in the Official Departmental Instructions, the person in attendance shall notify the Bureau of Maternal and Child Health. The Department will then notify the parents or legal guardian of the test results.

4. Upon notification that a specimen was insufficient or that it is necessary for a test to be repeated, the attending physician shall collect and submit a second specimen to the Laboratory in accordance with Official Departmental Instructions.

5. The attending physician shall initiate appropriate medical follow-up and diagnosis when abnormal test results occur. If that is not possible, the Bureau of Maternal and Child Health shall be notified as specified in the Official Departmental Instructions.

6. The attending physician shall notify the Bureau of Maternal and Child Health of all children born in South Carolina who are diagnosed as having inborn metabolic errors or hemoglobinopathies.

7. Appropriate genetic counseling should be offered to all families of children with abnormal test results as outlined in the Official Departmental Instructions.

Section F-Storage of Specimen

1. Hospital staff or other persons who collect blood specimens for the purpose of screening for inborn metabolic errors and hemoglobinopathies shall inform each child's parent or legal guardian of the blood specimen storage options.

2. Hospital staff or other persons who collect these blood specimens shall give the brochure produced by the Department that explains newborn screening for inborn metabolic errors and hemoglobinopathies to the parent or legal guardian as a means of informing them of the benefits of screening and blood specimen storage. Hospital staff or other persons who collect these blood specimens shall indicate that the brochure was given to the parent or legal guardian by documenting in the appropriate space on the Blood Sample Storage Options Form.

3. The Laboratory shall store all specimens at minus 20° Centigrade and may release specimens for purposes of confidential, anonymous scientific study unless prohibited by the parents, legal guardians, or children from whom the specimens were obtained when the children are eighteen years of age or older.

4. Hospital staff or other persons who collect these specimens shall ensure that the parent's or legal guardian's storage choice is documented on the Blood Sample Storage Options form if the parent or legal guardian does not agree to have their child's blood specimen stored and potentially released for confidential, anonymous scientific study. In these instances, the Laboratory shall maintain all such specimens based upon the storage option chosen by the parent or legal guardian as documented on the Blood Sample Storage Options form.

Section G-Use of Stored Specimen

1. Stored blood specimens may be released for the purposes of confidential, anonymous scientific study unless prohibited by the parent, legal guardian, or child from whom the specimen was obtained when he/she is eighteen years of age or older.

2. The Department's Institutional Review Board shall approve all scientific studies that use stored blood specimens before the specimens are released.

3. Blood specimens released for scientific study shall not contain information that may be used to determine the identity of the children from whom they were obtained by the person(s) to whom the specimens are released. The Department shall code the specimens before releasing them so that the Department can identify the children from whom the blood specimens were obtained if necessary.

4. If any such scientific study identifies genetic or other information that may benefit the children from whom the specimens were obtained, the Department may confidentially provide this information to the parents, legal guardians or children from whom the specimens were obtained when the children are eighteen years of age or older.

Section H-Forms

1. Religious Objection Form: The Religious Objection Form, Appendix A of this regulation, shall be completed if the parents refuse newborn screening for inborn metabolic errors and hemoglobinopathies for their child based upon religious convictions.

2. Information Release Form: The Information Release Form, Appendix B of this regulation, may be completed as needed for release of information regarding newborn screening for inborn metabolic errors and hemoglobinopathies to persons other than those specified elsewhere in this regulation.

3. Blood Sample Storage Options Form: The Blood Sample Storage Options Form, Appendix C of this regulation, shall be completed if the parents or legal guardians do not agree to have their child's specimen stored and potentially released for confidential, anonymous scientific study.

Section I-Enforcement Provision

1. Constitutionality

If any part or provision of these regulations is legally declared unconstitutional or if the application thereof to any persons or circumstances is held invalid, the validity and constitutionality of the remainder of these regulations shall not be affected thereby.

2. Penalties

Violation of these regulations shall be punishable in accordance with Section 44-37-30 of the Code of Laws of South Carolina, 1976, as amended.

APPENDIX A: Religious Objection Form: DHEC 1804, Newborn Screening Program, Parental Statement of Religious Objection

I am the parent or legal guardian of _____, a child born _____ in South Carolina. I request that my child not be tested by blood spot screening in order to detect silent, deadly metabolic diseases and hemoglobinopathies. I certify that this refusal is based on religious grounds. Religious grounds are the only permitted reason for refusal under South Carolina law, Section 44-37-30 (C).

I understand that my child may suffer brain damage, other bodily harm or death if a disease that can be detected by blood spot screening is not diagnosed. I understand that such harm can be lessened or prevented by early diagnosis and treatment. I understand that these diseases are usually silent, and may be present in a child that looks healthy. I understand that the blood spot screening test is the best way to detect these disorders early, and that testing is routinely done for every child. I understand that this testing is quick, easy and that the results are confidential. I understand that this testing has been the standard of care for all children born in South Carolina and the rest of the United States for many years.

I have been fully informed of, and fully understand, the possible devastating consequences to my child's health if blood spot screening is not done. I have been fully informed of, and fully understand the benefits of testing and blood specimen storage. I have been given the brochure produced by the South Carolina Department of Health and Environmental Control that describes the conditions for which testing is currently available and explains the benefits of testing and blood specimen storage. I also understand that my child would have been tested for these conditions except for my objection. I have been given the opportunity to ask questions concerning this testing and these conditions, and all of my questions have been fully answered to my satisfaction.

I release and hold harmless the South Carolina Department of Health and Environmental Control, the hospital or other facility at which the birth occurred, the person(s) responsible for the collection of the blood spots, and any other person or entity relying on this objection, for any injury, illness and/or consequences, including the death of my child, which may result to my child as the result of my refusal of blood spot screening.

Parent: _____ Date: _____

Witness: _____

NOTE TO PROVIDERS: This form is only necessary if the parent or legal guardian refuses testing for inborn metabolic errors and hemoglobinopathies.

APPENDIX B: Information Release Form: DHEC 1878, Authorization to Release Information Relative to Newborn Screening for Inborn Metabolic Errors and Hemoglobinopathies

Please check all boxes that apply.

- ❑ A. I agree that information about _____, born _____, obtained as a result of tests conducted for screening for inborn metabolic errors and hemoglobinopathies may be released or exchanged with the following providers:

  _____

  _____

  _____

- ❑ B. In cases where this information is immediately needed for continuity of health care, I authorize the South Carolina Department of Health and Environmental Control to provide this information to the providers listed above by fax.

- ❑ C. I authorize my signed form to be faxed to the providers listed above.

I understand that my confidentiality cannot be guaranteed when sending this information by fax. I understand that the copy of my signature below may be treated as an original signature.

I am the client, parent or legal guardian. I understand that I am responsible for this information if it is released to me and that my records are protected generally under state laws as well as statutes governing specific types of information and cannot be disclosed without my authorization. I also understand that I may revoke this authorization at any time except to the extent that action has been taken on it.

Signature:_____ Date:_____

Witness:_____ Date:_____

Revoked:_____ Date:_____

Some babies are born with diseases of the blood or body function. A baby with one of these diseases looks healthy. However, these diseases can cause mental retardation, abnormal growth, infections, or death. Some of these diseases can be found by early testing. This testing, called newborn screening, is important so that your baby is not harmed by one of these diseases. During newborn screening, a small sample of your baby's blood is

taken from the heel. The blood is tested. The blood shows if your baby has any of the "newborn screening" diseases. If your baby has one of these diseases, your doctor can treat your baby.

DHEC can store your baby's blood sample for special study. Studies help DHEC find out new information about diseases. If a study finds something in your child's blood sample that can help your child, DHEC can confidentially notify you (or your child if he/she is 18 years or older).

APPENDIX C: Blood Sample Storage Options Form: DHEC 1812, Blood Sample Storage Options, Screening for Inborn Metabolic Errors and Hemoglobinopathies

Child's complete legal name: _____

Child's date of birth: _____
Parent or legal guardian's complete name:

_____

Parent or legal guardian's complete address:

_____

South Carolina law requires the Department of Health and Environmental Control to store your child's blood sample in a manner required by law. The blood sample is collected on a special piece of filter paper. This is called "newborn screening." The blood is tested to see if your child has one of the "newborn screening" diseases that can cause mental retardation, abnormal growth or even death. After the tests are done, the filter paper is stored in a freezer at the state laboratory. This storage is highly protected, and each sample is held under strict confidentiality. A child's blood sample can only be released for approved research, without any identifying information, to learn new information about diseases. The law allows you to choose one of the options below, if you do not want your child's blood sample handled this way. **However, you are not required to check one of the boxes below.**

- ❑ I want my child's blood sample stored by the South Carolina Department of Health and Environmental Control, but I do not want my child's blood sample to be used for research.

- ❑ I want my child's blood sample destroyed by the South Carolina Department of Health and Environmental Control two years after the date of testing.

- ❑ I want my child's blood sample to be returned to me two years after the date of testing. I understand that it is my responsibility to notify the South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC, 29201, of address or name changes.

I have been given the brochure produced by the South Carolina Department of Health and Environmental Control that describes the conditions for which testing is currently available and explains the benefits of testing and blood sample storage.

Parent: _____ Date: _____

I have given the brochure produced by the South Carolina Department of Health and Environmental Control to the parent/legal guardian of the child named above.

Name: _____ Date: _____

DHEC can store your baby's blood sample for special study. Studies help DHEC find out new information about diseases. If a study finds something in your child's blood sample that can help your child, DHEC can confidentially notify you (or your child if he/she is 18 years or older).

IF THIS FORM IS NOT SIGNED BY A PARENT/LEGAL GUARDIAN AND/OR NONE OF THE ABOVE BOXES ARE CHECKED, THE BLOOD SAMPLE WILL BE STORED AS REQUIRED BY SC CODE ANN. SECTION 44-37-30 AT –20 DEGREES CENTIGRADE AND MAY BE RELEASED ONLY FOR CONFIDENTIAL, ANONYMOUS SCIENTIFIC STUDY.

NOTE TO PROVIDERS: The parent or legal guardian is not required to sign this form. However, the person who gives the brochure that explains neonatal testing and blood sample storage to the parent or legal guardian must sign this form.

Fiscal Impact Statement:

New costs to DHEC include approximately $35,000 for educational materials (videos, brochures, staff training manuals); approximately $21,000 in staff time to provide training to health care providers on the new legislative requirements; and $27,000 one-time cost and $43,000 annual cost to maintain the blood specimens based upon parental/guardian choice (one additional freezer with a purchase cost of $24,000 and an annual operations cost of $10,000; one full time equivalent laboratory technician with a personnel cost of approximately $33,000 annually to prepare specimens for storage, maintain a database of parental/guardian storage choice, retrieve specimens based upon parental/guardian choice, prepare and send necessary correspondence; and $3,000 to purchase a dedicated computer system and software to house the database of parental/guardian storage choice.)

Statement of Need and Reasonableness:

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

DESCRIPTION OF REGULATION: R.61-80, *Neonatal Screening for Inborn Metabolic Errors and Hemoglobinopathies*

Purpose: To incorporate legislative mandates regarding storage and use of blood specimens; incorporate legislative mandates regarding the confidentiality of information; update language to strengthen, improve and codify standards and terminology to be consistent with national and medical standards; and incorporate legislative mandates regarding forms and documentation.

Legal Authority: S.C. Code Section 44-37-30 and Act 225 (May 1, 2002)

Plan for Implementation: This amendment will take effect upon publication in the *State Register* following approval by the South Carolina General Assembly.

The proposed amendment will be implemented by providing the regulated community, specifically staff at hospitals where infants are born and county health departments, with copies of the regulation. In addition, on-site training will be offered to ensure that staffs understand their responsibilities in complying with the new requirements.

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

The revisions to the regulation are needed and reasonable because they will update State public health policies and practices to comply with the mandates of S.C. Code Section 44-37-30 and Act 225 (May 1, 2002). This Act required DHEC to provide parental options for the storage and use of blood specimen obtained as a result of

screening for inborn metabolic errors and hemoglobinopathies and clarified procedures for protection of confidentiality of information.

DETERMINATION OF COSTS AND BENEFITS:

There will be an undetermined cost to the regulated community in increased staff time needed to explain and document the blood specimen storage and use options to parents and guardians. DHEC will also incur ongoing costs in increased staff time devoted to training health care providers and in various aspects of maintaining the stored blood specimens. See the Fiscal Impact Statement above for the projected cost to the state and its political subdivisions.

UNCERTAINTIES OF ESTIMATES:

It is difficult to estimate the cost to health care providers in the regulated community for the increased staff time to explain and document the blood specimen storage and use options to parents and guardians because facilities use a variety of staff to perform this service. Staff persons potentially used for this service include registered nurses, licensed practical nurses, and medical technicians, among others. The costs to DHEC have minimal uncertainty.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

There will be no effect on the environment. The amendments will promote public health by providing specificity for the storage and use of blood specimens obtained as a result of newborn screening for inborn metabolic errors and hemoglobinopathies.

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

There will be no detrimental effect on the environment. There may be an adverse effect on public health if the regulation is not implemented due to the lack of specific guidance on the storage and use of these blood specimens. In addition, failure to implement this regulation will affect the ability of DHEC to comply with Act 225 (May 1, 2002) as effectively as possible.

Statement of Rationale: This statement was written pursuant to S.C. Code Section 1-23-120.

Act 225 (May 1, 2002), which changed S.C. Code Section 44-37-30, directed DHEC to amend R.61-80 so as to include provisions for the storage and use of blood specimens obtained as a result of screening for inborn metabolic errors and hemoglobinopathies. This Act also clarified procedures for maintenance of confidentiality of information obtained as a result of this testing.

Although the legislative mandates were clear, staff determined that a more comprehensive review of the regulation was indicated to ensure that the regulation remains current with accepted practice for newborn screening laboratory and follow-up services in the U.S. Several recently published documents were used as part of that review. They include the following: Serving the Family From Birth to the Medical Home, A Report From the Newborn Screening Task Force, published as a supplement to Pediatrics, August 2000; U.S. Newborn Screening System Guidelines II: Follow-up of Children, Diagnosis, Management, and Evaluation, published as a supplement to The Journal of Pediatrics, October 2000; Newborn Screening Programs: An Overview of Costs and Financing, March of Dimes 2002; Clinical Laboratory Improvement Amendments 1988 (CLIA '88, Health and Human Services); Recommendations and Standardization of Neonatal Screening (Joint Report of the Association of Public Health Laboratories and the Council of Regional Genetic Networks, March 1999); and Newborn Screening Quality Assurance Program (NSQAP), Centers for Disease Control and Prevention (CDC).

In addition, staff requested copies of laws, regulations, collection forms, religious or other objection forms, consent forms, policies on specimen storage, educational brochures and other materials from newborn screening laboratory and follow-up personnel around the U.S. who are participants in the newborn screening related listserv maintained by the National Newborn Screening and Genetics Resource Center. Materials were received from several states and were useful in determining how S.C. compares with others in the U.S.

As a result of the review process, it was determined that several minor word changes were needed in addition to the legislative mandates to clarify procedures and to bring the regulation in line with current national medical and laboratory standards and terminology.

Resubmitted May 8, 2003

Document No. 2760
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 30
Statutory Authority: S.C. Code Section 48-39-10 *et seq*.

R.30-1 Statement of Policy,
R.30-8 Enforcement, and
R.30-12 Specific Project Standards for Tidelands and Coastal Waters

Synopsis:

These regulatory amendments clarify language related to the permitting of docks and bulkheads. Additionally, language is included to provide the Department more flexibility in determining appropriate penalties for violations of these regulations. The changes address questions raised by permittees and interested parties regarding the administration of the regulations, and primarily reflect current administrative practice. Generally, additional language and modifications of existing language make the Department's regulations more user-friendly and specific. See Discussion below and Statement of Need and Reasonableness herein.

Discussion of Revisions:

SECTION	CHANGE
30-1.D	Added a definition, in proper alphanumeric order, for waterfront property.
30-8.D	Inserted a sentence allowing the Department to employ alternatives such as mitigation or restoration as a means to reach enforcement resolution.
30-12.A(2)(h)	Amended language requiring dock master plans to be recorded with bearings or State Plane coordinates, and for future modifications to reference the previously recorded plat. Also amended language to clarify that the exemptions in this section relate to May 24, 2002, amendments to the regulation.
30-12.A(2)(m)	Specified a maximum handrail height of 36 inches and deleted the reference to the Southern Building code.
30-12.A(2)(o)	Reworded language to clarify the marsh and water body frontage requirements for single and multiple use docks at 75 and 50 feet respectively.
30-12.A(2)(q)	Amended language to specify which dock related structures are included in the calculation of total allowable dock square footage.

30-12.A(2)(q)(i)-(iv)	Amended language to provide consistency in describing and specifying total allowable dock square footage for various size creeks.
30-12.A(2)(q)(viii)	Deleted a redundant sentence stating that boat storage docks are included in the total allowable dock square footage.
30-12.C(1)(c)	Amended language to prohibit bulkheads and revetments along marshlands unless upland is being lost due to tidally induced erosion.

Instructions: Amend R.30-1, 8, and 12 pursuant to each individual instruction provided below with the text of the amendment.

Text of Amendments:

Amend R.30-1. D by inserting the following definition in proper alphanumeric order:

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.

Amend R.30-8.D by adding a new sentence to the end as follows:

R.30-8.D: Penalties: As stated in Section 48-39-170 any person found guilty of violation of the Act shall be punished by imprisonment of not more than six months or by a fine of not more than five thousand dollars, or both for the first offense; and by imprisonment of not more than one year or by a fine of not more than ten thousand dollars, or both, for each subsequent offense. In lieu of or in addition to any civil fine, the Department may employ other means of enforcement resolution, including but not limited to mitigation or supplemental restoration/enhancement activities.

Amend R.30-12.A(2)(h) as follows:

R.30-12.A(2) (h) Developers of the subdivisions and multiple family dwellings are encouraged to develop plans which include joint-use docks and/or community docks at the time of required dock master plans. Dock corridors on the approved Dock Master Plan must be shown with bearings or State Plane Coordinates on a recordable subdivision plat for the development, and recorded in the appropriate County Office of Deeds. Subsequent re-surveys or modifications to lots shall reference the dock corridors on the recorded subdivision plat. Reference to this DMP must be given in all contracts for lot sales. Lots in subdivisions with approved Dock Master Plans as of May 24, 2002, are exempt from R.30-12.A(2)(q)(i) as amended on May 24, 2002. R.30-12.A(2)(q)(i) as amended on May 24, 2002, does not apply to other lots of record that exist as of May 24, 2002, until the later of July 1, 2007 or the expiration of any permit issued prior to that date.

Amend R.30-12.A(2)(m) as follows:

R30-12.A(2)(m) Handrails, if proposed, shall be limited to a maximum height of 36" above the walkway or pierhead decking.

Replace R.30-12.A(2)(o) as follows:

R30-12.A(2)(o) This section applies to lots subdivided or resubdivided after May 23, 1993. Additionally, lots subdivided or resubdivided after June 27, 1997 must meet the minimum, local requirements to construct a habitable structure in order to qualify for a dock.

(i) To be eligible for a single family dock, a lot must have:

(a) 75 feet of frontage at the marsh edge, and

(b) 75 feet between its extended property lines at the location in the waterbody of the proposed dock.

(ii) Joint and multiple use docks will be considered for adjacent waterfront properties each of which must have:

(a) 50 feet of frontage at the marsh edge, and

(b) 50 feet between its extended property lines at the location in the waterbody of the proposed dock.

(iii) Lots less than 50 feet wide are not eligible for a dock.

Amend R.30-12.A(2)(q), (q)(i) – (q)(iv), and (q)(viii), as follows:

R.30-12.A(2)(q) The Department sets forth the following standards for size and use of pierheads and floating docks. Total allowable dock square footage as used in this section includes the areas of any fixed pierheads, floating docks, boat storage docks, and additional areas covered by a roof; and excludes walkways, ramps, catwalks, and areas bounded by an unroofed boat lift, mooring buoy, davit, pile or similar structure.

(i) Docks will not be permitted on creeks less than 20 feet wide as measured from marsh vegetation on either side unless one of the following two special geographic circumstances exists: a lot has greater than 500 feet of water frontage or no potential access via dockage from the opposite side of the creek. However, in no circumstances will docks be permitted on creeks less than 10 feet wide as measured from marsh vegetation on either side, nor will boat lifts be permitted on any dock allowed in creeks less than 20 feet wide. Total allowable dock square footage should normally be restricted to 50 square feet.

(ii) On creeks between 20 and 50 feet, as measured from marsh vegetation on both sides, total allowable dock square footage shall be restricted to 120 square feet unless special geographic circumstances and land uses warrant a larger structure;

(iii) On creeks between 51 and 150 feet, as measured from marsh vegetation on both sides, total allowable dock square footage shall be restricted to 160 square feet unless special geographic circumstances and land uses warrant a larger structure;

(iv) On creeks larger than 150 feet, as measured from marsh vegetation on both sides, total allowable dock square footage shall be restricted to 600 square feet unless special geographic circumstances and land uses warrant a larger structure.

(viii) Boat storage docks will be considered on a case-by-case basis and may be permitted in lieu of elevated boatlifts. A boat storage dock is a floating structure used for boat storage in lieu of a boatlift.

Amend R.30-12.C(1)(c) as follows:

R.30-12.C(1)(c). Bulkheads and revetments will be prohibited where marshlands are adequately serving as an erosion buffer, where adjacent property could be detrimentally affected by erosion or sedimentation, or where public access is adversely affected unless upland is being lost due to tidally induced erosion.

Fiscal Impact Statement:

The Department estimates no additional cost will be incurred by the state or its political subdivisions as a result of the promulgation, approval, and implementation of these amendments; therefore, no additional state funding is being requested. Existing staff and resources have been utilized in preparation of these amendments and will further be utilized in the regulatory administration resulting from the amendments.

Statement of Need and Reasonableness:

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

DESCRIPTION OF REGULATION:
R.30-1, *Definitions,*
R.30-8, *Enforcement*, and
R.30-12, *Specific Project Standards for Tidelands and Coastal Waters*

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

Legal Authority: S.C. Code Section 48-39-10 *et seq*., Coastal Tidelands and Wetlands Act, 1976

Plan for Implementation: The amendments will make changes to and be incorporated into R.30-1, 8 and 12 upon approval of the General Assembly and publication in the *State Register*.

DETERMINATION OF NEED AND REASONABLENESSOF THE REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS: These amendments are necessary to add clarity to existing regulations and enable Department staff to more effectively administer the regulatory and enforcement programs of the Coastal Division.

DETERMINATION OF COSTS AND BENEFITS: Promulgation and administration of these amendments is estimated to have no significant economic impacts to entities regulated or result in cost increases to the general public. Public benefits, however, may be evident in improved management of coastal resources through increased clarity of the regulations. See Fiscal Impact Statement.

UNCERTAINTIES OF ESTIMATES: None.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH: The amendments refine the Department's ability to manage public usage of coastal resources and enable the Department to provide a more effective response to those seeking to utilize the public trust areas of the coastal zone.

DETRIMENTAL EFFECTS ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATIONS ARE NOT IMPLEMENTED: Non-implementation of the regulations will hinder SCDHEC/OCRM's statutory directives to manage the state's coastal environment for its citizens.

Statement of Rationale Pursuant to S.C. Code Section 1-23-120(B):

These revisions provide additional clarity and specificity to the existing regulations. The revisions are not significant changes and can be described as administrative refinement of existing Department policy. No new

scientific studies or information precipitated the development of the proposed revisions. The experience and professional judgment of the Department's staff were relied upon in developing the regulation. The revisions are based on staff judgment and address questions from the regulated community regarding particular sections of the existing regulations.

Document No. 2758
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 30
Statutory Authority: S.C. Code Section 48-39-10 *et seq*.; Act 198 (March 27, 2002); 48-39-290

R. 30-1, *Statement of Policy*
R.30-13, *Specific Project Standards for Beaches and Dunes*
R.30-15, *Activities Allowed Seaward of Baseline*

Synopsis:

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

Discussion of Revisions:

SECTION	CHANGE
30-1.D(23)	Amended the definition of groin to more accurately reflect their function.
30-13.N(1)	Deleted all references to groins in this section.

30-15 Added a new section that describes the requirements for permitting groins including when groins may be permitted, the monitoring requirements if they are permitted, the applicant's demonstration of a financial ability to correct any negative impacts attributable to the permitted activity, the Department's remediation responses if erosion increases because of the permitted activity, the remedies for aggrieved parties, the requirement for maintaining public access, and the role of affected local governments.

Instructions: Amend R.30-1, 13 and 15 pursuant to each individual instruction provided with the text of the amendments below.

Text of Amendments:

Amend R.30-1(D)(23) to read as follows:

(23) Groin - a structure designed to stabilize a beach by trapping littoral drift. Groins are usually perpendicular to the shore and extend from the shoreline into the water far enough to accomplish their purpose. Groins are narrow and vary in length from less than one hundred feet to several hundred feet. Groin fields are a series of two or more groins which, because of their proximity to each other, have overlapping areas of influence. Consequently, the entire groin field must be considered as one system in order to accurately analyze beach response. The following is a list of the existing groins and groin fields in South Carolina as of 1991.

Amend R.30-13(N)(1) by striking groin from (1), striking sections (d) and (e), and relettering the remaining sections in proper alphanumeric order as follows:

30-13(N). Erosion Control

(1) Jetties and offshore breakwaters interfere with the natural transport of sediment and therefore require special permits. They shall only be permitted after thorough analysis of the project demonstrates that there will be no negative effect on adjacent areas. The following standards shall apply:

(a) A bond may be required to ensure that necessary remedial steps are taken to alleviate any adverse effects on adjacent areas caused by the installation of these structures. These remedial steps may include redesign and reconfiguration of the structures or even complete removal.

(b) A monitoring plan to assess post-project impact on adjacent areas must be approved by the Department prior to the issuance of a permit.

(c) Construction activities shall be scheduled so as not to interfere with nesting and brood-rearing activities of sea birds, sea turtles, or other wildlife species.

(d) Where feasible, jetties shall be designed to provide public recreational fishing opportunities.

(e) The applicant must have written approval from the local government which has jurisdiction in the area where the project is proposed.

Amend R.30-15 by inserting a new subsection (G) as follows and renumbering remaining item in corrected alphanumeric sequence:

30-15. Activities Allowed Seaward of Baseline.

G. Groins. Existing groins may be reconstructed, repaired, and maintained. New groins may only be allowed on beaches that have high erosion rates with erosion threatening existing development or public parks. In addition to these requirements, new groins may be constructed and existing groins may be reconstructed only in furtherance of an on-going beach renourishment effort which meets the criteria set forth in R.30-14(G), and in accordance with the following:

(a) The applicant shall institute a monitoring program for the life of the project to measure beach profiles along the groin area and adjacent and downdrift beach areas sufficient to determine erosion/accretion rates. For the first five years of the project, the monitoring program must include, but is not necessarily limited to:

(i) establishment of new monuments;

(ii) determination of the annual volume and transport of sand; and

(iii) annual aerial photographs.

Subsequent monitoring requirements must be based on results from the first five-year report.

(b) Groins may only be permitted after thorough analysis demonstrates that the groin will not cause a detrimental effect on adjacent or downdrift areas. The applicant shall provide a financially binding commitment, such as a performance bond or letter of credit that is reasonably estimated to cover the cost of reconstructing or removing the groin and/or restoring the affected beach through renourishment pursuant to subsection (c).

(c) If the monitoring program established pursuant to subsection (a) shows an increased erosion rate along adjacent or downdrift beaches that is attributable to a groin, the department must require either that the groin be reconfigured so that the erosion rate on the affected beach does not exceed the pre-construction rate, that the groin be removed, and/or that the beach adversely affected by the groin be restored through renourishment.

(d) Adjacent and downdrift communities and municipalities must be notified by the department of all applications for a groin project.

(e) An adjacent or downdrift property owner that claims a groin has caused or is causing an adverse impact shall notify the department of such impact. The department shall render an initial determination within sixty (60) days of such notification. Final agency action shall be rendered within twelve months of notification. An aggrieved party may appeal the decision pursuant to the Administrative Procedures Act.

(f) In an area in which new groins have been permitted, or in an area in which existing groins have been reconstructed or repaired, access along the beach from one groin compartment to another must be maintained or improved. If access is impacted or eliminated, temporary access around or over the groin must be established

immediately. Within thirty days of notification from the Department, a plan to provide permanent access around or over the groin must be submitted by the entity responsible for the groin construction. This permanent access plan must be implemented within ninety days of the Department approval.

(g) The applicant must have written approval from the local government which has jurisdiction in the area where the project is proposed.

Fiscal Impact Statement:

The Department estimates no additional cost will be incurred by the state or its political subdivisions as a result of the promulgation, approval, and implementation of these amendments; therefore, no additional state funding is being requested. Existing staff and resources have been utilized in preparation of these amendments and will further be utilized in the regulatory administration resulting from the amendments.

Statement of Need and Reasonableness:

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

DESCRIPTION OF REGULATION:

R. 30-1, Statement of Policy
R.30-13, Specific Project Standards for Beaches and Dunes
R.30-15, Activities Allowed Seaward of Baseline

Purpose of Regulation: The purpose of these amendments of Regulations 30-1, 30-13 and 30-15 is to reflect changes to Section 48-39-290 relating to the permitting of groins seaward of the baseline that became effective March 27, 2002. These changes make the Department's regulations regarding the construction and refurbishment of groins on the State's beaches consistent with the current statutory authority to permit these activities.

Legal Authority: S.C. Code Section 48-39-10 *et seq*., Coastal Tidelands and Wetlands Act, 1976; Act 198 (March 27, 2002); and 48-39-290.

Plan for Implementation: The amendments will be incorporated into R. 30-1, 13 and 15 upon approval of the General Assembly and publication in the State Register. The amendments will be implemented, administered, and enforced by existing staff and resources.

DETERMINATION OF NEED AND REASONABLENESS OF THE REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS: These amendments are necessary because of recent changes in statutory authority regarding the permitting of groins seaward of the baseline.

DETERMINATION OF COSTS AND BENEFITS: Promulgation and administration of these amendments is estimated to have no significant economic impacts to entities regulated or result in cost increases to the general public, primarily because these amendments codify what has been the ongoing Department policy since initial passage of the Beachfront Management Act in 1988. Public benefits, however, may be evident in improved management of coastal resources through increased clarity of the regulations. See Fiscal Impact Statement.

UNCERTAINTIES OF ESTIMATES: Implementation of new legislation always has some uncertainties, however, given the nature of the proposed amendments those uncertainties are very limited.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH: The amendments refine the Department's ability to manage public usage of coastal resources, and enable the Department to provide a more effective response to those seeking to utilize the public trust areas of the coastal zone.

DETRIMENTAL EFFECTS ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATIONS ARE NOT IMPLEMENTED: Non-implementation of the regulations as proposed will hinder SCDHEC/OCRM's statutory directives to manage the state's coastal environment for its citizens.

Statement of Rationale Pursuant to S.C. Code Section 1-23-120(B):

On March 27, 2002, Act 198 became effective. This Act amended the State's policy regarding permitting of groins along ocean shorelines. The Department supported this legislation because properly constructed and monitored groins can stabilize erosional beaches without causing significant harm to adjacent beaches. These regulatory amendments are necessary to comply with the change in law.

Resubmitted May 7, 2003

Document No. 2783
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
Statutory Authority: 48-1-10 et seq.

R.61-9 Water Pollution Control Permits

Synopsis:

This amendment will:
(1) Change the storm water discharge requirements to supplement other changes published in the State Register and effective July 27, 2001, which resulted from the promulgation of Federal round II regulations (Federal Register [FR] December 8, 1999);
(2) Establish requirements to enhance the viability of wastewater facilities;
(3) Establish requirements for standard NPDES permit language and/or conditions;
(4) Establish requirements related to operation and maintenance of wastewater facilities;
(5) Clarify the application of fecal coliform limits for land application and/or surface waters;
(6) Make miscellaneous administrative changes such as minor permit modifications, revision to permit-transfer provisions, and authorization of a permit reopener; and
(7) Revise requirements to reflect any other state regulation requirements published since the June 28, 1996, State Register amendment of R.61-9 that may require appropriate changes, modifications, additions, or deletions to this regulation.

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

Discussion of Revisions:

1. To change the storm water discharge requirements for sediment and erosion control. This will be done to supplement other changes which resulted from the promulgation of Federal round II regulations (Federal Register [FR] December 8, 1999). For the other changes, referred to as Federal, these amendments were published in the State Register and became effective July 27, 2001;

SECTION CITATION	EXPLANATION OF CHANGE
a. 122.26(b)(15)	Revise the definition of small construction activity to require permitting of smaller disturbed areas near water bodies in the coastal zone.

b. Process and criteria for designating small MS4 for NPDES permitting:

122.32(f) Add a new item stating the process, developed to comply with 40 CFR 123.35, for designating small MS4 to require NPDES permitting.

122.32(g) Add a new item stating the criteria, developed to comply with 40 CFR 123.35, for designating small MS4 to require NPDES permitting.

122.32(h) Add a new item providing for waiving designation and for phasing the designation of small MS4 as authorized by 40 CFR 123.35.

2. To require the enhancement of the viability of wastewater facilities:

SECTION CITATION EXPLANATION OF CHANGE

600 and 600.1 to 600.5 **Viability Requirements**. Add a new section with requirements to ensure that entities in the wastewater management business have the technical, managerial and financial means to comply with the Pollution Control Act, S.C. Code Ann. 48-1-10 et seq.

3. To conform the regulation with standard NPDES permit language and/or conditions:

SECTION CITATION EXPLANATION OF CHANGE

122.41(a) Add the statement that "The Department's approval of wastewater facility Plans and Specifications does not relieve the permittee of responsibility to meet permit limits."

122.41(j)(1)(i)(A) Renumber the existing item from (j)(1).

122.41(j)(1)(i)(B) Add a new item establishing a requirement to make distribution of samples mandatory.

122.41(j)(1)(i)(C) Add a new item establishing requirements to prevent disposal of samples expected to show a violation.

122.41(j)(1)(ii) Add a new item establishing requirements related to flow measurement by permittees.

SECTION CITATION EXPLANATION OF CHANGE

122.41(j)(1)(ii)(A) Add a new item establishing the requirement that flow measurement by permittees be carried out using specific, sound methods.

122.41(j)(1)(ii)(B) Add a new item establishing the requirement that authorized estimates of flow by permittees be described properly in operating records.

122.41(j)(1)(ii)(C) Add a new item establishing the requirement that calibration of flow monitoring be recorded properly.

122.41(j)(1)(iii) Add a new item allowing the Department to specify a particular day of the month for monitoring and allowing the Department to approve a variance for "extenuating circumstances".

122.41(j)(1)(iv) Add a new item allowing the Department to require the permitee to monitor the receiving stream.

505.41(a) Add the statement that "The Department's approval of wastewater facility Plans and Specifications does not relieve the permittee of responsibility to meet permit limits."

505.41(j)(1)(i)(A) Renumber the existing item from (j)(1).

505.41(j)(1)(i)(B) Add a new item establishing a requirement to make distribution of samples mandatory.

505.41(j)(1)(i)(C) Add a new item establishing requirements to prevent disposal of samples expected to show a violation.

505.41(j)(1)(ii) Add a new item establishing requirements related to flow measurement by permittees.

505.41(j)(1)(ii)(A) Add a new item establishing the requirement that flow measurement by permittees be carried out using specific sound science.

505.41(j)(1)(ii)(B) Add a new item establishing the requirement that authorized estimates of flow by permittees be described properly in operating records.

505.41(j)(1)(ii)(C) Add a new item establishing the requirement that calibration of flow monitoring be recorded properly.

505.41(j)(1)(iii) Add a new item allowing the Department to specify a particular day of the month for monitoring and allowing the Department to approve a variance for "extenuating circumstances".

4. To establish in the regulation requirements related to operation and maintenance of wastewater facilities and operating permits for wastewater collection systems:

SECTION CITATION EXPLANATION OF CHANGE

122.2(b) "Satellite sewer system" Add a new definition (moved from 610.3) related to sewer system operation and maintenance and revise to include systems approved under R.61-9.505.8.

122.2(b) "Sewer system" Add a new definition related to sewer system operation and maintenance.

122.41(e)(1) Renumber the item from 122.41(e) and add a statement requiring effective treatment.

122.41(e)(2) Add a new item requiring preparation and updating of an operating manual for wastewater treatment associated with discharge permits and describing matters to be included in the manual.

122.41(e)(3) Add a new item requiring inspection of treatment facilities by a certified operator and providing limited exceptions to the requirement.

122.41(e)(4) Add a new item establishing operating requirements for sewer systems for industries with NPDES discharges.

122.44(i)(1) Revise the item to authorize monitoring necessary for protection of the environment.

122.44(i)(1)(i) Revise the item to further authorize monitoring of each pollutant which has a significant potential to have an effect on the environment or operation of treatment or disposal facilities.

503.50 Add a new subsection requiring control of odor-producing situations and activities related to sewage sludge treatment and disposal.

504.50 Add a new subsection requiring control of odor-producing situations and activities related to industrial sludge treatment and disposal.

505.41(e)(1) Renumber from 505.41(e) and add a statement requiring effective treatment.

505.41(e)(2) Add a new item requiring preparation and updating of an operating manual for wastewater treatment associated with Land Application and State permits and describing matters to be included in the manual.

505.41(e)(3) Add a new item requiring inspection of treatment facilities by a certified operator and providing limited exceptions to the requirement.

505.41(e)(4) Add a new item establishing operating requirements for sewer systems for industries with discharges under State permits.

505.44(i)(1) Revise the item to authorize monitoring necessary for protection of the environment.

505.44(i)(1)(i) Revise the item to further authorize monitoring of each pollutant which has a significant potential to have an effect on the environment or operation of treatment or disposal facilities.

610 and 610.1 - 610.7 **Operation and Maintenance of Satellite Sewer Systems.** Add a new section establishing rules governing the operation and maintenance of wastewater sewer systems, including gravity or pressure interceptor sewers. It is the purpose of this rule to establish uniform standards for the management of sewer systems to prevent and/or minimize system failures that would lead to public health or environmental impacts.

5. To clarify the development and application of fecal coliform limits for land application and/or surface waters;

SECTION CITATION EXPLANATION OF CHANGE

505.45(i)(9) Revise the item to make clear that the requirement for fecal coliform limitations pertains to all wastewater containing significant quantities of sanitary wastewater which is applied to the land. Further revisions also establish situations in which the limits may not be required and add a definition of significant.

6. To make miscellaneous administrative changes such as minor permit modifications, revision to permit-transfer provisions, and authorization of other bases for a permit reopener;

SECTION CITATION EXPLANATION OF CHANGE

122.4(g)(1) Renumber the item from existing 122.4(g).

122.4(g)(2) Add an item prohibiting reissuance of permits, under certain conditions, when the existing permit requires connection of the wastewater to another system which is operational.

122.6(a) Revise the item to prevent continuation of an expiring permit, under certain conditions, when the existing permit requires connection of the wastewater to another system which is operational.

122.41(b) Add a reference related to limiting reissuance of permits.

122.41(j)(5) Revise the item to refer penalties to South Carolina law, the Pollution Control Act (PCA), and to reference penalties stated in PCA.

122.41(k)(2) Revise the item to revise penalties in accordance with and refer to South Carolina law, the Pollution Control Act (PCA).

122.44(c)(1) Renumber the item from existing 122.4(c).

122.44(c)(2) Add a new item which would allow including a permit reopener in a permit under limited circumstances which would be the basis for a modification of the permit.

SECTION CITATION EXPLANATION OF CHANGE

122.63(d) Revise the wording for clarity.

122.63(d)(3) Add an item allowing a minor modification in additional circumstances (related to a change of the facility name).

122.63(d)(4) Renumber this item from previous item 122.63(d)(3).

122.63(f) Add authorizations, in the previously reserved item, for minor modifications in additional circumstances (related to 208 certification requirements or change to sludge disposal landfill).

122.63(h)(1) - (h)(5) Add new items providing authorizations for minor modifications in additional circumstances not related to Federal requirements (related to changes in operator or sampling requirements, other South Carolina requirements, administrative changes, and limited pretreatment requirements).

122.64(a)(4)(i) Renumber this item from previous item 122.64(a)(4).

122.64(a)(4)(ii) Add a new item authorizing termination of a permit upon cessation of manufacturing, when the manufacturing affects the effluent limits of the permit and has ceased for a period of at least 180 days, unless determined by the Department that a greater time is necessary.

122.64(a)(5) Add a new item allowing termination of a permit upon expiration, under certain conditions, when the existing permit requires connection of the wastewater to another system which has been completed.

124.5(c)(2) Revise the item to apply upon the effective date of a reissued permit.

124.13 Revise the item to limit issues for appeal to those raised during the public comment period. This restriction is included in S.C. R.61-72, Procedures for Contested Cases, which deals with permit appeals, and in certain U.S. EPA regulations which are not required to be included in state regulations.

SECTION CITATION EXPLANATION OF CHANGE

505.1(b)(5) Add an item to refer to Pump and Haul disposal under S.C. R.61-67.

505.4(e)(1) Renumber the item from existing 505.4(e).

505.4(e)(2) Add a new item prohibiting reissuance of Land Application or State permits, under certain conditions, when the existing permit requires connection of the wastewater to another system which is operational.

505.6(a) Revise the item to prevent continuation of an expiring permit, under certain conditions, when the existing permit requires connection of the wastewater to another system which is operational.

505.8(c) Revise the item to make clear that the financial responsibility of the permittee extends to all the potential components of the system for those holding permits for septic tanks serving more than one piece of property and to clarify the applicability of the item.

505.42(c)(1)(i) Supplement the item to allow consideration of separation of the seasonal high water table by less than 15 feet based on an evaluation of the quality of the effluent being applied and also consideration of a site where the seasonal high water table is less than 15 feet at some times but the actual separation of the water table is at least 15 feet at any time application occurs. This amendment retains the nominal requirements of the existing item but allows consideration of stated special circumstances in evaluating a proposed facility.

505.63(b)(1) Renumber this item from previous item 505.63(b).
505.63(b)(2) Add an item allowing a minor modification in additional circumstances (related to the analytical method).

505.63(c)(1) Renumber this item from previous item 505.63(c)

505.63(c)(2) Add an item allowing a minor modification in additional circumstances (relating to compliance schedules when projects are completed early).

505.63(d) Revise the wording for clarity.

505.63(d)(3) Add an item allowing a minor modification in additional circumstances (related to a change of the facility name).

505.63(d)(4) Renumber this item from previous item 505.63(d)(3).

505.63(f) Add authorizations, in the previously reserved item, for minor modifications in additional circumstances (related to reduced limits for lower flows, 208 certification requirements, minor outfall relocation, or change to sludge disposal landfill).

505.63(h) Add a new item providing authorizations for minor modifications in additional circumstances not related to Federal requirements (related to changes in operator or sampling requirements, other South Carolina requirements, administrative changes, and limited pretreatment requirements).

505.64(a)(4)(i) Renumber the item from existing item (a)(4).

505.64(a)(4)(ii) Add an item authorizing termination of a permit upon cessation of manufacturing in specified circumstances.

505.64(a)(5) Add a new item allowing termination of a permit upon expiration where the permit requires connection to POTW sewer and the sewer is available.

505.64(a)(6) Renumber the item from existing item (a)(5).

7. To make miscellaneous changes such as renumbering, relocation, or revision of the existing regulation to reflect the changes resulting from the appropriate revised requirements.

SECTION CITATION EXPLANATION OF CHANGE

122.1(a) Reinsert this heading for an item from the 1996 edition of this regulation, the heading being erroneously omitted in the previous amendment.

122.2(b) "guidelines" Delete the entire definition, including the word itself.

122.2(b) "New discharger" Make a grammatical correction.

122.2(b) "Waters of the United States" (5) and (7) Correct references to parts of this definition.

122.21(m)(6) Revise the item to correct a reference.

122.21(p) Update a reference to recognize a section added in the July 27, 2001 amendment.

122.22(a)(3) Make a clerical correction.

122.24(b) Remove language to eliminate duplication of statements in the regulation (from 122 Appendix C) while maintaining similarity to the Federal regulation.

122.26(b)(4)(iv) Make a clerical correction to a reference.

122.41(j)(4) Make a wording correction for clarification.

122.41(l)(4) Make a clerical correction.

122.43 Remove the noted sentence in the item, as section 124.14 (from the Federal regulation) is not required to be and is not included in South Carolina regulations.

SECTION CITATION EXPLANATION OF CHANGE

122.44(k) Revise the item to include a reference to an abbreviation.

122.45(a) Make a clerical correction in a reference.

122.62(d)(4) Make a clerical correction in a reference.

122.62(d)(5) Eliminate an erroneous reference. (The section of Federal regulation, which was the basis of the reference, has been removed.)

122 Appendix C, last paragraph Correct the Latin name of a species of fish.

124.56 (b)(1) (ii) Make a clerical correction in a reference.

125 Parts N - R Added to reserve these sections to stylistically clarify the outline.

125.3(c)(4) Make a revision in wording for clarity.

125 Part D (Title) Make a clerical correction in a reference.

403.7(f)(1)(ii) Add a reserved item to maintain consistency with Federal numbering and to provide format consistent with standards.

503.3(a)(4) Revise the item for clarity.

503.6(c) (1) and (2) Revise the numbering for consistency with formatting standards.

503.18(b) Add a reserved item to main consistency with Federal numbering and to provide format consistent with standards.

SECTION CITATION	EXPLANATION OF CHANGE
503.43(d)(1)	Revise a definition to comply with the Federal regulation, published in the August 4, 1999 Federal Register, correcting an oversight from the July 27, 2001 amendments to this regulation.
503.45(a)(1)	Make a clerical correction in numbering.
504.1(a)(2)	Revise the item to clarify which matters require reporting.
504.9(a)	Correct a misspelling in the item.
504.9(o)	Make a clerical correction in the item.
504.18(b)	Add a reserved item to main consistency with Federal numbering and to provide format consistent with standards.
504.21(b)	Make a wording revision for clarity.
505.1(b)(2)(iii)	Revise the item to recognize the promulgation of agricultural waste regulations.
505.21(a)(1)	Revise the item to eliminate a reference to best management practices requirements, which were removed from other sections of R.61-9 in the July 27, 2001 amendments.
505.21(d)(2)(ii)	Revise a reference in the item based on the July 27, 2001 amendments.
505.21(f)(2)	Make a clerical correction.
505.41(j)(4)	Make a wording correction for clarification.
505.46(a)	Make revisions for clarification.

Instructions:

Insert the amendments to R.61-9 in the various items and sections as stated in the individual instructions stated in bold text under the Text of Proposed Amendments.

Text of Proposed Amendments:

Replace R.61-9.122 Table of Contents to read:

61-9.122. The National Pollutant Discharge Elimination System

Table of Contents

Part A - Definitions and General Program Requirements

Section

Part D - Transfer, Modification, Revocation and Reissuance, and Termination of Permits

122.61 Transfer of permits.
122.62 Modification or revocation and reissuance of permits.
122.63 Minor modifications of permits.
122.64 Termination of permits.

APPENDIX A - NPDES Primary Industry Categories
APPENDIX B - Criteria For Determining A Concentrated Animal Feeding Operation (section 122.23)
APPENDIX C - Criteria For Determining A Concentrated Aquatic Animal Production Facility (section 122.24)
APPENDIX D - NPDES Permit Application Testing Requirements (section 122.21) (Refer to 40 CFR Part 122, Appendix D)
APPENDIX E - Rainfall Zones Of The United States (Refer to 40 CFR Part 122, Appendix E)
APPENDIX F - Incorporated Places With Populations Greater Than 250,000 According To The 1990 Decennial Census By Bureau Of Census (Refer to 40 CFR Part 122, Appendix F)
APPENDIX G - Incorporated Places With Populations Greater Than 100,000 And Less Than 250,000 According To 1990 Decennial Census By Bureau Of Census (Refer to 40 CFR Part 122, Appendix G)
APPENDIX H - Counties With Unincorporated Urbanized Areas With A Population Of 250,000 Or More According To The 1990 Decennial Census By The Bureau Of Census (Refer to 40 CFR Part 122, Appendix H)
APPENDIX I - Counties With Unincorporated Urbanized Areas Greater Than 100,000, But Less Than 250,000 According To The 1990 Decennial Census By The Bureau Of Census (Refer to 40 CFR Part 122, Appendix I)
APPENDIX J - NPDES Permit Testing Requirements For Publicly Owned Treatment Works [section 122.21(j)]

Revise 122.1 and 122.1(1) by inserting item (a) to read as follows (items (2) - (4) becoming part of (a) and remaining the same):

122.1 Purpose and scope.

(a) Coverage

(1) The regulatory provisions contained in R.61-9.122 and 124 implement the National Pollutant Discharge Elimination System (NPDES) Program under sections 318, 402, and 405 of the Clean Water Act (CWA) (Public Law 92-500, as amended by Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483, Pub. L. 97-117, and Pub. L. 100-4; 33 U.S.C. 1251 et seq.) and the South Carolina Pollution Control Act, S.C. Code Ann. 48-1-10, et seq.

In 122.2(b), delete the entire definition of "guidelines", including the word itself.

In 122.2(b), revise item (2) under the definition of "new discharger" to read as follows:

(2) includes an indirect discharger which commences discharging into waters of the State after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a site for which it does not have a permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979, at a site under Department's permitting jurisdiction for which it is not covered by an individual or general permit and which is located in an area determined by the Department in the issuance of a final permit to be an area of biological concern. In determining whether an area is an area of biological concern, the Department shall consider the factors specified in section 122(a)(1) through (10). An offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig will be considered a new discharger only for the duration of its discharge in an area of biological concern.

In item 122.2(b), add, in alphabetical order, the following new definition:

"Satellite sewer system" means a sewer system that is owned or operated by one person that discharges to a system that is owned or operated by a different person. Satellite sewer systems depend on a separate person for final wastewater treatment and discharge and include systems approved under R.61-9.505.8.

In item 122.2(b), add, in alphabetical order, the following new definitions:

"Sewer system" means any system of wastewater collection lines, sewers, interceptors and pump stations, except for service connections, as defined by R.61-67. In this part, a sewer system includes “sewage system” as defined by the Pollution Control Act.

In 122.2(b), revise the definition of "Waters of the United States" to read as follows, items (1) through (4) thereunder remaining the same:

"Waters of the United States" or "waters of the U.S.";

In 122.2(b), revise item (5) under the definition of "Waters of the United States" to read as follows:

(5) Tributaries of waters identified in paragraphs (1) through (4) of this definition;

In 122.2(b), revise item (7) under the definition of " Waters of the United States " to read as follows:

(7) Wetlands adjacent to waters (other than waters which are themselves wetlands) identified in paragraphs (1) through (6) of this definition.

Revise item 122.4(g) to read as follows:

(g) (1) For any discharge inconsistent with a plan or plan amendment approved under section 208(b) of CWA, unless the Department finds such variance necessary to protect the public health, safety, and welfare;

Add new item 122.4(g)(2) to read as follows:

(2) In reissuance of a permit which requires connection to a regional sewer system or other treatment facilities under the water quality management plan under section 208 of the CWA, once the permittee is notified by the Department that the regional sewer system is operational.

Revise item 122.6(a) to read as follows, subitems (1) and following remaining the same:

(a) The conditions of an expired permit continue in force under S.C. Code section 1-23-370(b) until the effective date of a new permit (see R.61-9.124.15), except when the permit requires connection to a regional sewer system or other treatment facilities under the water quality management plan under section 208 of the CWA and the permittee has been notified by the Department that the regional sewer system is operational, if:

Revise item 122.21(m)(6) to read as follows:

(m)(6) Thermal discharges. A variance under CWA section 316(a) for the thermal component of any discharge must be filed with a timely application for a permit under this section, except that if thermal effluent limitations are established under CWA Section 402(a)(1) or are based on water quality standards, the request for a variance may be filed by the close of the public comment period under R.61-9.124.10. A copy of the request as required under R.61-9.125, Part H, shall be sent simultaneously to the appropriate State or interstate certifying

agency as required under R.61-9.125. (See 40 CFR 124.66 for special procedures for thermal variances in accordance with section 316(a) of the CWA.)

Revise item 122.21(p) to read as follows:

(p) Record keeping. Except for information required by paragraph (q) of this section, which shall be retained for a period of at least five years from the date the application is signed (or longer as required by R.61-9.503 or R.61-9.504), applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this section for a period of at least 3 years from the date the application is signed.

Revise item 122.22(a)(3) to read as follows, subitems (i) and following remaining the same:

(3) For a municipality, State, Federal, or other public agency or public facility: By either a principal executive officer, mayor, or other duly authorized employee or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes:

Revise item 122.24(b) to read as follows, (c) and following remaining the same:

(b) Definition. "Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which meets the criteria in Appendix C of this regulation, or which the Department designates under paragraph (c) of this section.

Revise item 122.26(b)(4)(iv) to read as follows:

(iv) The Department may, upon petition, designate as a large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in paragraph (b)(4)(i), (ii), and (iii) of this section.

Revise item 122.26(b)(15)(i) to read as follows, (i)(A) and following remaining the same:

(i) Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres and, in coastal counties within one-half (1/2) mile of a receiving water body (but not for single-family homes which are not part of a subdivision development), that result in any land disturbance less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The Department may waive the otherwise applicable requirements in a general permit for a storm water discharge from construction activities that disturb less than five acres where:

Remove the text of item 122.26(c)(2) and reserve the item, as follows:

(2) [Reserved.]

Add new items 122.32(f), (g), and (h) to read as follows:

(f) Process for designating small MS4 to require storm water NPDES. The Department will designate small MS4s according to the following criteria as a determination that a storm water discharge results in or has the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts.

(1) The Department will make initial designations on a watershed basis but no later than December 8, 2004 [except see the phasing considerations in (h)(3) for MS4 with population less than 10,000], as follows:

(i) All MS4 which are located within an urbanized area as defined by the U.S. Bureau of the Census are to be designated and must obtain permits, unless a waiver is granted. (Many of the municipalities and counties which are small MS4 covered by this requirement are listed in Appendix 6 of 64FR68722, December 8, 1999.)

(ii) Consider all small MS4 with a population density of at least 1000 persons per square mile and a population of at least 10,000 located outside urban areas, according to the criteria. (Six municipalities which meet these descriptions are listed in Appendix 7 of 64FR68722.)

(iii) Consider small MS4 which are adjacent to and impact a designated MS4, according to criteria.

(iv) Consider other government entities which are MS4 relevant to criteria (e.g., military installations, prisons, and state, county, or municipal school, or hospital campuses).

(v) (A) Consider MS4 for which petitions are received requesting that permitting be required.

(B) See section 122.26(f)(5) as to the period for making a determination on designation.

(2) The Department will designate small MS4 to require permitting, as follows:

(i) Small MS4 within urbanized areas;

(ii) Entire municipalities which meet the criteria;

(iii) Counties, military installations, prisons, and state, county, or municipal school or hospital campuses, giving consideration to whether solely the urbanized areas should be designated;

(iv) Small MS4 physically interconnected with and substantially affecting regulated MS4, according to the criteria.

(3) In the process of designating small MS4, the Department will inform entities of the waiver requirements of 40 CFR 123.35(d) and evaluate any requested waiver in making a designation decision.

(4) The Department will evaluate any entity for which a petition is received requesting that a permit be required, based on criteria.

(5) The Department will reevaluate to designate appropriate, additional MS4 whenever the 303(d) list is revised.

(6) The Department will reevaluate at each census only to designate additional small MS4.

(g) Criteria for Designating Small MS4 for Storm Water NPDES Permitting

(1) Any small MS4 with a population of 10,000 or more and a population density of 1000 persons per square mile meeting any criterion will be designated, unless one or more of the exceptions in (1)(i) below applies. For smaller or less-densely populated MS4, the following criteria will be used in any evaluation of whether they should be designated to require a permit.

(i) Any water body receiving storm water from the MS4 is on the South Carolina {303(d)} list of impaired waters for a pollutant discharged in the storm water of the entity or a pollutant contributing to the standards violation leading to listing, unless the MS4 shows that it meets one of the following exceptions:

(A) The runoff from the MS4 caused by a 2-inch rainstorm would be less than one (1) percent of the annual average flow of each receiving stream on the 303(d) list;

(B) The MS4 has excellent BMP in place and presents data showing exemplary quality storm water runoff;

(C) The MS4 has a low ratio of runoff to rainfall (e.g., sandy soil) and moderate (that is, not high) water table; or

(D) The MS4 is shown to have a significantly lower percentage of impermeable area than would be expected for its level of development.

(ii) Any water body receiving storm water from the MS4 is classed ONRW, ORW, or Freshwater-Trout or is open for shellfish harvesting.

(iii) Population growth in the MS4 between the 1990 and 2000 (or the two most-recent) censuses has been 10 percent or more or growth has been 2 percent or more in each of the three (3) most-recent years.

(iv) The MS4 is located within 3 miles of an urbanized area, and the MS4 under consideration discharges storm water to one or more of the water bodies which receive storm water from the urbanized area.

(v) An MS4 which has been partly (at least 25%) designated (e.g., part lying within an urbanized area). Consideration will be give to designating only the portion of a county, military installation, prison, or state, county, or municipal school or hospital campus which is in the relevant urbanized area or, for the more extensively developed counties, designating areas up to three (3) miles from the boundary of the urbanized area.

(vi) The population density of the MS4 is at least 1500 persons per square mile.

(2) The following matters may also be considered in deciding whether a permit is required.

(i) The storm water discharge of an MS4 is causing or contributing to a violation of a water quality standard.

(ii) An MS4 is subject to activity contributing or expected to contribute to storm water contamination; for example, frequent military training exercises.

(iii) An MS4 includes industries with significant particulate emissions (such as battery manufacturing {e.g., lead}, steel manufacturing, etc.)

(iv) An MS4 includes a high percentage of impermeable area (pavement, roof).

(v) An MS4 owns or operates a wastewater treatment facility which has a history of being on the NPDES "Significant Non-compliance List" for effluent violations.

(vi) An MS4 approaches but does not reach two or more of the criteria in (1) above.

(3) Government-owned educational institutions, hospital and prison complexes, and military bases outside of urban areas will be considered in the same manner as municipalities outside urban areas. That is, if they have a population of 10,000 or more and a population density of 1500 persons per square mile, they will be designated. If they are less populated or less-densely populated, they will be considered based on the criteria, if a petition requests that a permit be required.

(4) As an initial decision, designate any small MS4 which has either greater than 2000 total population with a density of at least 1500 persons per square mile or greater than 4000 total population with a density of at least 1000 persons per square mile and which is within the boundaries of or whose boundaries touch, and which drains to at least one basin which receives drainage from, a permitted or designated MS4. However, consider exceptions and "other considerations" stated elsewhere in these criteria

(h) Waivers and Phasing. The Department may waive or phase in the requirements otherwise applicable to regulated small MS4s, as defined in Sec. 122.32(a)(1) and (2) of this item, under the following circumstances:

(1) The Department may waive permit coverage for each small MS4 in jurisdictions with a population under 1,000 within the urbanized area according to section 122.32(d).

(2) The Department may waive permit coverage for each small MS4 in jurisdictions with a population under 10,000 according to section 122.32(e).

(3) The Department may phase in permit coverage for small MS4s serving jurisdictions with a population under 10,000 on a schedule consistent with a State watershed permitting approach. Under this approach, the Department will permit coverage for small MS4s that qualify for such phased-in coverage during the year assigned for permitting in the basin where it is located. Under this option, all regulated small MS4s are required to have coverage under an NPDES permit no later than March 8, 2007.

(4) The Department will periodically review any waivers granted in accordance with paragraph (h)(2) of this section to determine whether any of the information required for granting the waiver has changed. At a minimum, the reviews will be conducted once every five years during pertinent years for basin permit issuance. In addition, the Department will consider any petition to review any waiver when the petitioner provides evidence that the information required for granting the waiver has substantially changed.

Revise item 122.41(a) to read as follows:

(a) Duty to comply. The permittee must comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the Clean Water Act and the Pollution Control Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. The Department's approval of wastewater facility Plans and Specifications does not relieve the permittee of responsibility to meet permit limits.

Revise item 122.41(b) to read as follows:

(b) Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. (But see 122.4(g)(2)).

Renumber item 122.41(e) to 122.41(e)(1) and revise to read as follows:

(e) (1) Proper operation and maintenance. The permittee shall at all times properly operate and maintain in good working order and operate as efficiently as possible all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the terms and conditions of this permit. Proper operation and maintenance includes effective performance based on design facility removals, adequate funding, adequate operator staffing and training and also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

Add new items 122.41(e)(2) through (3)(ii)(E) to read as follows:

(2) The permittee shall develop and maintain at the facility a complete Operations and Maintenance Manual for the waste treatment facilities and/or land application system. The manual shall be made available for on-site review during normal working hours. The manual shall contain operation and maintenance instructions for all equipment and appurtenances associated with the waste treatment facilities and land application system. The manual shall contain a general description of the treatment process(es), the operational procedures to meet the requirements of (e)(1) above, and the corrective action to be taken should operating difficulties be encountered.

(3)(i) Except as stated in (ii) below, the permittee shall provide for the performance of daily treatment facility inspections by a certified operator of the appropriate grade as defined in the permit for the facility. The inspections shall include, but should not necessarily be limited to, areas which require visual observation to determine efficient operation and for which immediate corrective measures can be taken using the O & M manual as a guide. All inspections shall be recorded and shall include the date, time, and name of the person making the inspection, corrective measures taken, and routine equipment maintenance, repair, or replacement performed. The permittee shall maintain all records of inspections at the permitted facility as required by the permit, and the records shall be made available for on-site review during normal working hours.

(ii) The Department may make exceptions to operating requirements, if stated in the permit, as follows:

(A) Attendance by the certified operator of the appropriate grade ("the operator") is normally required only on days when treatment or discharge occurs.

(B) For performance of daily inspections, permits may allow a reduced grade of operator for limited time periods under specific circumstances when justified by the permittee in a staffing plan and approved by the Department.

(C) Reduced inspection frequency, but in no case less than weekly, may be suitable when specified in the permit, if there is complete telemetry of operating data and there is either a simple treatment system with a low potential for toxicity but requiring pumps or other electrical functions or the ability to stop the discharge for an appropriate period when necessary.

(D) In other circumstances where the permittee demonstrates the capability to evaluate the facility in an alternative manner equivalent to the inspection requirements in subparagraph 3(i).

(E) Any exceptions allowed under (A), (B), (C), and (D) above may be subject to compliance with the permit conditions.

Add new item 122.41(e) (4), as follows:

(4) (i) Purpose. This regulation establishes rules for governing the operation and maintenance of wastewater sewer systems, including gravity or pressure interceptor sewers. It is the purpose of this rule to establish standards for the management of sewer systems to prevent and/or minimize system failures that would lead to public health or environmental impacts.

(ii) Authority and applicability. Under Section 48-1-30 of the Code of Laws of South Carolina (1976 as amended), the Department is authorized to adopt such rules and regulations as may be necessary to implement the Pollution Control Act. This regulation applies to all sewer systems that have been or would be subject to a DHEC construction permit under Regulation 61-67 and whose owner owns or operates the wastewater treatment system to which the sewer discharges and which discharges under NPDES. Nothing in this regulation supersedes a more stringent requirement that may be imposed by sewer system owners that manage wastewater from satellite systems. This regulation (122.41(e)(4)) is effective when published in the State Register.

(iii) General requirements. The requirements to properly operate and maintain sewer systems are the responsibility of the system owner. General Standards. The sewer system owner must:

(A) Properly manage, operate, and maintain at all times all parts of its sewer system(s), to include maintaining contractual operation agreements to provide services, if appropriate;

(B) Provide adequate capacity to convey base flows and peak flows for all parts of the sewer system or, if capital improvements are necessary to meet this standard, develop a schedule of short and long term improvements;

(C) Take all reasonable steps to stop and mitigate the impact of releases of wastewater to the environment; and

(D) Notify the Department within 30 days of a proposed change in ownership of a sewer system.

(iv) [Reserved.]

Renumber item 122.41(j)(1) to 122.41(j)(1)(i)(A), as follows:

(i) (A) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

Add new items 122.41(j)(1)(i)(B) and (C), as follows:

(B) Samples shall be reasonably distributed in time, while maintaining representative sampling.

(C) No analysis, which is otherwise valid, shall be terminated for the purpose of preventing the analysis from showing a permit or water quality violation.

Add new items 122.41(j)(1)(ii), (iii), and (iv) as follows:

(ii) Flow Measurements.

(A) Where primary flow meters are required, appropriate flow measurement devices and methods consistent with accepted scientific practices shall be present and used to ensure the accuracy and reliability of measurements of the volume of monitored discharges. The devices shall be installed, calibrated, and maintained to ensure that the accuracy of the measurements is consistent with the accepted capability of that type of device. Devices selected shall be capable of measuring flows with a maximum deviation of not greater than 10 percent from the true discharge rates throughout the range of expected discharge volumes. The primary flow device, where required, must be accessible to the use of a continuous flow recorder.

(B) Where permits require an estimate of flow, the permittee shall maintain at the permitted facility a record of the method(s) used in "estimating" the discharge flow (e.g., pump curves, production charts, water use records) for the outfall(s) designated on limits pages to monitor flow by an estimate.

(C) Records of any necessary calibrations must be kept.

(iii) The Department may designate a single, particular day of the month on which any group of parameters listed in the permit must be sampled. When this requirement is imposed in a permit, the Department may waive or alter compliance with the permit requirement for a specific sampling event for extenuating circumstances.

(iv) The Department may require that a permittee monitor parameters in the stream receiving his permitted discharge as necessary to evaluate the need for and to establish limits and conditions and to insure compliance with water quality standards (i.e., R.61-68).

Revise item 122.41(j)(4) to read as follows:

(4) Analyses for required monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless other test procedures have been specified in the permit or, in the case of sludge use or disposal, unless otherwise specified in R.61-9.503 or R.61-9.504.

Revise item 122.41(j)(5) to read as follows:

(5) The PCA provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $25,000 or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment provided by the Clean Water Act is also by imprisonment of not more than 4 years.

Revise item 122.41(k)(2) to read as follows:

(2) The PCA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than $25,000 per violation, or by imprisonment for not more than two years per violation, or by both.

Revise item 122.41(l)(4) to read as follows, items (l)(4)(i) and following remaining the same:

(4) Monitoring reports. Monitoring results shall be reported at the intervals specified in the permit.

Revise item 122.43(b)(1) to read as follows:

(b)(1) An "applicable requirement" is a State statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit. An applicable requirement is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit, to the extent allowed in section 122.62.

Revise item 122.44(c) to 122.44(c) and 122.44(c)(1), as follows:

(c) Reopener clause:

(1) For any permit issued to a treatment works treating domestic sewage (including "sludge-only facilities"), the Department shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal promulgated under section 405(d) of the CWA. The Department may promptly modify or revoke and reissue any permit containing the reopener clause required by this paragraph, if the standard for sewage sludge use or disposal is more stringent than any requirements for sludge use or disposal in the permit or controls a pollutant or practice not limited in the permit.

Add new item 122.44(c)(2) to read as follows:

(2) A permit may include a reopener referring to a permit modification reasonably foreseen based on expected revision to law or regulation or based on the expectation of receipt of information when either of these would be the basis for a modification under R.61-9.122.62.

Revise items 122.44(i)(1) and 122.44(i)(1)(i) to read as follows, items (i)(1)(ii) and following remaining the same:

(1) To assure compliance with the permit and protection of the environment, requirements to monitor:

(i) The mass (or other measurement specified in the permit) for each pollutant limited in the permit and as necessary to characterize any other pollutant, which may be in the wastewater, which has a significant potential to have an effect on the environment or operation of treatment or disposal facilities,

Revise the introductory language of item 122.44(k) to read as follows, the sub-items remaining the same:

(k) Best management practices (BMP) to control or abate the discharge of pollutants when:

Revise item 122.45(a) to read as follows:

(a) Outfalls and discharge points. All permit effluent limitations, standards and prohibitions shall be established for each outfall or discharge point of the permitted facility, except as otherwise provided under section 122.44(k) (BMPs where limitations are infeasible) and paragraph (h) of this section (limitations on internal waste streams).

Revise items 122.62(d)(4) and (5) to read as follows:

(4) Compliance schedules. The Department determines good cause exists for modification of a compliance schedule or terms and conditions of a permit, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, in no case may an NPDES compliance schedule be modified to extend beyond an applicable CWA statutory deadline. See also section 122.63(c) (minor modifications) and paragraph (d)(13) of this section (NPDES innovative technology).

(5) When the permittee has filed a request for a variance under CWA section 301(c), 301(k), or 316(a) or for "fundamentally different factors" within the time specified in section 122.

Revise the introductory language of item 122.63(d) to read as follows, items (d)(1) and (2) remaining the same:

(d) Approve permit transfer for a Change in Ownership, as follows:

Renumber existing item 122.63(d)(3) to 122.63(d)(4) and add new item 122.63(d)(3) to read as follows:

(3) Change the name of the facility.

(4) Permits are non-transferable except with the prior consent of the Department.

Revise existing item 122.63(f) to read as follows:

(f) (1) Add or revise requirements for certification under section 208 of CWA.

(2) [Reserved.]

(3) Change sludge disposal sites from one approved landfill to another.

Add new item 122.63(h), including subitems (1) through (5), to read as follows:

(h) (1) Change the operator grade or other operator requirements, including revision to frequency of operator visits.

(2) (i) Change a sampling date stated in the permit or add a sampling date,

(ii) Add specific sample locations if unclear in the issued permit,

(iii) Reduce sampling frequency after some period of time, if specifically allowed in an issued permit.

(3) Add the treatment system reliability classification.

(4) Require submittal of closure plans.

(5) Change page numbers of the issued permit.

Renumber existing item 122.64(a)(4) to 122.64(a)(4)(i) and add new items (4)(ii) and (5) to read as follows:

(4) (i) A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit (for example, plant closure or termination of discharge by connection to a POTW).

(ii) Cessation of substantially all manufacturing operations, which are a basis for effluent limits or which contribute to a discharge, for a period of 60 days or longer.

(5) A permittee with a permit which requires connection to a regional sewer system or other treatment facilities under the water quality management plan under section 208 of the CWA is ineligible for reissuance of a permit once notified by the Department that the regional sewer system is operational.

In Appendix C of R.61-9.122, revise the definition of "Warm water aquatic animals" to read as follows:

"Warm water aquatic animals" include, but are not limited to, the Ictaluridae, Centrarchidae, and Cyprinidae families of fish; e.g., respectively, catfish, sunfish, and minnows.

Revise item 124.5(c)(2) to read as follows:

(2) In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued and effective.

Revise section 124.13 to read as follows:

124.13 Obligation to raise issues and provide information during the public comment period. All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Department's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period (including any public hearing) under section 124.10. No issue shall be raised during an appeal by any party that was not submitted to the administrative record as part of the preparation and comment on a draft permit, unless good cause is shown for the failure to submit it. Any supporting materials which are submitted shall be included in full and may not be incorporated by reference, unless they are already part of the administrative record in the same proceeding, or consist of State or Federal statutes and regulations, Department and EPA documents of general applicability, or other generally available reference materials. Commenters shall make supporting materials not already included in the administrative record available. (A comment period longer than 30 days may be necessary to give commenters a reasonable opportunity to comply with the requirements of this section. Additional time shall be granted under section 124.10 to the extent that a commenter who requests additional time demonstrates the need for such time).

Revise item 124.56(b)(1)(ii)to read as follows:

(ii) Limitations on internal waste streams under R.61-9.122.45(h);

Revise the Table of Contents of R.61-9.125 to read as follows:

61-9.125 Criteria and Standards for the National Pollutant Discharge Elimination System

Table of Contents

125.31 Criteria.
125.32 Method of application.

Parts E - G [Reserved]

Part H - Criteria for Determining Alternative Effluent Limitations Under Section 316(a) of the CWA

125.70 Purpose and scope.
125.71 Definitions.
125.72 Early screening of applications for variances under section 316(a) of the CWA.
125.73 Criteria and standards for the determination of alternative effluent limitations under section 316(a) of the CWA.

Parts I - R [Reserved]

Revise item 125.3(c)(4) to read:

(4) Limitations developed under paragraph (d)(2) of this section may be expressed, where appropriate, in terms of toxicity (e.g., "the LC50 for fat head minnow of the effluent from outfall 001 shall be greater than 25%"), provided that it is shown that the limits reflect the appropriate requirements (for example, technology-based or water-quality-based standards) of the CWA.

Revise the title of 61-9.125 Part D to read as follows:

125 Part D Criteria and Standards for Determining Fundamentally Different Factors Under Sections 301(b)(1)(A), 301(b)(2)(A) and (E) of the CWA.

Add new reserved Parts 61-9.125 N through R, as follows:

61-9.125 Parts N - R [Reserved.]

Revise the Table of Contents of R.61-9.403 to read as follows:

61-9.403 General Pretreatment Regulations for Existing and New Sources of Pollution

Table of Contents

Section

403.1 Purpose and applicability.
403.2 Objective of general pretreatment regulation.
403.3 Definitions.
403.4 State or local law.
403.5 National pretreatment standards; prohibited discharges.
403.6 National pretreatment standards; categorical standards.
403.7 Removal credits.
403.8 POTW pretreatment program requirements: development and implementation by POTW.
403.9 POTW pretreatment programs and/or authorization to revise pretreatment standards: submission for approval.
403.10 (a) [Reserved].
(b) [Reserved].

(c) [Reserved].
(d) [Reserved].
(e) State program in lieu of POTW program.
403.11 Approval procedures for POTW pretreatment programs and POTW granting of removal credits.
403.12 Reporting requirements for POTW and industrial users.
403.13 Variances from categorical pretreatment standards for fundamentally different factors.
403.14 Confidentiality.
403.15 Net/Gross calculation to adjust Categorical Pretreatment Standards to reflect the presence of pollutants in the Industrial User's intake water.
403.16 Upset provision.
403.17 Bypass.
403.18 Modification of POTW Pretreatment Programs.

Appendix A - [Reserved].
Appendix B - 65 Toxic Pollutants.
Appendix C - Industrial Categories Subject to National Categorical Pretreatment Standards.
Appendix D - Selected industrial subcategories exempted from regulation pursuant to paragraph 8 of the NRDC v. Costle consent decree.
Appendix E - Sampling Procedures.
Appendix F - [Reserved].
Appendix G - Pollutants Eligible for a Removal Credit.

Add new 1tem 403.7(f)(1)(ii) to read as follows:

(ii) [Reserved.]

Revise item 503.3(a)(4) to read as follows:

(4) A person who derives a bulk or bag material from sewage sludge shall not be required to obtain a permit if: (1) the sewage sludge meets the ceiling concentrations in Table 1 of section 503.13; the pollutant concentration limits in Table 3 of section 503.13; the Class A pathogen requirements of section 503.32(a); one of the vector attraction reduction requirements in section 503.33(b)(1) through section 503.33(b)(8), and (2) there is a permit in effect for either the preparer, generator, and/or applier of the sewage sludge.

Renumber items (c)(1) and (c)(2) under item 503.6(c) to read as follows:

(1) Domestic Sludge. Other wastes do not include auxiliary fuel, as defined in section 503.41(b), fired in a domestic sewage sludge incinerator.

(2) Industrial Sludge. See R.61-9.504 for permit requirements for Industrial sludges.

Add new item 503.18(b) to read as follows:

(b) [Reserved.]

Revise the definition of RSC under 503.43(d)(1) to read as follows:

RSC = Risk-specific concentration for arsenic, cadmium, chromium, or nickel in micrograms per cubic meter.

Renumber item (1) under 503.45 to (a)(1) to read as follows, item (2) and following remaining the same:

(a)(1) An instrument that measures and records the total hydrocarbons concentration in the sewage sludge incinerator stack exit gas continuously shall be installed, calibrated, operated, and maintained for each sewage sludge incinerator, as specified by the Department.

Add new section 503.50 to read as follows:

503.50 Odor Control Requirements. The permit holder shall use best management practices normally associated with the proper operation and maintenance of a sludge wastewater treatment site, any sludge storage or lagoon areas, transportation of sludges, and all individual activities permitted under R.61-9.503 to ensure that an undesirable level of odor does not exist.

(a) The permittee shall prepare an odor abatement plan for the sewage sludge treatment sites, any sludge storage or lagoon areas, and land application or surface disposal sites. Permittees that land-apply sludge must prepare the plan within 180 days of the effective date of this regulation. Otherwise, the permittee has one (1) year to prepare the plan. The plan must include the following topics:

(1) Operation and maintenance practices which are used to eliminate or minimize undesirable odor levels in the form of best management practices for odor control;

(2) Use of treatment processes for the reduction of undesirable odors;

(3) Use of setbacks; and

(4) Contingency plans and methods to address odor problems for the different types of disposal/application methods used.

(b) Unless otherwise requested, prior to issuance of a new or expanded land application disposal permit (either NPDES or Land Application), the Department may review the odor abatement plan for compliance with this Part (503.50). The Department may require changes to the plan as appropriate.

(c) No permittee may cause, allow, or permit emission into the ambient air of any substance or combinations of substances in quantities that an undesirable level of odor is determined to result unless preventative 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 may determine, in accordance with section 48-1-120 of the Pollution Control Act, if the odor is at an undesirable level by considering the character and degree of injury or interference to:

(1) The health or welfare of the people;

(2) Plant, animal, freshwater aquatic, or marine life;

(3) Property; or

(4) Enjoyment of life or use of affected property.

(d) After determining that an undesirable level of odor exists, the Department may require:

(1) the permittee to submit a corrective action plan to address the odor problem,

(2) remediation of the undesirable level of odor within a reasonable timeframe, and

(3) in an order, specific methods to address the problem.

(e) If the permittee fails to control or abate the odor problems addressed in this section within the specified timeframe, the Department may revoke disposal/application activities associated with the site or the specific aspect of the sludge management program.

Revise item 504.1(a)(2) to read as follows:

(2) In addition, the standards in this part include the frequency of monitoring and record-keeping requirements when industrial sludge is applied to the land. Also included in this part are reporting requirements for industrial sludge disposal when the sludge is applied to the land.

Revise item 504.9(a) to read as follows:

(a) "Apply industrial sludge or industrial sludge applied to the land" means land application of industrial sludge. Disposal of industrial sludge in a permitted solid waste unit or in accordance with a wastewater facility closeout plan approved pursuant to Regulation 61-82 is not land application.

Revise item 504.9(o) to read as follows:

(o) "Industrial Sludge" is 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, industrial septage; 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 Part 503 or R.61-9.503.

Add new item 504.18(b) to read as follows:

(b) [Reserved.]

Revise item 504.21(b) to read as follows:

(b) "Industrial sludge unit" is land on which industrial sludge is placed for final disposal. This does not include land on which industrial sludge is either stored or treated. Land does not include waters of the State, as defined in R.61-9.122.2, and does not include beneficial use activities covered under Part B which comply with agronomic rate requirements and metals limitations or other bulk industrial sludge land application activities permitted on a case-by-case basis under Part B (504.13(a)(1)).

Revise the title of R.61-9.504 Part E to read:

Part E 504.40 to 504.49 [Reserved.]

Add new section 504.50 to read as follows:

504.50 Odor Control Requirements. The permit holder shall use best management practices normally associated with the proper operation and maintenance of a sludge wastewater treatment site, any sludge storage or lagoon areas, transportation of sludges, and all individual activities permitted under R.61-9.504 to ensure that an undesirable level of odor does not exist.

(a) The permittee shall prepare an odor abatement plan for the industrial sludge treatment sites, any sludge storage or lagoon areas, and land application or land disposal sites. Permittees that land-apply sludge must prepare the plan within 180 days of the effective date of this regulation. Otherwise, the permittee has one (1) year to prepare the plan. The plan must include the following topics:

(1) Operation and maintenance practices which are used to eliminate or minimize undesirable odor levels in the form of best management practices for Odor Control;

(2) Use of treatment processes for the reduction of undesirable odors;

(3) Use of setbacks; and

(4) Contingency plans and methods to address odor problems for the different type of disposal/application methods used.

(b) Unless otherwise requested, prior to issuance of a new or expanded land application disposal permit (either NPDES or Land Application), the Department may review the odor abatement plan for compliance with this Part (504.50). The Department may require changes to the plan as appropriate.

(c) No permittee may cause, allow, or permit emission into the ambient air of any substance or combinations of substances in quantities that an undesirable level of odor is determined to result unless preventative 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 may determine, in accordance with section 48-1-120 of the Pollution Control Act, if the odor is at an undesirable level by considering the character and degree of injury or interference to:

(1) The health or welfare of the people;

(2) Plant, animal, freshwater aquatic, or marine life;

(3) Property; or

(4) Enjoyment of life or use of affected property.

(d) After determining that an undesirable level of odor exists, the Department may require:

(1) the permittee to submit a corrective action plan to address the odor problem,

(2) remediation of the undesirable level of odor within a reasonable timeframe, and

(3) in an order, specific methods to address the problem.

(e) If the permittee fails to control or abate the odor problems addressed in this section within the specified timeframe, the Department may revoke disposal/application activities associated with the site or the specific aspect of the sludge management program.

Revise item 505.1(b)(2)(iii) to read as follows:

(iii) Agricultural Waste Facilities, except those regulated under South Carolina R.61-43. The submission and information requirements shall be determined by the Department.

Add new item 505.1(b)(5) to read as follows:

(5) See South Carolina R.61-67, Standards for Wastewater Facility Construction, section 300.G, Pump and Haul Operations, related to requirements for transporting wastewater for disposal.

Renumber item 505.4(e) to 505.4(e)(1) and add new item (e)(2) to read as follows:

(e) (1) For any Land Application Permit or State permit which is inconsistent with a plan or plan amendment approved under section 208(b) of the CWA, unless the Department finds such variance necessary to protect the public health, safety, and welfare;

(2) In reissuance of a Land Application Permit or State permit which requires connection to a regional sewer system or other treatment facilities under the water quality management plan under section 208 of the CWA, once the permittee is notified by the Department that the regional sewer system is operational.

Revise item 505.6(a) to read as follows, items (a)(1) and following remaining the same:

(a) The conditions of an expired permit continue in force under S.C. Code section 1-23-370(b) until the effective date of a new permit (see R.61-9.124.15), except when the permit requires connection to a regional sewer system or other treatment facilities under the water quality management plan under section 208 of the CWA and the permittee has been notified by the Department that the regional sewer system is operational, if:

Revise item 505.8(c) to read as follows:

(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 and tile field system and relevant pumping components. If residential wastewater is not being managed, the Department may consider waiving this requirement, if justified.

Revise item 505.21(a)(1) to read as follows:

(1) Any person who discharges or proposes to discharge pollutants directly or indirectly to groundwaters of the State or to any land of the State, or who owns or operates a "sludge only facility" and who does not have an effective permit, except persons covered by general permits under R.61-9.122.28 excluded under section 505.3, or a user of a privately owned treatment works, unless the Department requires otherwise under section 505.44(m), shall submit a complete application to the Department in accordance with this section and R.61-9.124.

Revise item 505.21(d)(2)(ii) to read as follows:

(ii) In addition to any other applicable requirements in this regulation, all POTW and other "treatment works treating domestic sewage", including "sludge-only facilities", shall submit with their applications the information listed at section 122.21(q) within the time frames established in paragraph (c)(2) of this section.

Revise item 505.21(f)(2) to read as follows, sub-items (2)(i) and following remaining the same:

(f) (2) All applicants for Land Application permits and State permits (including permits being reissued or expanded) shall provide the following information to the Department, using the application form provided by the Department (additional information required of applicants is set forth in paragraph (g)):

Revise item 505.41(a) to read as follows, items (a)(1) and following remaining the same:

(a) Duty to comply. The permittee shall comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the Pollution Control Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. The Department's approval of wastewater facility Plans and Specifications does not relieve the permittee of responsibility to meet permit limits.

Renumber item 505.41(e) to 505.41(e)(1), revise the item, and add new items (e)(2) and (3) to read as follows:

(e) (1) Proper operation and maintenance. The permittee shall at all times properly operate and maintain in good working order and operate as efficiently as possible all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the terms and conditions of this permit. Proper operation and maintenance includes effective performance based on design facility removals, adequate funding, adequate operator staffing and training and also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

(2) The permittee shall develop and maintain at the facility a complete Operations and Maintenance Manual for the waste treatment facilities and/or land application system. The manual shall be made available for on-site review during normal working hours. The manual shall contain operation and maintenance instructions for all equipment and appurtenances associated with the waste treatment facilities and land application system. The manual shall contain a general description of the treatment process(es), the operational procedures to meet the requirements of (e)(1) above, and the corrective action to be taken should operating difficulties be encountered.

(3) (i) Except as stated in (ii) below, the permittee shall provide for the daily performance of treatment facility inspections by a certified operator of the appropriate grade ("the operator") as defined in the permit for the facility. The inspections shall include, but should not necessarily be limited to, areas which require visual observation to determine efficient operations and for which immediate corrective measures can be taken using the O & M manual as a guide. All inspections shall be recorded and shall include the date, time, and name of the person making the inspection, corrective measures taken, and routine equipment maintenance, repair, or replacement performed. The permittee shall maintain all records of inspections at the permitted facility as required by the permit, and the records shall be made available for on-site review during normal working hours.

(ii) The Department may make exceptions to operating requirements, if stated in the permit, as follows:

(A) Attendance by the operator is normally required only on days when treatment, land application, or discharge occurs.

(B) For performance of daily inspections, permits may allow a reduced grade of operator for limited time periods under specific circumstances when justified by the permittee in a staffing plan and approved by the Department.

(C) Reduced inspection frequency, but in no case less than weekly, may be suitable when specified in the permit, if there is complete telemetry of operating data and there is either a simple treatment system with a low potential for toxicity but requiring pumps or other electrical functions or the ability to stop the discharge for an appropriate period when necessary.

(D) In other circumstances where the permittee demonstrates the capability to evaluate the facility in an alternative manner equivalent to the inspection requirements in subparagraph 3(i).

(E) Any exceptions allowed in (A), (B), (C), and (D) above are subject to compliance with permit conditions.

Add new item 505.41(e)(4) to read as follows:

(4) (i) Purpose. This regulation establishes rules for governing the operation and maintenance of wastewater sewer systems, including gravity or pressure interceptor sewers. It is the purpose of this rule to

establish standards for the management of sewer systems to prevent and/or minimize system failures that would lead to public health or environmental impacts.

(ii) Authority and applicability. Under Section 48-1-30 of the Code of Laws of South Carolina (1976 as amended), the Department is authorized to adopt such rules and regulations as may be necessary to implement the Pollution Control Act. This regulation applies to all sewer systems that have been or would be subject to a DHEC construction permit under Regulation 61-67 and whose owner owns or operates the wastewater treatment system to which the sewer discharges and which discharges under a State permit. Nothing in this regulation supersedes a more stringent requirement that may be imposed by sewer system owners that manage wastewater from satellite systems. This regulation (505.41(e)(4)) is effective when published in the State Register.

(iii) General requirements. The requirements to properly operate and maintain sewer systems are the responsibility of the system owner. General Standards. The sewer system owner must:

(A) Properly manage, operate, and maintain at all times all parts of its sewer system(s), to include maintaining contractual operation agreements to provide services, if appropriate;

(B) Provide adequate capacity to convey base flows and peak flows for all parts of the sewer system or, if capital improvements are necessary to meet this standard, develop a schedule of short and long term improvements;

(C) Take all reasonable steps to stop and mitigate the impact of releases of wastewater to the environment; and

(D) Notify the Department within 30 days of a proposed change in ownership of a sewer system.

(iv) [Reserved.]

Renumber item 505.41(j)(1) to 505.41(j)(1)(i)(A), revise the item, and add new items (j)(i)(B) and (C) and (j)(ii) and (iii) to read as follows:

(j) Monitoring and records.

(1) (i) (A) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(B) Samples shall be reasonably distributed in time, while maintaining representative sampling.

(C) No sampling or analysis, which is otherwise valid, shall be terminated for the purpose of preventing the analysis from showing a permit or water quality violation.

(ii) Flow Measurements.

(A) Where primary flow meters are required, appropriate flow measurement devices and methods consistent with accepted scientific practices shall be present and used to ensure the accuracy and reliability of measurements of the volume of monitored discharges. The devices shall be installed, calibrated, and maintained to ensure that the accuracy of the measurements is consistent with the accepted capability of that type of device. Devices selected shall be capable of measuring flows with a maximum deviation of not greater than 10 percent from the true discharge rates throughout the range of expected discharge volumes. The primary flow device, where required, must be accessible to the use of a continuous flow recorder.

(B) Where permits require an estimate of flow, the permittee shall maintain at the permitted facility a record of the method(s) used in "estimating" the discharge flow (e.g., pump curves, production charts, water use records) for the outfall(s) designated on limits pages to monitor flow by an estimate.

(C) Records of any necessary calibrations must also be kept.

(iii) The Department may designate a single, particular day of the month on which any group of parameters listed in the permit must be sampled. When this requirement is imposed in a permit, the Department may waive or alter compliance with the permit requirement for a specific sampling event for extenuating circumstances.

Revise item 505.41(j)(4) to read as follows:

(4) Analyses for required monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless other test procedures have been specified in the permit or, in the case of sludge use or disposal, unless otherwise specified in R.61-9.503 or R.61-9.504.

Revise item 505.42(c)(1)(i) to read as follows:

(i) New or expanding rapid infiltration basins must be limited to sites where the minimum separation of seasonal high groundwater table will remain 15 feet or more below the basin bottom throughout the year. Consideration may be given to separation of the seasonal high water table by less than 15 feet based on an evaluation of the quality of the effluent being applied. Consideration may also be given to a site when the seasonal high water table is less than 15 feet at some times but the actual separation of the water table is at least 15 feet at any time application occurs.

Revise items 505.44(i)(1) and (i)(1)(i) to read as follows, items (i)(1)(ii) and following remaining the same:

(1) To assure compliance with permit limitations and protection of the environment, requirements to monitor:

(i) Each pollutant limited in the permit and as necessary to characterize any other pollutant, which may be in the wastewater, which has a significant potential to have an effect on the environment or operation of treatment or disposal facilities,

Revise item 505.45(i)(9)(i) to read as follows:

(i) Land application systems. For all POTW and for those other systems including in the influent a significant amount of, or having a significant effect from, domestic sewage, at least as stringent as 200/100 ml monthly average and 400/100 ml daily maximum, or the bacteriological standard from the nearest surface water body as defined in R.61-68.E.12(c)(8) and (9) (if this surface water is classified with a more restrictive standard), except where it can be shown that neither storm water nor wastewater will run off the disposal site to a waterway and that the isolation of the disposal site will eliminate exposure of persons to pathogens. A significant amount or effect is related to the effluent having a reasonable potential to violate the above-stated bacteriological requirement. For all other discharges, the Department may use the previously identified limits, or establish other fecal coliform limitations to reflect the specific discharge and site conditions. Domestic sewage is defined at R.61-9.503.9.

Revise item 505.46(a) to read as follows:

(a) A Land Application permit issued (except for permits issued for activities covered under 40 CFR Part 503) pursuant to State law and this regulation shall be effective for a fixed term not to exceed ten (10) years. A Land Application permit issued for activities covered under 40 CFR Part 503 pursuant to State law and this regulation

shall be effective for a fixed term not to exceed five (5) years. An issued State permit shall remain effective until cancelled or revoked by the Department.

Renumber item 505.63(b) to 505.63(b)(1) and add item (b)(2) to read as follows:

(b) (1) Require more frequent monitoring or reporting by the permittee, change the monitoring day, or make other changes which do not result in the discharge of other or more pollutants;

(2) Change or add a requirement to use an analytical method.

Renumber item (c) to (c)(1) and add new (c)(2) to read as follows:

(1) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement or

(2) Delete schedules of compliance or specific interim limits, if final limits are placed in effect.

Revise item 505.63(d) to read as follows, items (d)(1) and following remaining the same:

(d) Approve permit transfer for a Change in Ownership, as follows:

Renumber item 505.63(d)(3) to 505.63(d)(4) and add new item 505.63(d)(3) to read as follows:

(3) Change facility name.

(4) Permits are non-transferable except with the prior consent of the Department.

Revise item 505.63(f) to read as follows, including new subitems (1) through (4):

(f) (1) Add intermediate, lower-flow-capacity pages of effluent limits that have no loadings higher than the current permit (e.g., adding a 0.5 MGD page [requiring secondary treatment] if the permit already has a 1 MGD page [requiring secondary treatment]).

(2) Add or revise CWA section 208 certification requirements.

(3) [Reserved.]

(4) Change sludge disposal sites from one approved landfill to another.

Add new item 505.63(h) to read as follows, including new subitems (1) through (6)(b):

(h) (1) Change the operator grade or other operator requirements, including revision to frequency of operator visits.

(2) (i) Change a sampling date stated in the permit or add a sampling date,

(ii) Add specific sample locations if unclear in the issued permit,

(iii) Reduce sampling frequency after some period of time, if specifically allowed in an issued permit.

(3) Add the treatment system reliability classification.

(4) Require submittal of closure plans.

(5) Change page numbers of the issued permit.

(6) (a) Comply with 403.8(c) concerning pretreatment programs.

(b) Add a compliance schedule to require development of a new pretreatment program, requiring, where appropriate, that the permittee comply with 403.8(b) Deadline for Program Approval.

Renumber existing item 505.64(a)(4) to 505.64(a)(4)(i) and add new item (4)(ii) to read as follows:

(4) (i) A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit (for example, plant closure or termination of discharge by connection to a POTW).

(ii) Cessation of substantially all manufacturing operations, which are a basis for effluent limits or which contribute to a discharge, for a period of 180 days or longer.

Renumber existing item 505.64(a)(5) to 505.64(a)(6) and add new item (5) to read as follows:

(5) A permittee with a permit which requires connection to a regional sewer system or other treatment facilities under the water quality management plan under section 208 of the CWA is ineligible for reissuance of a permit once notified by the Department that the regional sewer system is operational.

(6) The permittee's failure to comply with the Environmental Protection Fees Regulation R.61-30.

Add new section R.61-9.600, including items 600.1 through 600.5, to read as follows:

61-9.600 Viability Requirements.

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600.1 Purpose and Applicability.

(a) Purpose. This regulation establishes rules to ensure that entities owning wastewater systems demonstrate the technical, managerial, and financial means to comply with the regulations as a prerequisite for receiving a wastewater discharge permit (e.g., NPDES), including permit transfers.

(b) Authority and Applicability. This Part (R.61-9.600) applies to owners of wastewater systems, including facilities to collect, transport, treat and discharge wastewater and wastewater residuals, excluding permits under R.61-56 and service connections as defined by R.61-67. This Part (R.61-9.600) does not apply to a single business or industrial site that owns a wastewater system serving only its own operations or property, excluding residences. Provisions under this Part (R.61-9.600) may be waived by the Department to remedy existing public health or environmental problems. This rule applies on the date published in the State Register.

600.2 Definitions. The definitions contained in R.61-9.122, apply to this regulation. Terms not defined in this section or sections referenced previously have the meaning given by the PCA.

"Business plan" means, in the context of R.61-9.600, a document consisting of three sub-plans, a Facilities Plan, a Management Plan, and a Financing Plan, as applicable, which shows how a wastewater system (or group of systems under a common owner) will be self-sustaining and that the owner has the commitment and capability (financial, managerial, and technical capability) to consistently comply with applicable laws and regulations governing wastewater collection, treatment, and disposal.

"Department" means the South Carolina Department of Health and Environmental Control.

"Viable wastewater system owner" means an owner who has demonstrated the financial, technical, and managerial capability to handle all aspects of operation, maintenance, and replacement of wastewater systems to reasonably assure compliance with Department laws and regulations.

"Wastewater system" means facilities for the collection, transportation, treatment, and disposal of wastewater.

600.3 General Requirements.

(a) The system owner or proposed owner is responsible for demonstrating viability in accordance with this Part.

(b) Without a demonstration that the proposed owner is or will be a viable wastewater system owner, or unless otherwise exempted, the Department may deny permit requests under R.61-67 or R.61-9. The Department may take necessary actions to bring an existing owner to the point of being a viable wastewater system owner, including requiring changes that will provide for proper operation, maintenance, and replacement of facilities, and to be in compliance with applicable statutes and regulations concerning sewerage systems.

(c) In determining whether a wastewater system owner is viable, the Department may consider information regarding how the owner has demonstrated viability of any existing operations in the state, information provided in a business plan, plans for setting sewer service rates in accordance with rules of the S.C. Public Service Commission (where applicable), and other relevant information. If an owner owns other wastewater systems, the Department may consider the overall resources of the owner such that an individual wastewater system does not have to be financially self-sustaining.

600.4. New Wastewater Systems and Transfers of Systems.

(a) Prior to issuance of a wastewater permit under R.61-9 or R.61-67, including a transfer of an NPDES or Land Application permit, the proposed owner must demonstrate viability per the definition of "Viable wastewater system owner."

(b) If the proposed wastewater system owner does not own other wastewater systems in South Carolina, the demonstration must include the submission of a business plan which demonstrates how the system will be self-sustaining and that the owner has the commitment and capability (financial, managerial, and technical capability) to consistently comply with applicable laws and regulations governing wastewater collection, treatment, and disposal.

(c) If the proposed wastewater system is connecting to an existing system where the ownership will be the same (proposed and existing system having the same owner), this demonstration is not required.

(d) If the proposed wastewater system owner already owns other wastewater systems in South Carolina, the Department may consider financial and managerial information related to the owner's other wastewater system operations in the state.

600.5 Existing Systems. If an existing wastewater system has operation, maintenance or compliance problems warranting a formal enforcement action, the Department may require, in an order, the owner to submit a business plan to facilitate viability by identifying the elements necessary to perform proper operation, maintenance, and improvements and to stay in compliance (or come into compliance) with applicable regulatory requirements.

Add new section R.61-9.610, including items 610.1 through 610.7, to read as follows:

61-9.610 Operation and Maintenance of Satellite Sewer Systems.

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610.1 Purpose. This regulation establishes rules for governing the operation and maintenance of wastewater sewer systems, including gravity or pressure interceptor sewers. It is the purpose of this rule to establish standards for the management of sewer systems to prevent and/or minimize system failures that would lead to public health or environmental impacts.

610.2 Authority and applicability. Under Section 48-1-30 of the Code of Laws of South Carolina (1976 as amended), the Department is authorized to adopt such rules and regulations as may be necessary to implement the Pollution Control Act. This regulation applies to all sewer systems that have been or would be subject to a DHEC construction permit under Regulation 61-67, except for those whose owner owns or operates the wastewater treatment system to which the sewer discharges and which discharges under NPDES or a State permit (see 122.41(e)(4) and 505.41(e)(4)), and to systems approved pursuant to 61-9.505.8. Nothing in this regulation supersedes a more stringent requirement that may be imposed by sewer system owners that manage wastewater from satellite systems. This regulation is effective when published in the State Register.

610.3. General requirements. The requirements to properly operate and maintain sewer systems are the responsibility of the system owner. General Standards. The sewer system owner must:

(a) Properly manage, operate, and maintain at all times all parts of its sewer system(s), to include maintaining contractual operation agreements to provide services, if appropriate;

(b) Provide adequate capacity to convey base flows and peak flows for all parts of the sewer system or, if capital improvements are necessary to meet this standard, develop a schedule of short and long term improvements;

(c) Take all reasonable steps to stop and mitigate the impact of releases of wastewater to the environment; and

(d) Notify the Department within 30 days of a proposed change in ownership of a sewer system.

610.4 [Reserved.]

610.5 [Reserved.]

610.6 Permitting of satellite sewer systems. The Department may issue permits for the operation of a satellite sewer system in cases where the sewer system owner does not have an NPDES or Land Application discharge permit for the wastewater for that sewer system. Such permits do not supersede or replace the requirement under R.61-67.100.E.7 to obtain an approval to place a system into operation.

(a) Authority for general permits for sewer system operation. The requirements for operation and maintenance of a sewer system may be set forth in a general permit issued by the Department. If a general permit is issued, the Department has the authority to apply general permit coverage to system owners and subsequently enforce the provisions of the general permit. For existing systems, the provisions of the permit will be effective upon notice to individual system owners. For proposed systems, they will obtain coverage upon issuance of a construction permit issued pursuant to R.61-67 if the owner has demonstrated it will be a viable operator in accordance with R.61-9.600.

(b) Authority for individual permit for sewer system operation. If a general permit does not address the circumstances appropriate to a sewerage system proposed for permitting under R.61-67, the Department may require an individual operating permit.

(c) Sewer system permit coverage transfers. If a sewer system is sold, coverage under the permit must be transferred by the Department to a new owner before the previous owner is free of the responsibilities outlined in the permit. A request to transfer the permit may be denied if the new owner or proposed new owner cannot demonstrate that it will be a viable operator in accordance with R.61-9.600.

610.7 Sewer system permit (general and individual) administration.

(a) The Department may issue a permit to implement the requirements of R.61-9.610. Once a permit is issued and effective, the Department has the authority to grant or deny coverage or deny transfer of coverage.

(b) Where applicable, applicants for permits must submit their applications on permit application forms designated by the Department.

(c) Permit issuance or modification of a permit shall be preceded by a 30-day public comment period.

(d) Term of permits. Permits issued under R.61-9.610 may be issued without a finite term.

Fiscal Impact Statement:

A significant cost of approximately $328,200 per year is expected only for small municipal separate storm sewer systems required to be permitted by criteria under these amendments, as further described in the Statement of Need and Reasonableness below.

Statement of Need and Reasonableness Pursuant to S.C. Code Sections 115(C)(1) - (3) and (9) - (11):

DESCRIPTION OF REGULATION: R.61-9. Water Pollution Control Permits.

Purpose: To amend Regulation 61-9 for a number of different purposes: supporting requirements included in NPDES Permits, establishing requirements and permits for proper operation of sewer systems, establishing requirements to control erosion and sediment in construction projects, and establishing criteria for designating the small municipal separate storm sewer systems required to obtain NPDES permits.

Legal Authority: This change to state law is authorized by S.C. Code Sections 48-1-10 through 350 and the Clean Water Act, 33 U.S.C. 1251 et seq., and regulations promulgated in the Federal Register (FR) of December 8, 1999.

Plan for Implementation: The additional work required by the proposed amendments, mainly involving additional storm water efforts, will total about one (1) man-year per year. As budget constraints appear to prohibit addition of positions, the additional work will be integrated with present operations and spread among several existing positions (storm water permitting, wastewater compliance, wastewater enforcement, Environmental Quality Control districts). The permitting of small municipal separate storm sewer systems (MS4) can be expected to displace some work of the Agency onto the MS4. If the displacement does not balance the additional work, there can be expected shifts in resources for existing activities.

DETERMINATION OF NEED AND REASONABLENESS FOR THE REGULATION AND EXPECTED BENEFIT:

PROPOSAL 1. To change the storm water discharge requirements to provide the consolidation of control criteria for sediment and erosion control. This will be done to supplement other changes which resulted from the promulgation of Federal Phase II regulations (Federal Register [FR] December 8, 1999). For the other changes, referred to as Federal, these amendments were published in the State Register and became effective July 27, 2001;

a. The change to Federal requirements on December 8. 1999, to lower the area of disturbance requiring a discharge, NPDES, permit from five (5) acres to one (1) acre brings the State and Federal requirements into close agreement and is a favorable time to combine the programs. These changes are included in item 122.26(b)(15).

b. The Federal regulations promulgated on December 8, 1999, established requirements for regulation provisions which must be included in state regulations. These requirements were met in the South Carolina R.61-9 amendments promulgated July 27, 2001. The Federal regulation also required that the states establish criteria, which could be unique to each state, for designating which municipal separate storm sewer systems (MS4) (that are not inside an urbanized area) must apply for and obtain NPDES permits for storm water discharges. The criteria are included in these amendments at subsections 122.32(f), (g), and (h). As the specific criteria are not required by Federal regulation, this amendment could not be included in the earlier process, which did not require legislative approval.

PROPOSAL 2. To require the enhancement of the viability of wastewater facilities:

There have been a number of situations where the owner of a wastewater facility abdicated his responsibilities for operation, because of death, bankruptcy, or other reason, leaving homeowners connected to a sewer system for which no one accepted responsibility for operation and maintenance. In these cases the potential existed, in at least one case, continues to exist, for failure of sewer system components leading to sewer system overflows or treatment system deterioration leading to poor treatment and violations of discharge limits and stream standards. The viability section of these amendments, at R.61-9.600 will require that facility owners demonstrate that they have the resources and ability to continue to maintain their sewer and/or treatment system on a continuing basis. The proposal authorizes denying a permit where an owner is not viable. An exclusion from the requirement has been inserted for industries serving only their own operations or property, unless there is service to residences.

PROPOSAL 3. To conform the regulation with standard NPDES permit language and/or conditions;

Based on comments from the public, the Department has concluded that requirements which are applied consistently in permits should ordinarily be included in regulation. Matters which have been or will be consistently included in permit requirements are included in these amendments, as follows:

a. The statements, at 122.41(a) and 505.41(a), that the Department issuing a construction permit does not relieve a permittee of the responsibility to comply with his discharge permit.

b. Language, at 122.41(j)(1) and 505.41(j)(1), stating specific requirements related to sampling and flow measurement at the treatment plant.

PROPOSAL 4. To establish in the regulation requirements related to operation and maintenance of wastewater facilities and operating permits for wastewater collection systems;

a. The following matters which have consistently been included in permit requirements are included in these amendments:

(1) Items 122.41(e)(1) and 505.41(e)(1) are proposed to include "effective performance based on design facility removals, adequate funding, adequate operator staffing and training" in the description of "proper operation and maintenance";

(2) The requirement, at 122.41(e)(2) and 505.41(e)(2), that permittees with wastewater treatment systems develop and keep current operation and maintenance manuals;

(3) Specific requirements, at 122.41(e)(3) and 505.41(e)(3), for operator attendance and activities at wastewater treatment plants;

(4) Item 122.41(j)(1)(ii)(A) and 505.41(j)(1)(ii)(A) would require that flow measurement accuracy be within 10 percent of the actual flow; and

(5) Item 122.41(j)(1)(iii) and 505.41(j)(1)(iii) would authorize the Department to specify a sample day each month, assuring that the Department can plan an inspection for a day when the permittee is monitoring.

b. Items 122.41(j)(1)(i)(B) and (C) would state restrictions so that monitoring will be carried out in a manner representing the actual discharge.

c. Item 122.41(j)(1)(iv) proposes to authorize the Department to require a permittee to monitor the stream receiving his discharge.

d. [Reserved.]

e. Revisions at 122.44(i)(1) and 505.44(i)(1) would authorize monitoring requirements necessary for protection of the environment and monitoring of each pollutant which may be in the wastewater and has a significant potential to have an effect on the environment or operation of treatment or disposal facilities.

f. These amendments propose new subsections 503.50 and 504.50 requiring control of odor-producing situations and activities related to, respectively, sewage and industrial sludge treatment and disposal.

g. Many sewer systems have maintenance, loading, infiltration, or inflow conditions which lead to occasional or frequent overflows of sewage which reach waters of the state. These amendments, in new definitions in 122.2(b) and new items 122.41(e)(4) and 505.41(e)(4) and new sections R.61-9.610, propose to require that sewer systems establish programs which will prevent sewer system overflows.

PROPOSAL 5. To clarify the development and application of fecal coliform limits for land application and/or surface waters;

Apparently, there is limited uncertainty in the reading of present item 505.44(i)(9) related to development and application of fecal coliform limits for land application and/or surface waters. This amendment is intended to

remove that uncertainty. In addition reference is added to limited conditions which would allow different limits. Further, a definition of significant has been included.

PROPOSAL 6. To make miscellaneous administrative changes such as minor permit modifications, revision to permit-transfer provisions, and authorization of other bases for a permit reopener;

a. 122.4(g)(2), 122.6(a), 122.64(a)(5). These amendments, respectively, prohibit reissuance of a permit, prevent the continuation of a permit upon expiration, and allow termination of a permit, under certain conditions, when the existing permit requires connection of the wastewater to another system which has been completed.

b. 122.41(b). This amendment makes a reference to the prohibition of reissuance mentioned in "a" above.

c. 122.41(k)(2). This amendment provides references to the penalties for violations stated in the Pollution Control Act, S.C. Code Ann. 48-1-10 et seq.

d.122.44(c)(2). This amendment allows including a permit reopener in a permit under limited circumstances which would be the basis for a modification of the permit.

e. 122 and 505.63 (c), (d), (f), and (h). These amendments authorize minor permit modifications under additional stated circumstances. Minor modifications must be agreeable to the permittee and do not require public notice.

(1) 505.63(b)(2). This amendment authorizes minor permit modifications to specify in the permit an analytical method, under limited circumstances.

(2) 122 and 505.63(d)(3). These amendments authorize minor permit modifications to change the name only of the permittee.

(3) 505.63(f)(1). This amendment authorizes minor permit modifications to allow adding limits to permits for lower flow with the same level of treatment. With the restriction stated above, such permit modifications would make the permit more stringent, allowing less pollutant to be discharged.

(4) 122 and 505.63(f)(2). These amendments authorize minor permit modifications to add or revise requirements for certification under section 208 of the Clean Water Act.

(5) [Reserved.]

(6) 122.63(f)(3) and 505.63(f)(4). These amendments authorize minor permit modifications to change sludge disposal sites designated in the permits from one approved landfill to another.

(7) 122.63(h) These amendments authorize minor permit modifications which are solely based on South Carolina regulation, not affected by Federal NPDES regulations.

(8) 122 and 505.63(h)(1). These amendments authorize minor permit modifications to change the operator grade or other operator requirements, including revision to frequency of operator visits.

(9) 122 and 505.63(h)(2). These amendments authorize minor permit modifications to change the sampling date or location or, if specifically allowed in an issued permit, reduce sampling frequency after some period of time.

(10) 122 and 505.63(h)(3). These amendments authorize minor permit modifications to add the treatment system reliability classification.

(11) 122 and 505.63(h)(4). These amendments authorize minor permit modifications to require submittal of closure plans for treatment systems.

(12) 122 and 505.63(h)(5). These amendments authorize minor permit modifications to change page numbers of issued permits.

(13) 505.63(h)(6). This amendment authorizes minor permit modifications to comply with 403.8(c) concerning a pretreatment program or to add a compliance schedule to require development of a new pretreatment program, requiring, where appropriate, that the permittee comply with 403.8(b) Deadline for Program Approval.

f. 122.64(a)(4)(ii). This amendment allows termination of a permit for a facility where manufacturing operations have ceased, under limited conditions. Continuing a permit in effect for a facility which has no discharge causes the allocation of some portion of the capacity of the receiving water body when there is no basis for such allocation. Further, a facility subsequently starting operation at the same site will almost always have significantly different operations, needing different permit conditions. The term after closure when permit termination is authorized is 180 days.

g. 124.5(c). This amendment makes clear that, under appropriate conditions, an existing permit remains in effect until a reissued permit goes into effect.

h. [Reserved.]

i. 124.13. The amendment to this item prohibits raising an issue during appeal of a permit when the issue was not raised during preparation of the permit or during the public comment period. This prohibition is included in regulations which govern NPDES permit appeals, S.C. R.61-72, Procedures for Contested Cases, and U.S. Environmental Protection Agency NPDES regulation 40 CFR 124.76.

j. 505.1(b)(5) This amendment refers to requirements (in South Carolina R.61-67, Standards for Wastewater Facility Construction, section 300.G, Pump and Haul Operations) for transporting wastewater for disposal.

k. 505.8(c). This amendment makes clear that the financial responsibility of the permittee extends to all the potential components of the system for those holding permits for septic tanks serving more than one piece of property and clarifies the applicability of the item.

l. 505.42(c)(1)(i). This amendment allows consideration of separation of the seasonal high water table by less than 15 feet based on an evaluation of the quality of the effluent being applied and also consideration of a site where the seasonal high water table is less than 15 feet at some times but the actual separation of the water table is at least 15 feet at any time application occurs. This amendment retains the nominal requirements of the existing item but allows consideration of stated special circumstances in evaluating a proposed facility.

m. 505.64(a)(4)(ii). This amendment allows termination of a permit for a facility where manufacturing operations have ceased, under limited conditions. Further, a facility subsequently starting operation at the same site will almost always have significantly different operations, needing different permit conditions. The term after closure when permit termination is authorized is 180 days.

PROPOSAL 7. To make miscellaneous changes such as renumbering, relocation, or revision of the existing regulation to reflect the changes resulting from the appropriate revised requirements.

a. 122.24(b) To eliminate duplication of statements in the regulation (from 122 Appendix C) while maintaining similarity to the Federal regulation, this amendment eliminates the redundant language.

b. 505.1(b)(2)(iii). Revise the item to recognize the promulgation of agricultural animal waste regulations.

c. Revision of the following items consists only of clerical correction:

(1) 122.1(a)

(2) 122.2(b) "Guidelines"

(3) 122.2(b) "New discharger", item (2).

(4) 122.2(b) "Waters of the State" and items (5) and (7) thereunder.

(5) 122.21(m)(6)

(6) 122.21(p)

(7) 122.22(a)(3)

(8) 122.26(b)(4)(iv)

(9) 122.41(j)(4)

(10) 122.41(l)(4)

(11) 122.43(b)(1)

(12) 122.44(k)

(13) 122.45(a)

(14) 122.62(d)(4)

(15) 122.62(d)(5)

(16) 122.63(d) and (d)(4).

(17) 122 Appendix C "Warm water aquatic animals"

(18) 124.56(b)(1)(ii)

(19) 125.3(c)(4)

(20) 125 Part D (Title)

(21) 403.7(f)(1)(ii)

(22) 503.3(a)(4)

(23) 503.6(c)(1) and (2)

(24) 503.18(b)

(25) 503.43(d)(1) RSC

(26) 503.45(a)(1)

(27) 504.1(a)(2)

(28) 504.9(a)

(29) 504.9(o)

(30) 504.18(b)

(31) 504.21(b)

(32) 505.21(a)(1)

(33) 505.21(d)(2)(ii)

(34) 505.21(f)(2)

(35) 505.41(j)(4)

(36) 505.46(a)

DETERMINATION OF COSTS AND BENEFITS:

Proposal 1.

a. [Reserved.]

b. [Reserved.]

c. Process and criteria for designating small municipal separate storm sewer systems (MS4) to be permitted under NPDES.

(1) The Federal regulation (40 CFR 123.35, promulgated in the Federal Register December 8, 1999) specifically designated 48 South Carolina (apparent) MS4 to be permitted. Revisions to the urbanized areas based on growth shown in the 2000 census and revised definition of the areas by the U.S. Bureau of Census have added 22 more MS4 to those located within urbanized areas. There is no cost under this regulation for those MS4, as the designation was done separate from this regulation.

(2) The Federal regulation also designated a category of unnamed MS4 for permitting, consisting of all MS4 which are located within any U.S. Census Bureau-defined Urbanized Area. MS4 may be municipalities, counties, or government-owned facilities such as schools, hospitals, prisons, or military installations. The Department must determine which MS4 fall into this category. However, there is again no cost under this regulation for those MS4, as the designation was done separate from this regulation.

(3) The process and criteria developed for this proposed regulation were, in general, required by the Federal regulation to be developed, and the regulation stated specific matters to be considered in developing the process and criteria. But the specifics were developed by the Department.

(a) Therefore, our approach is to estimate what the Federal requirement was and what the additional requirements of our criteria are; then estimate what the cost of the additional requirements would be.

One aspect of this is that the Federal Register did list 6 MS4 as being appropriate for designation. And the South Carolina criteria were developed to designate them, so this is a Federal requirement.

(b) Based on information presently available to the Department, who is expected to be designated?

(i) The six municipalities listed in the FR (Clemson, Easley, Gaffney, Greenwood, Newberry, Orangeburg). These are considered as being designated by Federal requirements;

(ii) Beaufort; Conway; Greer; Hilton Head Island; North Myrtle Beach; Pendleton.

(iii) S.C-defined small, adjacent incorporated places. But these will be in the urbanized areas(UA), not adjacent, because the proposed S.C. population density criterion for designation is set at a level which, under the Federal Census Bureau definition, will make them urbanized. With their being inside the UA, the Federal regulation designates them, not the State regulation; that is, any incorporated place within the UA must be permitted, per the Federal regulation. (Another way to say this is that it is likely that there will not be any MS4 which meets the S.C. criteria for being a small, adjacent MS4.);

(iv) Schools, hospitals, prisons, military installations which meet the criteria. (It is not definite that there are any of these which are not in an urbanized area. These may include Clemson University, Coastal Carolina University, Beaufort Naval/Marine housing, Marine Corps Air Station/Beaufort, and Parris Island Marine base.)

(c) What will the cost be?

(i) EPA estimates, from the 12/8/99 FR, were used in the information on the amendments completed 7/27/01. This was based on the number of inhabitants permitted. So an estimate in that manner would require an estimate of the total number of inhabitants affected, meaning a list of places to be designated is necessary. For the revisions based on the FR of 12/8/99 and related to storm water, there will be sizeable costs. U.S. EPA estimates that compliance with regulation requirements will cost permittees approximately $9.18 per household per year. The Bureau of water uses an estimate of the average population per household of a little more than 3, so that the cost per person is about $3.

(ii) Preliminary evaluation of the criteria indicates that 6 towns (in addition to the 6 in Appendix 7 of the 12/8/99 FR) will be designated under the criteria developed by S.C. DHEC (rather than under direct designation under U.S. EPA requirements). The total population of these towns is about 89,400, and the total annual cost of compliance for those towns is estimated as $268,200. Additionally, there are 2 South Carolina facilities (the U.S. military bases would not cost South Carolina anything) which might be designated under the criteria. However, there is not enough information in hand to even determine whether each of those is an MS4 (owns and operates a separate storm sewer system). But if Clemson University and Coastal Carolina University each has a population of 10,000 and the same estimate of the cost per person is used, the annual cost for compliance would be about $60,000.

(iii) The estimated total annual cost for all South Carolina MS4 designated under these amendments is **$328,200** per year. (Benefits may be dispersed widely and not necessarily to those bearing the costs.)

(4) U.S. EPA estimated the national benefits from the water quality improvements expected from the enhanced storm water regulations. The benefits consist of improving the suitability of waters for boating, fishing, and swimming, with estimates of the beneficial value being related to dollar amounts that respondents to a survey would be willing to pay for the improvements. The U.S. EPA estimates showed annual benefits of between $670,000,000 and $1,630,000,000. The maximum benefits significantly exceed costs. Further, U.S. EPA states, "There are additional benefits to storm water control that cannot be quantified or monetized." These benefits

include "... improved aesthetic quality of waters, benefits to wildlife and threatened and endangered species, cultural values, and biodiversity benefits." Further benefits mentioned by U.S. EPA which could not be specifically valued are "... flood control benefits, ... increased property value, ... ecological benefits ...."

Proposal 2. To require the enhancement of the viability of wastewater facilities: Any actual cost of the regulation to permittees will be for development of a business plan. However, the outcome of development and use of the plan will be for owners to act in ways which can be expected to result in sustaining the business for the long term.

Proposal 3. To conform the regulation with standard NPDES permit language and/or conditions: None of the items under this category has any expected additional cost. They are already required by existing permits.

Proposal 4. To establish in the regulation requirements related to operation and maintenance of wastewater facilities and operating permits for wastewater collection systems:

a. There are additional items of the amendments which are included in existing permits and are related to treatment system operation. As they are existing requirements, there is no additional cost because of the amendment.

(1) 122.41(e)(2) and 505.41(e)(2) require permittees to develop and maintain an operations manual for wastewater treatment plants.

(2) 122.41(e)(3) and 505.41(e)(3) require permittees to provide for treatment facility inspections by a properly certified operator in the specified manner and with stated exemptions.

(3) 122.41(j)(1) and 505.41(j)(1) state specific requirements for sampling and flow measurement at wastewater treatment plants.

b. Proposed 122.41(j)(1)(iv) would require monitoring of the receiving stream where necessary to protect the stream. The occasions where the requirement is applied should be infrequent so that the costs will be minimal.

c. 122.44(i)(1)(i) and 505.44(i)(1)(i) allow a permit to require monitoring of pollutants which have a potential to have an adverse effect on the environment or on treatment. This is expected to apply to particularly toxic pollutants or particularly sensitive receiving waters. This should be an infrequent requirement as, with a high potential for environmental problems, a limit would likely be established, for which the existing regulation authorizes monitoring.

d. These amendments propose new subsections 503.50 and 504.50 requiring plans to control odor-producing situations and activities related to, respectively, sewage and industrial sludge treatment and disposal. Proper operation and maintenance of well-designed wastewater facilities will prevent most odor problems, so that costs for complying with this requirement will be minimal.

e. For requirements of new items 122.41(e)(4) and 505.41(e)(4) and new section 610, Operation and Maintenance of Sewer Systems, there will be minimal cost to the state for the implementation. Costs of operating permits will be kept to a minimum by issuing general permits, where appropriate. Regulated entities will see widely varying costs ranging from $0 to $50 per tap per year depending on the size of the collection system, current condition of the collection system, operation and maintenance programs currently in place, and management and planning efforts for capital needs. Costs to regulated entities may be offset by system benefits from long-term savings in maintenance, repair, and rehabilitation costs stemming from better management and planning. Additional water quality and public health benefits will be realized due to reduced numbers of sewer system overflows.

Proposal 5. To clarify the development and application of fecal coliform limits for land application and/or surface waters: As this item involves clarification of an existing requirement, there is no additional cost.

Proposal 6. Miscellaneous administrative changes such as minor permit modifications, revision to permit-transfer provisions, and authorization of other bases for a permit reopener:

a. In proposed 122.4(g)(2), 122.6(a), and 122.64(a)(5), reissuance of a permit is prohibited if the permit requires that the system connect to a regional sewer system and a system is available. There should be no cost to this requirement as the regulation simply reinforces a requirement which is stated to be included in an issued permit.

b. Several changes under 122.63 and 505.63 allow additional types of minor NPDES permit modifications. Any such modification must involve agreement of the permittee, by the definition of a minor modification. Therefore, any cost can be expected to be minimal.

c. 122.64(a)(4) and 505.64(a)(4) each state an additional basis for terminating NPDES permits, which is closure of plant operations for a period of more than 180 days. The termination would necessitate a new application and issuance of a new permit before operation can resume. However, when a facility has stopped operation for a significant period, almost any new operation which starts would be different enough from the previous operation to require a new permit. Therefore, there is no additional cost for this provision.

d. 122.64(a)(5) states an additional basis for terminating NPDES permits upon expiration, which is that the permit requires, based on a 208 plan, connection of the wastewater from the facility to another wastewater system which has become available. As this regulation provision supports requirements stated in permits and 208 plans, there is no additional cost for the regulation.

Proposal 7. Miscellaneous changes such as renumbering, relocation, or revision of the existing regulation to reflect the changes resulting from the appropriate revised requirements: Items in this category are administrative only and do not entail additional costs to the State or to permittees.

UNCERTAINTIES OF ESTIMATES:

The estimates for costs of complying with storm water NPDES permits by small municipal separate storm sewer systems stated by U.S. EPA in the Federal Register show significant variation, both for cost estimates and benefit estimates. Furthermore, preliminary information from cost estimates related to permits issued in South Carolina suggest that U.S. EPA estimates of costs are significantly lower than actual costs.

Any significant costs for complying with the viability requirements would occur with sewer systems with inadequate business practices. Costs of establishing sound programs in such situations are inherently uncertain.

The estimates of cost for the requirements on operation and maintenance of sewer systems are quite variable, relating to age of the system, existing state of maintenance, and the extent of the present program.

EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH:

1. To change the storm water discharge requirements to provide the consolidation of control criteria for sediment and erosion control.

a. Revisions to storm water regulations for small municipal separate storm sewer systems (MS4) can be expected to lead to significant improvements in water quality near many of the newly-regulated entities.

b. Permitting of small municipal separate storm sewer systems (MS4) under these criteria can be expected to improve the water quality of streams to which their storm water discharges. This will contribute to achieving water quality standards and removing the streams from the list of impaired waters (section 303[d] of the Clean Water Act).

2. Requirements to enhance the viability of wastewater facilities

Accomplishing the objectives of the viability regulation, R.61-9.600, will prevent uncontrolled sewer overflows and the discharge of inadequately treated wastewater which may occur when attention, expertise, and financial resources are not available for wastewater facilities.

3. Requirements related to operation and maintenance of wastewater facilities

Accomplishing the objectives of proposed Operation and Maintenance of Sewer Systems, R.61-9.610 (also stated in R.61-9.122.41(e)(4) and 505.41(e)(4)), will prevent uncontrolled sewer overflows by requiring the development and implementation of informed, written programs of maintenance and improvement of sewer systems.

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

Many water bodies in South Carolina are presently impaired by pollutants which occur in storm water. Failure to implement the small MS4 amendments will significantly delay or prevent the improvements needed to consistently attain water quality standards in many of these streams.

There are significant numbers of overflows from South Carolina sewer systems, which typically cause violations of stream standards and the potential for human health impacts. Failure to implement the viability and sewer system operation and maintenance amendments will allow many of these events to continue to occur.

Statement of Rationale Pursuant to S.C. Code Section 1- 23-120:

1. Change the storm water discharge requirements to supplement other changes promulgated in the State Register July 27, 2001, which were based on the Federal promulgation of Phase II storm water regulations (Federal Register [FR] December 8, 1999).

a. [Reserved.]

b. [Reserved.]

c. 122.32(f), (g), and (h). Small MS4 designation process and criteria. The program and criteria for designating small MS4 for NPDES permitting are largely adopted from requirements in Federal Regulation 40 CFR 123.35. However, discretion is allowed to permitting authorities by U.S. EPA, and the following items were selected by the Department as criteria for designation with the rationale stated:

(1) (122.32(f)(2)(ii)) Designating entire towns, where the town must only be partly designated based on the Urbanized Area, is a decision of the Department. The rationale for this requirement is that

(a) There is some potential for stream pollution from all municipal development and

(b) The cost of developing the requirements needed to protect water quality are the same for part of the town or all of the town; therefore,

(c) The benefit of applying the program to the entire town far outweighs the cost.

(2) (122.32(g)(1)(i)) Requiring a permit where storm water discharges to a stream which is on the list of impaired waters (CWA §303(d)) and the storm water of the MS4 contains a related pollutant is a decision of the Department. The rationale for this requirement is that

(a) The Department will have concluded, through an established process, that the waterway is impaired;

(b) The storm water contains a pollutant which can contribute to such impairment; and

(c) The MS4 (for consideration, having a population of at least 10,000 and density of at least 1000/mi.^{2}) is large enough and densely-developed enough to be a concern for storm water quality; therefore,

(d) There is a significant potential for the storm water of the MS4 to contribute to impairment of a stream.

(3) (122.32(g)(1)(ii)) Requiring a permit where storm water discharges to a stream which is classed ONRW, ORW, or Freshwater-Trout or is open for shellfish harvesting is a decision of the Department. The rationale for this requirement is that

(a) The Federal regulation required consideration of sensitive waters;

(b) The Department has concluded, through an established process, that the waterway is highly sensitive, the basis for all these classifications;

(c) Normal municipal storm water contains pollutants which can contribute to impairment of a sensitive water body; and

(d) The MS4 is large enough and densely-enough developed to be a concern for storm water quality; therefore,

(e) There is a significant potential for the storm water of the MS4 to contribute to impairment of a stream.

(4) (122.32(g)(1)(iii)) Requiring a permit where the MS4 has seen population growth between the 1990 and 2000 (or the two most-recent) censuses of 10 percent or more or growth of 2 percent or more in each of the three (3) most-recent years for which information is available is a decision of the Department. The rationale for this requirement is that

(a) The Federal regulation required consideration of population growth in criteria for designation;

(b) Rapid growth of an area can be associated with extensive construction, which will involve extensive land disturbance and have the potential for significant storm water contamination; and

(c) Separate from the issue of growth, the MS4 is large enough and densely-enough developed to be a concern for storm water quality; therefore,

(d) There is a significant potential for the storm water of the MS4 to contribute to impairment of a stream.

(5) (122.32(g)(1)(iv) Requiring a permit where the MS4 is located within 3 miles of an urbanized area and the MS4 under consideration discharges storm water to one or more of the water bodies which receive storm water from the urbanized area is a decision by the Department. The rationale for this requirement is that

(a) The Federal regulation required consideration of "contiguity" of an MS4 "to an urbanized area";

(b) The MS4 is within the distance equal to the dimensions of a square town with a population of 10,000 and a population density of 1000 per square mile from streams potentially affected by storm water contaminants;

(c) Storm water from the MS4 discharges to a water body potentially affected by a permitted facility;

(d) Separate from the issue of contiguity, the MS4 is large enough and densely-developed enough to be a concern for storm water quality; therefore,

(e) There is a significant potential for the storm water of the MS4 to contribute to impairment of a stream.

(6) (122.32(g)(1)(vi)) Requiring a permit where the population density of the MS4 is at least 1500 persons per square mile is a decision by the Department. The rationale for this requirement is that

(a) The Federal regulation required consideration of high population density;

(b) The population density is significantly greater than that density at which storm water quality becomes a major concern;

(c) This criterion leads to designating the MS4 stated by U.S. EPA (in Appendix 7 of FR 12/8/99) to require consideration; therefore,

(d) There is a significant potential for the storm water of the MS4 to contribute to impairment of a stream.

(7) (122.32(g)(2)(v)) Requiring a permit where the MS4 owns or operates a wastewater treatment facility which is on the NPDES "Significant Non-compliance List" is a decision by the Department. The rationale for this requirement is that

(a) The Federal regulation required consideration of "... ineffective water quality protection by other programs ...."

(b) Being included on the NPDES "Significant Non-compliance List" shows that the owner of the MS4 has not carried out a program sufficient to comply with wastewater discharge permit requirements.

(c) Therefore, there is a significant concern about compliance with storm water requirements by the owner of the MS4.

(8) (122.32(g)(4)) Requiring a permit for MS4 which has either greater than 2000 total population with a density of at least 1500 persons per square mile or greater than 4000 total population with a density of at least 1000 persons per square mile and which is within the boundaries of or whose boundaries touch, and which drains to at least one basin which receives drainage from, a permitted or designated MS4 is a decision of the Department. The rationale for this requirement is that

(a) The Federal regulation required consideration of "... contiguity to an urbanized area...."

(b) The criteria include a somewhat denser population than the criterion for inclusion in an urbanized area so that there will seldom be an MS4 designated under them. Rather, such areas will be included in the urbanized area and will be directly required by the Federal regulation to be permitted.

(9) (122.32(g)(1)(i)(A)) Allowing an exception from permitting when the runoff from the MS4 caused by a 2-inch rainstorm would be less than one (1) percent of the annual average flow of each receiving stream on the 303(d) list is a decision by the Department. The rationale for this exception is that the runoff into each stream is a small enough portion, even during periods of sizeable runoff, to have a minimal effect on the stream.

2. Establish requirements to enhance the viability of wastewater facilities.

There have been a number of situations where the owner of a wastewater facility abdicated his responsibilities for operation, because of death, bankruptcy, or other reason, leaving homeowners connected to a sewer system for which no one accepted responsibility for operation and maintenance. Department files on these facilities are available for review by contacting the DHEC FOI Office, 2600 Bull Street, Columbia, SC.

3. Establish requirements for standard NPDES permit language and/or conditions.

The Department has been strongly encouraged by the regulated community and environmental groups to do this.

4. Establish requirements related to operation and maintenance of wastewater facilities (such as staffing issues at wastewater treatment facilities).

a. 122.41(j)(1)(i)(B). Current regulations require only that sampling be performed during a specified sampling period. The proposal says, " Samples shall be reasonably distributed in time ...."

b. 122.41(j)(1)(i)(C). Prohibiting termination of analysis for the purpose of preventing an analysis from resulting in a violation is a decision by the Department which is necessary to assure that data representative of the actual discharge is developed and submitted.

c. 122.41(j)(1) Requiring that effluent flow monitoring accuracy be within ten (10) percent of the actual value is a decision of the Department. The rationale for this requirement is that

(1) This level of accuracy is readily available with standard equipment suitable for wastewater effluents.

(2) Knowledge of the flow is necessary to determine the quantity of pollutant, that is, the loading, to the stream.

d. 122.41(j)(1)(iii). Authorizing the Department to set a specific date each month for the permittee to sample is a decision by the Department which allows the Department to plan sampling on a date when the permittee will be sampling in order to assure that sampling and analysis procedures by the permittee are suitable.

e. These amendments propose new subsections 503.50 and 504.50 requiring control of odor-producing situations and activities related to, respectively, sewage and industrial sludge treatment and disposal. The requirements are derived from South Carolina R.61-43, Standards for the Permitting of Agricultural Animal Facilities, with appropriate adjustments. Wastewater and industrial sludge and animal manures have similar potential for odor problems.

f. Requirements of proposed Operation and Maintenance of Sewer Systems, R.61-9.610 (also stated in R.61-9.122.41(e)(4) and 505.41(e)(4)), will reduce the number and severity of overflows of wastewater. There are many sewer systems in South Carolina which have at least occasional sewage overflows. The bacterial concentration of sewage is such that any such overflow is likely to cause a violation of a stream standard. Moreover, as the S.C. Water Classifications and Standards regulation does not allow a mixing zone for bacterial discharges, the overflows certainly constitute violations of stream standards.

5. Clarify the application of fecal coliform limits for land application and/or surface waters.

The proposed amendment clarifies the existing item to show that it applies anywhere that sanitary wastewater is a significant component of the wastewater in the system. It also provides limited circumstances under which the Department may apply other limits. These circumstances are intended to be, and would have to be demonstrated in each particular case to be, protective of the environment and of any persons exposed to the wastewater or disposal fields.

6. Make miscellaneous administrative changes such as authorization of a permit reopener, minor permit modifications, and revision to permit-transfer provisions.

a. 122.44(c)(2). Authorizing the Department to include a "... reopener referring to a permit modification reasonably foreseen based on expected revision of law or regulation or based on the expectation of receipt of information, when either of these would be the basis for a modification under R61-9.122.62" is a decision of the Department. The rationale for the authorization is that

(1) This provides for modifying (reopening) a permit during its term when it is recognized that a revision in a pertinent regulation is impending, compliance with a new regulation typically being required within three (3) years rather than the five-year term of a permit and the law or regulation would be the basis for a modification and

(2) This allows the issuance of a permit when adequate information is unavailable about certain parameters, but all other information is available, allowing revision of the permit during its term if the new information shows that it is necessary and the new information would be the basis for a modification.

b. 122.64(a)(4)(ii). Authorizing the Department to terminate a permit for a manufacturing facility which has ceased "... substantially all manufacturing operations, which are a basis for effluent limits or which contribute to a discharge, for a period of 180 days or longer ..." is a decision of the Department. The rationale for the authorization is that

(1) Item 122.45(b)(2)(i) of R.61-9 says that a permit must be based on actual production. Since there is no production when the plant is closed, the resulting permit would require zero discharge.

(2) The proposed regulation item states that the closed operations must be "... a basis for effluent limits or ... contribute to a discharge ...."

(3) 180 days is long enough to assure that closure is long-term. For example, in many cases employees will have obtained other jobs.

c. 124.13. Prohibiting appeal of an issued permit when the concerns have not been "... submitted to the administrative record as part of the preparation and comment on a draft permit ..." is a decision of the Department. This prohibition is included in S.C. R.61-72, Procedures for Contested Cases, and U.S. EPA regulation 40 CFR 124.76, which is not required to be included in state regulation.

Proposal 7. Miscellaneous changes such as renumbering, relocation, or revision of the existing regulation to reflect the changes resulting from the appropriate revised requirements.

Administrative changes**.**

Document No. 2825
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
Chapter 61
Statutory Authority: S.C. 1976 Code Sections 13-7-10, 13-7-40 and 13-7-45 *et seq*. and Supplement

R.61-64*, X-Rays (Title B)*

Synopsis:

This amendment will revise R.61-64, *X-Rays (Title B)* Sections 2.3.1, 2.3.2, 2.10.6 and 11.3.1. These fees are for the application fee; shielding plan review fee; annual and pro-rated x-ray equipment and vendor fees; and, survey instrument calibration. The fee increases are needed due to the mandate, under the Atomic Energy and Radiation Control Act, to recover the cost of the program through the collection of fees. See Discussion below and Statements of Need and Reasonableness and Rationale herein.

Discussion of Revisions

SECTION	REVISION
R.61-64.2.3.1	Revised to add the increase of the application fee.
R.61-64.2.3.2	Revised to add the increase of the shielding plan review fee.
R.61-64.2.10.6	Revised to add the increase of the annual fees.
R.61-64.11.3	Revised to add the increase of the calibration fees.

Instructions: Amend R.61-64 pursuant to each individual instruction provided with the text below:
Text:

Amend section 2.3.1 to read:

2.3.1 Application Fee. Each registrant shall pay a non-refundable application fee of $62.50 upon submission of the initial Facility Registration Approval Request form. A facility registration approval shall not be issued until payment of the application fee.

Amend section 2.3.2 to read:

2.3.2 Shielding Plan Review Fee. Each registrant shall pay a non-refundable shielding plan review fee of $62.50 per x-ray control upon submission of any shielding plan. A shielding plan approval shall not be issued until payment of the review fee.

Amend section 2.10.6 to read:

2.10.6 Schedule of Fees. The following fee schedule shall be used by the Department to determine the annual fee due:

Type of Equipment	Fee
Radiographic	$100
Fluoroscopic	$100
Combination Rad/Fluoro	$200
Dental	$62.50
Therapy	$125
Diffraction	$68.75
X-ray Fluorescence	$68.75
Accelerator	$125
Electron Microscope	$37.50
Spectrograph	$68.75
Cephalometer	$100
Panoramic	$50
Cabinet X-ray	$93.75
CT Scanner	$100
C-Arm Fluoroscopic	$100
Mammography	(See RHB 5.6)
Stereotactic Mammography	$100
Baggage Checker	$68.75
Bone Densitometer	$100
Lithotripter	$100
Type of Equipment	Fee
Simulator	$100
Other	$100

Vendors and Installers	$156.25

Amend section 11.3.1 of RHB 11.3 Fees. Sections 11.3.2 and 11.3.3 remain the same:

11.3.1 A calibration fee shall be charged for each instrument and probe calibrated at the SCRCL. The following fee schedule shall be used by the Department to determine calibration fees:

Type of Instrument	Fee
Geiger-Mueller (GM) instrument Calibrated at 2 points on each scale	$75
Ion Chamber	
First mode-2 points on each scale	$75
Second mode-2 points on each scale	$18.75
PIC-6 Calibrated at 2 points on each scale	$75
R Meter Calibrated at 2 points on each scale	$50
MDH 1015 or 1515	
One probe-five calibration points	$250
Additional probe-five calibration points	$106.25
300 V battery replacement	Market price plus tax
MDH 2025	
One probe- five calibration points	$106.25
Additional probe-five calibration points	$75
Dosimeter response check	$ 18.75
Minimum handling fee, any instrument-no calibration	$31.25
Other services	$62.50 per hour

Fiscal Impact Statement:

There will be no cost to the state and its political subdivisions with the implementation of these proposed amendments. This program is funded by the collection of fees from the regulated community as mandated by the Atomic Energy and Radiation Act. The Act requires the cost of running the program to be recovered through the collection of fees.

Statement of Need and Reasonableness:

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

DESCRIPTION OF REGULATION: Amendment of Regulation 61-64*, X-Rays (Title B)*, Rules and Regulations for Radiation Control.

Purpose: The Department proposes to revise R.61-64*, X-Rays (Title B),* Sections 2.3.1, 2.3.2, 2.10.6 and 11.3.1. These fees are for the application fee; shielding plan review fee; annual and pro-rated x-ray equipment and vendor fees; and, survey instrument calibration. The fee increases are needed due to the mandate, under the Atomic Energy and Radiation Control Act, to recover the cost of the program through the collection of fees.

Legal Authority: R.61-64*, X-rays (Title B)* is authorized by the S.C. Code Section 13-7-45 *et seq*. and Supplement.

Plan for Implementation: These amendments will make changes to and be incorporated into R.61-64 upon approval of the Board of Health and Environmental Control, the General Assembly and publication in the State Register. These amendments will be implemented by providing the regulated community with copies of the regulation.

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

The changes are needed in order to address the training needs associated with technological advances with new modalities in radiology, the need to adequately equip staff with radiation measurement and detection equipment, and to recover increases in operating costs.

The changes are reasonable because they will be implemented with existing staff and are normally set to only recover the costs of operating the program as required by the Atomic Energy and Radiation Control Act.

DETERMINATION OF COSTS AND BENEFITS:

There will be a small cost to the state and its political subdivision registrants with the implementation of these amendments due to the proposed increase in fees. The fees have only been increased once since 1993. The 1993 increase in fees was based on costs to the program in 1991. Since 1991, the inflation rate has increased 22.7%. Examples of the increase are from $50 to $62.50 per year for a dental unit and from $80 to $100 per year for a medical radiographic unit. The Department is also increasing application fees for new facilities from $50 to $62.50. In addition fees will be increased from $50 to $62.50 for shielding plan reviews and fees will be increased from $125 to $156.25 for vendors who sell, install and service x-ray equipment.

The fees for calibration of x-ray equipment, which have only been increased once since 1993, will be increased to account for the increased inflation rate. Even with the increase, our fees will remain less than those charged by commercial calibration facilities.

Even after these increases, the annual fees for the use of x-ray equipment in South Carolina will be below the Southeastern average.

UNCERTAINTIES OF ESTIMATES: There are no uncertainties associated with this amendment of R.61-64.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

There will be no effect upon the environment or upon the public health of the citizens of the state.

DETRIMENTAL EFFECTS ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATIONS ARE NOT IMPLEMENTED:

There will be no detrimental effects on the environment if these changes are not implemented. However, in order to continue providing the level of service and support to our registrants, the fee increase is necessary. In addition, our role in protecting the public and workers from the adverse effects of radiation is very important and worthwhile.

Statement of Rationale:

The statement of rationale was determined by staff analysis pursuant to S.C. Code Section 1-23-120.

The changes are needed in order to provide the necessary knowledge and skills to keep abreast of advances in technology, especially in the medical field, which requires us to receive the latest training in order to effectively, regulate and support these uses of radiation. In response to the events of September 11, 2001, the federal government is placing more responsibilities on the states regarding radiation security issues with no support for training and equipment, but yet they still require our program to be adequately trained and equipped. Increased costs of operation are required to be recovered by the Atomic Energy and Radiation Control Act.

Document Number 2754
COMMISSION ON HIGHER EDUCATION
Chapter 62
Statutory Authority: 1976 Code Section 59-150-360

62-900.150 Lottery Tuition Assistance Program for Two-Year Public and Independent Institutions

Synopsis:

In accordance with Section 59-150-360 of the 1976 Code of Laws, the Commission on Higher Education shall promulgate regulation and establish procedures to administer the Lottery Tuition Assistance Program at the two-year public and independent institutions. The purpose of the Lottery Tuition Assistance Program is to provide resources that supplement, not supplant, existing resources for educational purposes to South Carolina students. The program will assist students who wish to attend two-year public or independent colleges in the State.

Instructions: Add new R.62-900.150, Lottery Tuition Assistance Program, to Chapter 62 regulations.

Text:

Table of Contents:

62-900.150 Purpose of the Lottery Tuition Assistance Program

Pursuant to the S.C. Education Lottery Act, the Commission on Higher Education shall promulgate regulation and establish procedures to administer the Lottery Tuition Assistance Program at the State two-year public and independent institutions. The purpose of the Lottery Tuition Assistance Program is to provide resources to the extent that funds are available that supplement, not supplant, existing resources for educational purposes to South Carolina's students. The program will assist students who wish to attend two-year public or independent colleges in South Carolina.

62-900.155 Allocation of Funds

A. This program is dependent upon sufficient annual funding from the S.C. Education Lottery Account.

B. Of the monies in the Education Lottery Account, funds shall be appropriated to the Commission on Higher Education for tuition assistance at two-year public and independent institutions as provided in Section 59-150-360.

62-900.160 Program Definitions

A. “Academic year” is defined as the fall, spring, and summer terms.

B. “Associate degree program” is defined as a two-year or associate’s degree program (Associate of Arts or Associate of Science), which leads to the first two years of a baccalaureate degree at a location approved by the U.S. Department of Education for participation in Federally funded financial aid programs and authorized by the Commission on Higher Education.

C. “Cost-of-tuition” is defined as the amount charged for registering for credit hours of instruction and mandatory fees accessed to all students. Other fees, charges, or cost of textbooks cannot be included.

D. “Degree-seeking student” is defined as any part-time or full-time student enrolled in an eligible program of study at an eligible institution.

E. “Eligible program” is defined as a program of study leading to an associate’s degree or at least a two-year program that is acceptable for full credit towards a bachelor's degree, which meets all other Title IV regulations as authorized by the U.S. Department of Education for participation in Federally funded financial aid programs.

F. “Field of study” shall mean an area in which a certificate, diploma, or degree is awarded. A certificate or diploma earned that relates to the associate degree constitutes the same field of study.

G. “Full-time student” shall mean a student who has matriculated into an eligible program, and who enrolls in a minimum of twelve credit hours (or the equivalent) during an academic term.

H. “Independent two-year institutions” shall mean independent two-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 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. " Institutions whose sole purpose is religious or theological training or the granting of professional degrees do not meet the definition of an eligible institution.

I. An “offense” shall mean a violation of any law or rule in any state or Federal criminal justice system.

J. “Part-time student” shall mean a student who has matriculated into an eligible program, and who enrolls in a minimum of six credit hours and a maximum of eleven credit hours (or its equivalent) during an academic term.

K. “Remedial coursework” shall mean sub-collegiate level preparatory courses in English, mathematics, and reading.

L. “Satisfactory academic progress” shall mean the minimum academic standard for academic progress established by the institution for the purpose of complying with Title IV regulations for Federal Student Aid Programs.

M. “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, Statute 59-112-10, unless the student qualifies for an exception as defined in the residency regulation promulgated by the Commission on Higher Education as determined by the institutional residency officer each academic year.

N. “Two-year public institutions” shall mean two-year institutions defined by Chapter 103 of Title 59 of the 1976 Code, which stipulates a "public institution of higher learning shall mean any state-supported-post-secondary educational institution."

62-900.165 Student Eligibility

A.To be eligible for Lottery Tuition Assistance each academic year, the student must:

1. File the Free Application for Federal Student Aid (FAFSA) form and complete the process to determine eligibility for Federal student aid each academic year;

2. Be a U.S. citizen or a permanent resident that meets the definition of an eligible non-citizen under State residency statutes;

3. Qualify for in-state tuition and be a resident of the State of South Carolina for a minimum of one year according to Title 59 of the 1976 Code of Laws governing the determination of residency for tuition and fee purposes, unless the student qualifies for an exception as defined in the residency regulation promulgated by the Commission on Higher Education;

4. Be enrolled or accepted for enrollment as a part-time or full-time degree-seeking student in an eligible program at an eligible two-year public or independent college in South Carolina and be making satisfactory academic progress towards completion of the requirements of the program as provided by Title IV Regulations. A student enrolled in less than six credit hours during one term may not receive Lottery Tuition Assistance for the term in question but is eligible for the award upon return to part-time or full-time status;

5. Be enrolled or have completed at the time of funds disbursement a minimum of six credit hours for the term of eligibility;

6. Verify that he/she does not owe a refund or repayment on a State Grant, a Pell Grant, or a Supplemental Educational Opportunity Grant and is not in default on a loan under the Federal Perkins Loan or Federal Stafford Loan programs;

7. Not be eligible for or a recipient of a LIFE Scholarship during the academic year; and

8. Meet all eligibility requirements annually.

B. Students shall not be eligible to receive Lottery Tuition Assistance for more than one certificate, diploma, or degree earned within any five-year period unless the additional certificate, diploma, or degree constitutes progress in the same field of study.

C. Students enrolled in an eligible program of study as stated in the "Program Definitions" section may include remedial courses as part of the minimum number of required credit hours for part-time or full-time status, as long as such courses carry credit hours and meet Title IV limitations on remedial coursework.

D. Any false information provided by the student or any attempt to obtain or expend Lottery Tuition Assistance for unlawful purposes or any purpose other than in payment or reimbursement for the cost of tuition at the institution authorized to award the funds will be cause for immediate cancellation of Lottery Tuition Assistance. Any student who has attempted to or obtained Lottery Tuition Assistance 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 Lottery Tuition Assistance.

62-900.170 Policies and Procedures for Awarding Lottery Tuition Assistance

A. The Lottery Tuition Assistance Program will be campus-administered, and the funds will supplement the student financial aid awards.

B. Actual award amounts are dependent upon the number of eligible students and the amount of funding available each academic year. Lottery Tuition Assistance may not exceed the cost of in-state tuition at State two-year public institutions for the academic year for which the award is made at the designated institution. At independent two-year institutions, the award amount is limited to the highest in-state tuition rate at a two-year public institution. In calculating the amount awarded in Lottery Tuition Assistance, all Federal grants and Need-based Grants must be awarded first before determining the amount eligible in Lottery Tuition Assistance to be used for payment towards cost-of-tuition.

C. Adjustments to the financial aid package will be made to Lottery Tuition Assistance when Federal grants and Need-based Grants can be applied towards cost-of-tuition.

D. Participating institutions will notify students of their Lottery Tuition Assistance with the terms and conditions of the award

E. The institution must retain annually appropriate paper or electronic documentation for each award to include at a minimum:

1. Institutional Student Information Report (ISIR)
2. Award notification
3. Institutional disbursements to student
4. Refund and repayment (if appropriate)
5. Satisfactory academic progress
6. Student's residency status
7. Enrollment and curriculum requirements
8. Student's disability (if appropriate)
9. Student award based upon approval of institutional appeal (if appropriate)

F. It is the institution's responsibility to ensure that no ineligible student receives Lottery Tuition Assistance.

62-900.175 Duration of Award and Continued Eligibility

A. Award decisions will be made annually and are not automatically guaranteed. The institution shall adjust the amount of the award during the academic year in the event of a change in the student's enrollment status.

B. Each academic year, students applying for Lottery Tuition Assistance must file a Free Application for Federal Student Aid and any supplemental forms, which may be required by the institution. Students must meet all eligibility requirements as stated in the "Student Eligibility" Section. Students must adhere to these guidelines and other pertinent statutes and regulations and with application timeliness and procedures stipulated by the institutions.

C. After attempting 24 credit hours for continued eligibility, the student is required to earn at least a cumulative 2.0 grade point average on a 4.0 scale for graduation purposes by the end of each academic year.

D. The institution shall be responsible for maintaining institutional certification of each recipient's continuous part-time and/or full-time enrollment in an eligible program of study.

E. Students wishing to appeal any award decision must submit a written request to the institution's Director of Financial Aid. This request will be handled in accord with the institution's financial aid appeals procedures. The institution's decision on appeals shall be final.

62-900.180 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 "Student Eligibility" Section except for a student who is approved by the Disability Services Provider to be enrolled in less than part-time status is 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. The institutional Disability Services Provider must provide written documentation to the Office of Financial Aid each academic year verifying that the student is approved to be enrolled in less than part-time status.

62-900.185 Institutional Disbursement of Funds

A. Actual award amounts are dependent upon the number of eligible students and the amount of funding available each academic year. Lottery Tuition Assistance may not exceed the cost of in-state tuition at State two-year public institutions for the academic year for which the award is made at the designated institution. At

independent two-year institutions, the amount cannot exceed the highest in-state tuition rate at a two-year public institution. In calculating the amount awarded in Lottery Tuition Assistance, all Federal grants and Need-based Grants must be awarded first before determining the amount eligible in Lottery Tuition Assistance to be used for payment towards cost-of-tuition.

B. The institution shall provide an award notification to Lottery Tuition Assistance Program recipients, which will contain the terms and conditions of the award and other financial aid awarded. Students will be notified of adjustments in financial aid due to changes in eligibility and/or over-award issues.

C. After the last day to register for each term of the academic year, the institution will verify that each recipient is a South Carolina resident who is a part-time or full-time degree-seeking student. According to the Scholarship and Grant Programs Policies and Procedures Manual, a listing of eligible recipients by social security number with the award amounts for the semester will be sent to the Commission on Higher Education with the institution's request for funds. A year-end reconciliation report will be submitted to the Commission on Higher Education prior to June 30th.

62-900.190 Refunds and Repayments

A. In the event a student who has been awarded Lottery Tuition Assistance withdraws or is suspended from the institution, or drops below part-time (six credit hours) or full-time (twelve credit hours) status during any term of the academic year, institutions must reimburse the Lottery Tuition Assistance Program for the term in question pursuant to refund policies of the institution.

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

62-900.195 Program Administration and Audits

A. The South Carolina Commission on Higher Education will coordinate the oversight of functions (e.g., guidelines, policies, rules, regulations) relative to this program with eligible two-year public and independent institutions in South Carolina. The Commission on Higher Education shall be responsible for the allocation of funds, promulgation of the regulations and rules, and statewide oversight of the Lottery Tuition Assistance Program.

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 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.

62-900.200 Suspension or Termination of Institutional Participation

A. The Commission may review institutional administrative practices to determine institutional compliance with rules and regulations, pertinent statutes, and program guidelines. If such a review determines that an institution has failed to comply with program statutes, 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 Lottery Tuition Assistance Program for any funds lost or improperly awarded.

B. Upon receipt of evidence that an institution has failed to comply with program statutes, rules, regulations, 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, 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 this regulation.

Fiscal Impact Statement:

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

Statement of Rationale:

During the 2002 legislative session, the S.C. General Assembly approved funding from the S.C. Education Lottery to create a new student aid program, the Lottery Tuition Assistance Program. This regulation is being promulgated to provide procedures for the two-year independent and public institutions in implementing the program.

Document Number 2755
COMMISSION ON HIGHER EDUCATION
Chapter 62
Statutory Authority: 1976 Code Section 59-142-20

62-450 South Carolina Need-based Grants Program

Synopsis:

The Commission on Higher Education proposes to amend and replace in its entirety R.62-450 of the South Carolina Need-based Grants Program. The proposed amendments will clarify the policies and procedures for administering the Need-based Grants Program at the State's public colleges and universities. The proposed amendments include language that will allow students who are pursuing a program of study that is structured so as not to require a baccalaureate degree and leads to a graduate degree to receive the grant for up to eight full-time equivalent semesters. Also included is language that would require institutions to give first priority and award the maximum allowable Need-based Grant ($2,500 if full-time or $1,250 if part-time) to students who are in the custody of the South Carolina Department of Social Services (DSS) due to the approval of Proviso 58.14 during the 2001 legislative session.

Instructions: Add new R.62-450, South Carolina Need-based Grants Program, to Chapter 62 regulations.

Text:

Table of Contents:

62-495 Refunds and Repayments
62-500 Program Administration and Audits
62-505 Suspension or Termination of Institutional Participation

62-450 Purpose of the South Carolina Need-based Grants Program

Pursuant to Act 458, South Carolina Children First: Resources for Scholarships and Tuition Act of 1996, of the 1995-1996 Appropriations Bill, the Commission on Higher Education shall promulgate regulation and establish procedures to administer the South Carolina Need-based Grants Program. The purpose of the South Carolina Need-based Grants Program is to provide additional financial aid assistance to South Carolina's neediest students. The program will assist students who wish to attend public or independent colleges or universities in the State.

62-455 Allocation of Need-based Grant Funds to Public and Independent Institutions

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. The Commission on Higher Education shall award to eligible students who are attending public or independent eligible institutions as State Need-based Grant recipients as follows:

1. Of the funds allocated to public institutions, the percentage shall be equivalent to the percentage of the public institution’s share of the total South Carolina resident undergraduate full-time headcount enrollment in the preceding year.

2. Of the funds allocated to independent institutions, the percentage shall be equivalent to the percentage of the independent institutions' share of the total South Carolina resident undergraduate full-time headcount enrollment in the preceding year and will be determined annually by the South Carolina Commission on Higher Education and the Tuition Grants Commission. The funds allocated for Need-based Grants shall be included in the annual appropriation to the Commission on Higher Education and transferred annually into the budget of the South Carolina Tuition Grants Commission, which will distribute these funds as Tuition Grants.

62-460 Program Definitions for Administering South Carolina Need-based Grants at Public Institutions

A. “Academic year” is defined as the fall and spring semesters during which a part-time student would be expected to earn a minimum of twelve credit hours or a full-time student would be expected to earn a minimum of 24 credit hours.

B. “Associate degree program” is defined as a two-year technical or occupational program or an associate’s degree program (Associate of Arts or Associate of Science) which leads to the first two years of a baccalaureate degree at a location approved by the U.S. Department of Education for participation in Federally funded financial aid programs and authorized by the Commission on Higher Education.

C. “Baccalaureate degree program” is defined as an undergraduate program of study leading to the first bachelor's degree at a location approved by the U.S. Department of Education for participation in Federally funded financial aid programs and authorized by the Commission on Higher Education**.**

D. “Degree-seeking student” is defined as any part-time or full-time student enrolled in an eligible program of study at an eligible institution.

E. “Eligible program” is defined as a program of study leading to: 1) the first baccalaureate degree 2) a program of study that is structured so as not to require a baccalaureate degree and leads to a graduate degree; 3) first associate’s degree or two-year program that is acceptable for full credit towards a bachelor’s degree; or 4) one-year program that leads to other recognized credentials (e.g., first diploma or first certificate). Study toward the first diploma or certificate may be followed by study toward the first associate’s degree, which may be followed by transfer to the first baccalaureate degree or a program of study that is structured so as not to require a baccalaureate degree and leads to a graduate degree. Students who have already obtained a baccalaureate degree are not eligible fore subsequent grant funds.

F. “Full-time student” shall mean a student who has matriculated into an eligible program of study, and who enrolls in a minimum of twelve credit hours during the regular academic semester.

G. “Independent 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 whose major campus and headquarters are located within South Carolina and which is accredited by the Southern Association of Colleges and Schools."

H. “Need analysis” shall mean the process of analyzing the household and financial information on the student’s financial aid application and calculating the amount the family can be expected to contribute to the educational costs. For Federal Student Aid Programs, the need analysis system is defined under Title IV of the Higher Education Act of 1965.

I. “Needy student” shall mean a post-secondary student enrolled in or accepted for enrollment in a public institution who demonstrates to the institution the financial inability, either parental, familial, or personal, to bear the total cost-of-attendance for any regular academic semester. The determination of need shall be made in accordance with Federal need analysis formulae and provisions.

J. An “offense” shall mean a violation of any law or rule in any state or Federal criminal justice system.

K. “One-year program” is defined as an undergraduate program of study leading to other recognized educational credentials (e.g., certificates or diplomas that prepare students for gainful employment in a recognized occupation) at a location approved by the U.S. Department of Education for participation in Federally funded financial aid programs and is authorized by either the Commission on Higher Education or the State Board for Technical and Comprehensive Education.

L. “Part-time student” shall mean a student who has matriculated into an eligible program of study, and who enrolls in a minimum of six credit hours and a maximum of eleven credit hours during the regular academic semester.

M. “Program of study that is structured so as not to require a baccalaureate degree” is a program of study that is structured so as not to require a baccalaureate degree for acceptance into the program and leads to a graduate degree, which will be the student’s first academic degree awarded, at a location approved by the U.S. Department of Education for participation in Federally funded financial aid programs. Students are eligible to receive the grant for a maximum of eight full-time equivalent semesters as long as all other eligibility criteria are met. Students who have been awarded a baccalaureate or graduate degree are not eligible for grant funding.

N. “Public institutions” are those institutions as defined in Chapter 103 of Title 59 of the 1976 Code, which stipulates that: "1) 'public higher education' shall mean state-supported education in the post-secondary field, including comprehensive and technical education; 2) 'public institution of higher learning' shall mean any state-supported post-secondary educational institution and shall include technical and comprehensive educational institutions."

O. “Remedial coursework” shall mean sub-collegiate level preparatory courses in English, mathematics, and reading offered at the State’s technical colleges.

P. “Satisfactory academic progress” shall mean the minimum academic standard for academic progress established by the public institution for the purpose of complying with Title IV regulations for Federal Student Aid Programs.

Q. “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, Statute 59-112-10, unless the student qualifies for an exception as defined in the residency regulation promulgated by the Commission on Higher Education as determined by the institutional residency officer each academic year.

62-465 Student Eligibility

A. To be eligible for a Need-based Grant each academic year, the student must:

1. Be a "needy student" following the financial need analysis as established under Title IV Regulations for determining eligibility for Federal Student Aid. The student must file the Free Application for Federal Student Aid (FAFSA) Form;

2. Be a U.S. citizen or a permanent resident that meets the definition of an eligible non-citizen under State Residency Statute;

3. Be a resident of the state of South Carolina for twelve consecutive months as defined in Chapter 112 of Title 59 of the 1976 Code of Laws governing the determination of residency for tuition and fee purposes, unless the student qualifies for an exception as defined in the residency regulation promulgated by the Commission on Higher Education;

4. Be enrolled or accepted for enrollment as a part-time or full-time degree-seeking student in an eligible program of study at an eligible public institution in South Carolina. A student enrolled in less than six credit hours during one semester may not receive a Need-based Grant for the semester in question but is eligible for reapplication for a grant upon return to part-time or full-time status;

5. Be enrolled and attending or have completed at the time of the grant disbursement in a minimum of six credit hours if part-time for the semester or twelve credit hours if full-time for the semester;

6. Certify that he/she has not been adjudicated delinquent, convicted, or pled guilty or nolo contendere to any felonies, 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 institution testifying to the fact, except that a student who has been adjudicated delinquent, convicted, or pled guilty or nolo contendere of an alcohol or drug related misdemeanor offense is only ineligible for the next academic year of eligibility after the date of the adjudication, conviction or plea;

7. Verify that he/she does not owe a refund or repayment on a State Grant, a Pell Grant, or a Supplemental Educational Opportunity Grant and is not in default on a loan under the Federal Perkins Loan or Federal Stafford Loan Programs; and

8. Must reapply for the Need-based Grant each academic year and meet all eligibility requirements annually.

B. Students enrolled part-time or full-time may not receive a Need-based Grant for more than a maximum of eight full-time equivalent semesters. Students who have already been awarded their first baccalaureate degree are not eligible to receive a Need-based Grant.

C. Students enrolled in an eligible program of study as stated in the “Program Definitions” Section may include remedial courses as part of the minimum number of required credit hours for part-time or full-time status, as long as such courses carry credit hours and meet Title IV limitations on remedial coursework.

D. Any false information provided by the student or any attempt to obtain or expend any Need-based Grant for unlawful purposes or any purpose other than in payment or reimbursement for the cost-of-attendance at the institution authorized to award the grant will be cause for immediate cancellation of the Need-based Grant. Any student who has obtained a Need-based Grant 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 Need-based Grant.

62-470 Policies and Procedures for Awarding Need-based Grants

A. The Need-based Grants Program for the public institutions will be campus-administered. Grant funds will supplement the student financial aid awards administered by the participating public colleges and universities.

B. The participating institution will make awards in amounts to be defined in accordance with the Need-based Grants Program regulation and criteria, but not to exceed $1,250 per eligible part-time student and $2,500 per eligible full-time student per academic year, based on the institution's allocated funds for Need-based Grants and other financial aid awarded to individual applicants. However, the Commission, due to inflation increases or other relevant factors, may periodically adjust the maximum award for the Need-based Grants Program.

C. Need-based Grants are to be used only towards payment for the cost-of-attendance as defined by Title IV Regulations as modified by D below for the academic year for which the award is made at the designated institution. The maximum amount awarded shall not exceed the cost-of-attendance as defined in Title IV Regulations for any 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 on-campus meal plan, which includes 21 meals per week.

E. In determining the amount awarded for the Need-based Grant, all other sources of gift aid, including Federal, State, private and institutional funds, must be applied to the total cost-of-attendance in accordance with Title IV Regulations before calculating the unmet need and awarding the grant. The Need-based Grant shall be awarded only after all other sources of gift aid have been exhausted. Adjustments to the financial aid package will be made to the Need-based Grant in accordance with prescribed Title IV Regulations in order to prevent an over-award.

F. Institutions must give first priority and award the maximum allowable Need-based Grant ($2,500 if full-time or $1,250 if part-time) to students who are in the custody of the South Carolina Department of Social Services (DSS). However, institutions should not award the maximum amount if, by doing so, this causes the student to exceed the unmet need according to Title IV Regulations. Students who may be eligible under this provision are responsible for contacting the institution and providing official verification to the institution that he/she is in custody of DSS. Acceptable verification shall include a letter from DSS.

G. Participating institutions will notify students of their Need-based Grant along with the terms and conditions of the award.

H. Annual allocations of funds to the public institutions will be based on each institution's percentage of the State’s total enrollment of South Carolina resident undergraduate full-time degree-seeking headcount enrollment. The percentage will be based on the previous year’s total as determined by the Commission on Higher Education. Unused funds, which cannot be awarded by an institution, must be returned to the Commission on Higher Education, which may redirect the funds to institutions where unmet need exists.

I. The institution must retain annual paper or electronic documentation for each award to include at a minimum:

1. Need analysis
2. Affidavit documenting that the student has never been convicted of any felonies, alcohol or drug related misdemeanor offenses as stated under "Student Eligibility" and "Duration of Award and Continued Eligibility" Sections
3. Award notification
4. Institutional disbursement to student
5. Refund or repayment (if appropriate)
6. Satisfactory academic progress
7. Student's residency status
8. Enrollment and curriculum requirements
9. Student's disability (if appropriate)
10. Student is in custody of DSS (if appropriate)
11. Student award based upon approval of institutional appeal (if appropriate)

J. It is the institution's responsibility to ensure that only eligible students receive a Need-based Grant.

62-475 Duration of Award and Continued Eligibility

A. Need-based Grants shall be awarded each academic year. The institution shall adjust the amount of the grant award during the academic year in the event of a change in the student's eligibility.

B. Need-based Grants may be awarded annually for no more than a total of eight full-time equivalent semesters of part-time or full-time study. Award decisions will be made annually and are not automatically guaranteed. Students who have already been awarded their first baccalaureate degree are not eligible to receive a Need-based Grant.

C. Students must reapply each academic year for a Need-based Grant in accord with these guidelines and other pertinent statutes and regulations and with application timeliness and procedures stipulated by the participating institution. Students applying for a Need-based Grant must complete a FAFSA Form and be a needy student. The student must also complete any supplemental forms that may be required by the institution.

D. The institution shall be responsible for securing institutional certification of each recipient's cumulative grade point average, credit hours attempted and earned, and satisfactory academic progress for purposes of determining eligibility for award renewal.

E. For continued eligibility, the student is required to:

1. For graduation purposes, earn at least 24 credit hours each regular academic year if awarded a Need-based Grant as a full-time student or earn at least twelve credit hours each regular academic year if awarded a Need-based Grant as a part-time student. If a student is awarded a Need-based Grant for one semester of the academic year as a part-time student and the other semester as a full-time student, the student must earn at least eighteen credit hours each regular academic year. If a student is awarded a Need-based Grant for only one semester of the academic year, the student must earn at least twelve credit hours each regular academic year if a full-time student or earn at least six credit hours each regular academic year if a part-time student. Credits earned during any additional semesters (i.e., interim, winterim, maymester, summer or other non-regular semester) cannot be used to replace or reduce the minimum credit hour requirement for the regular academic year; and

2. Earn at least a cumulative 2.0 grade point average on a 4.0 scale for graduation purposes by the end of each regular academic year.

F. Students wishing to appeal any grant award decision must submit a written request to the institution's Director of Financial Aid. This request will be handled in accordance with the institution's financial aid appeal procedures. The institution's decision on appeals shall be final.

62-480 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 "Student Eligibility" Section except for a student who is approved by the Disability Services Provider to be enrolled in less than part-time status is eligible to receive grant 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, students who qualify under ADA and Section 504 of the Rehabilitation Act of 1973 must meet all renewal requirements as defined in "Duration of Award and Continued Eligibility" Section except for a student not meeting the annual credit hour requirement who is approved by the Disability Services Provider to be enrolled in less than part-time status for that academic year. Students must earn the required number of hours approved by the institutional Disability Services Provider each academic year for grant renewal and earn a minimum 2.0 cumulative grade point average on a 4.0 scale by the end of the academic year. 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 each academic year verifying that the student is approved to be enrolled in less than part-time status.

D. Students who qualify under ADA and Section 504 of the Rehabilitation Act of 1973 are eligible to receive up to the maximum number of available semesters and available funds.

62-485 Enrollment in Internships, Cooperative Work Programs, Travel Study Programs, or National or International Student Exchange Programs

A. Students enrolled in an internship, cooperative work program, travel study program, or National or International Student Exchange Program approved by the student's home institution, and enrolled in fewer than six credit hours, shall not be eligible to receive a Need-based Grant during the period in which the student is enrolled in such programs or courses. Students enrolled in such programs may receive a Need-based Grant during a subsequent fall or spring semester if determined to be eligible.

B. 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 at least part-time transfer credit (minimum of six credit hours) are eligible to receive Need-based Grant funds during the period in which the student is enrolled in such programs. Students will be required to meet the continued eligibility requirements.

C. Eligible students may use the appropriated portion of the Need-based Grant 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 at least part-time transfer credit (minimum of six credit hours). Need-based Grant 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 grant funds to the institutions where students will participate in internships, cooperative work programs, travel study programs, or National or International Student Exchange Programs. The institution is responsible for grant funds according to the "Program Administration and Audits" Section.

D. The home institution will be responsible for securing official certification of the student's cumulative grade point average, credit hours earned, and satisfactory academic progress for the purposes of determining eligibility for grant renewal for the next academic year.

62-490 Institutional Disbursement of Need-based Grants

A. The participating institution will identify award amounts, which cannot exceed $1,250 per eligible part-time student and $2,500 per eligible full-time student per academic year. Half of the grant shall be disbursed during the fall semester and half disbursed during the spring semester, assuming continued eligibility. The maximum amount, which may be received by a recipient for eight full-time equivalent semesters, shall be $10,000 for students seeking their first baccalaureate degree or a program of study that is structured so as not to require a baccalaureate degree and leads to a graduate degree, $5,000 for students seeking their first associate's degree, and $2,500 for students seeking their first one-year certificate or diploma**.** Students who have obtained an associate's degree initially are eligible to apply for a Need-based Grant upon enrollment in their first baccalaureate degree or a program of study that is structured so as not to require a baccalaureate degree. Students who have obtained a recognized educational credential in a one-year program initially are eligible for application for a Need-based Grant upon enrollment in their first associate's degree, first baccalaureate degree, or a program of study that is structured so as not to require a baccalaureate degree and leads to a graduate degree.

B. A Need-based Grant may not be applied to a second baccalaureate 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 baccalaureate degree as defined in the "Program Definitions" Section.

C. The institution shall provide an award notification each academic year to Need-based Grant recipients, which will contain the terms and conditions of the grant 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 Need-based Grant and terms for the award.

D. After the last day to register for each semester of the academic year, the institution will verify enrollment of each recipient as a South Carolina resident that is a part-time or full-time degree-seeking student. According to the Scholarship and Grant Programs Policies and Procedures Manual, a listing of eligible recipients by social security number with the award amounts for the semester will be sent to the Commission on Higher Education with the institution's request for funds. A year-end reconciliation report will be submitted to the Commission on Higher Education prior to June 30th. Any unused funds shall be refunded to the Commission on Higher Education no later than June 30th of each fiscal year.

62-495 Refunds and Repayments

A. In the event a student who has been awarded a Need-based Grant withdraws, is suspended from the institution, or drops below part-time (six credit hours) or full-time (twelve credit hours) status during any regular semester of the academic year, institutions must reimburse the Need-based Grants Program for the amount of the grant for the semester in question pursuant to refund policies of the institution. Collection is the responsibility of the institution.

B. The institution may redistribute such funds to other eligible students in accordance with the guidelines, or if such funds cannot be redistributed within the academic year, the institution shall return the refund amount to the Commission on Higher Education for redistribution to other institutions.

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

62-500 Program Administration and Audits

A. The South Carolina Commission on Higher Education will coordinate the oversight of functions (e.g., guidelines, policies, rules, regulations) relative to this program with eligible institutions. The Commission on Higher Education shall be responsible for the allocation of funds, promulgation of the regulation and rules, any audits, or other statewide oversight of the Need-based Grants Program as deemed necessary to monitor the expenditure of grant 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. Where the initial allocation exceeds the need of students at an institution, the Commission shall have the authority to redistribute the excess funds to other institutions:

1. All funds not awarded by the institution 45 days after the last day to register for the spring semester of the academic year shall be returned to the Commission for redistribution.

2. Institutions in need of additional Need-based Grant funds for eligible students must provide documentation to this effect and must request additional funds from the Commission on Higher Education in writing by not later than 45 days after the last day to register for the spring semester of the academic year.

D. Participating institutions are authorized to establish additional guidelines, rules, and regulations for awarding the grants consistent with the South Carolina Need-based Grants Program Regulation contained herein.

E. The Chief Executive Officer at each participating institution shall identify to the Commission on Higher Education a Need-based Grant 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 fiscal agent to receive and deliver funds for use under the program.

62-505 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 State Need-based Grants 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 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, guidelines, rules, and regulations.

Fiscal Impact Statement:

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

Statement of Rationale:

During the 2001 legislative session, Proviso 58.14 was approved, which instructed institutions to give first priority and award the maximum allowable Need-based Grant ($2,500 if full-time or $1,250 if part-time) to students who are in the custody of the Department of Social Services. This regulation is being promulgated to implement this legislative mandate by including the appropriate language in the awarding procedures.

Document Number 2756
COMMISSION ON HIGHER EDUCATION
Chapter 62
Statutory Authority: 1976 Code Section 59-104-20

62-300 Palmetto Fellows Scholarship Program

Synopsis:

The Commission on Higher Education proposes to amend and replace in its entirety R.62-300 of the Palmetto Fellows Scholarship Program. The proposed amendments will clarify the policies and procedures for administering the Palmetto Fellows Scholarship Program. Beginning with the 2002-03 academic year, the proposed amendments will increase the Palmetto Fellows Scholarship from a maximum annual award amount of up to $5000 to $6700 per academic year. The proposed regulation also includes language that will allow students who are pursuing a program of study that is structured so as not to require a baccalaureate degree to receive the scholarship for up to eight terms (or its equivalent).

Instructions: Add new R.62-300, Palmetto Fellows Scholarship Program, to Chapter 62 regulations.

Text:

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62-300 Purpose of the Palmetto Fellows Scholarship Program

Pursuant to Act 458 which was initially established as Title 59 of the 1976 Code as amended under Section 18A.28 of the 1997-98 Appropriations Bill, 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.

62-305 Allocation of Palmetto Fellows Scholarship Funds to Public and Independent Institutions

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. The Commission on Higher Education shall award to eligible students attending public or independent eligible institutions as Palmetto Fellows Scholarships as follows:

1. Of the funds allocated to public institutions, the percentage shall be equivalent to the percentage of the public institution's share of the total South Carolina resident undergraduate full-time headcount enrollment in the preceding year.

2. Of the funds allocated to independent institutions, the percentage shall be equivalent to the percentage of the independent institutions' share of the total South Carolina resident undergraduate full-time headcount enrollment in the preceding year and will be determined annually by the South Carolina Commission on Higher Education and the Tuition Grants Commission.

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.

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 will consist of a fall, spring and summer term (or its equivalent).

B. "Baccalaureate degree program" is defined as an undergraduate program of study leading to the first bachelor's degree at a location approved by the U.S. Department of Education for participation in Federally funded Student Aid Programs.

C. "Degree-seeking student" is defined as any student enrolled full-time in a program of study that leads to the first baccalaureate degree or a program of study that is structured so as not to require a baccalaureate degree at an eligible institution.

D. "Full-time student" shall mean a student who has matriculated into a program of study leading to the first baccalaureate degree or a program of study that is structured so as not to require a baccalaureate degree and leads to a graduate degree 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. 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 coursework.

E. “Independent 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 whose major campus and headquarters are located within South Carolina and which is accredited by the Southern Association of Colleges and Schools." However, independent two-year institutions are not eligible for participation in this program.

F. An “offense” shall mean a violation of any law or rule in any state or Federal criminal justice system.

G. “Program of study that is structured so as not to require a baccalaureate degree” is a program of study that is structured so as not to require a baccalaureate degree for acceptance into the program and leads to a graduate degree, which will be the student’s first academic degree awarded, at a location approved by the U.S. Department of Education for participation in Federally funded Student Aid Programs. Students are eligible to receive the scholarship for a maximum of eight terms (or its equivalent) as long as all other eligibility criteria are met. Students who have been awarded a baccalaureate or graduate degree are not eligible for scholarship funding.

H. “Public institutions” are those four-year baccalaureate 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 post-secondary field." Public two-year institutions and technical colleges are not eligible for participation in this program.

I. “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.

J. “Transfer student” is defined, for the purposes of this program, as a student who has changed full-time enrollment from one eligible institution to another eligible institution.

62-315 Student Eligibility

A. In order to qualify for consideration for a Palmetto Fellows Scholarship, a student must:

1. Be enrolled as a senior in a public or private high school or any other high school program of study approved and certified by that school district as conforming to relevant State Statute at the time of application and be a legal resident of South Carolina as defined in applicable State Statute governing the determination of residency for tuition and fee purposes at the time of college enrollment;

2. Be a U.S. citizen or a permanent resident that meets the definition of an eligible non-citizen under State Residency Statute;

3. Meet the following three criteria: a minimum score of 1200 on the Scholastic Assessment Test (SAT) or an equivalent ACT score, and a cumulative 3.5 grade point ratio (GPR) on the Uniform Grading Scale at the end of the junior year, and rank in the top five percent of the class at the end of either the sophomore or the junior year. Qualifying scores must be certified by the high school on the Palmetto Fellows Scholarship application by no later than the scholarship application deadline;

4. Be seriously considering attending, have applied, or have been accepted for admission to an eligible four-year baccalaureate-granting public or independent college or university in South Carolina as defined under Chapter 143 and Chapter 113 of Title 59 of the 1976 Code as a first-time, full-time, degree-seeking student;

5. Certify that he/she has not been adjudicated delinquent, convicted, or pled guilty or nolo contendere to any felonies, 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 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 an alcohol or drug related misdemeanor offense is only ineligible for the next academic year of eligibility after the date of the adjudication, conviction or plea; and

6. Submit the official Palmetto Fellows Scholarship Application by the established deadline 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 high school student who transfers into the State or a student who is enrolled in a high school outside of South Carolina is eligible to participate in the program providing that the student meets all eligibility requirements as described herein as well as all residency requirements as described in the "Program Definitions" Section above. A transfer student from, or a student enrolled in, an out-of-state high school may apply on the condition that the counselor or principal at the high school at which the student is presently enrolled provides official high school transcripts and appropriate documentation of compliance with all eligibility criteria, including State residency status, SAT score or equivalent ACT score that are certified by the high school on the Palmetto Fellows Scholarship application by no later than the scholarship application deadline, GPA at the end of the junior year, and rank at the end of either the sophomore or the junior year in high school. The high school principal or counselor must identify each eligible student and provide an application to each student.

D. A high school student who graduates immediately after the high school junior year is eligible to apply for the Palmetto Fellows Scholarship, providing that the student meets all eligibility requirements as described in the "Student Eligibility" Section, and providing that the student is entering a participating college or university not later than the fall term immediately following high school graduation.

E. Students receiving a Palmetto Fellows Scholarship are not eligible for a LIFE or HOPE Scholarship.

F. Any student who attempts to obtain or obtains a 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.

62-320 Student Application

A. The Commission on Higher Education will send information regarding the application process to South Carolina high schools. High school officials will identify students who meet the following three criteria: SAT score or equivalent ACT score, and cumulative GPR at the end of the junior year, and rank in the high school sophomore or junior class. Applications must be submitted no later than the established deadline along with the appropriate official signatures and the students' official transcripts by the principals to the Commission on Higher Education.

B. The high schools shall complete and return a list to the Commission on Higher Education indicating the names of all students who meet the eligibility criteria according to the high school. Both the high school principal and guidance counselor must sign the list. The list shall indicate whether the student is submitting a completed application or declining the opportunity to submit an application. If the student declines the opportunity to submit an application, 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.

C. Students must have certification that they earned a cumulative 3.5 GPR on the Uniform Grading Scale at the end of the junior year.

D. Students must have certification that they rank in the top five percent of their high school class at the end of either the sophomore or the junior year.

E. For those high schools that have fewer than twenty students in the class, the high school can submit up to two applications (an application for the student who is ranked number one in the sophomore class and, if different, an application for the student who is ranked number one in the junior class). For those high schools that have fewer than forty students but greater than twenty students in the class, the high school can submit up to four applications (up to two applications for the students ranked number one – one for the student who is ranked number one in the sophomore class and, if different, one for the student who is ranked number one in the junior class; and up to two applications for the students ranked number two in the class – one for the student who is ranked number two in the sophomore class and, if different, one for the student who is ranked number two in the junior class). These students must meet all other eligibility criteria.

F. Students must have certification that they earned a score of at least 1200 on the SAT, or an equivalent ACT score. The Commission on Higher Education shall convert all ACT scores to the equivalent SAT scores.

G. Qualifying test scores must be certified by the high school on the Palmetto Fellows Scholarship application by no later than the scholarship deadline. It is permissible to select a verbal score from one test administration and a math score from a different test administration in order to obtain the qualifying composite score.

62-325 Selection Process

A. The Commission on Higher Education shall notify students of their selection as a Palmetto Fellow along with terms and conditions of the award.

B. Students must notify the Commission on Higher Education of their acceptance of the scholarship and designate the participating institution in which they plan to enroll by the date established by the Commission on Higher Education or forfeit the Palmetto Fellows Scholarship.

C. The Commission on Higher Education shall ensure that there is equitable minority participation in the program.

62-330 Policies and Procedures for Awarding Palmetto Fellows Scholarships

A. The institution shall specify exact award amounts based upon applying the Palmetto Fellows Scholarship Regulation and criteria stipulated herein. The annual award amount for each Palmetto Fellow shall not exceed $6700 per academic year.

B. Palmetto Fellows Scholarships are to be used only towards payment for cost-of-attendance as established by Title IV Regulations with modifications set forth in C below for the academic year for which the scholarship is made at the designated institution. The maximum amount awarded shall not exceed the cost-of-attendance as established by Title IV Regulations for any year.

C. 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.

D. In determining the amount awarded for the Palmetto Fellows Scholarship, all other sources of gift aid, including Federal, State, private and institutional funds, must be applied to the unmet total cost-of-attendance in accord with Title IV Regulations before calculating the scholarship amount and awarding the scholarship.

Adjustments to the financial aid package will be made to the Palmetto Fellows Scholarship in accordance with prescribed Title IV Regulations in order to prevent an over-award.

E. Although a student may be named a Palmetto Fellow, the student may not receive a monetary award if the award, when added to other financial resources, would cause the student to receive total assistance in excess of the student's cost-of-attendance as defined by Title IV Regulations and these guidelines.

F. Participating institutions will notify students of their award along with the terms and conditions of the award.

G. 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, alcohol or drug related misdemeanor offenses as stated under "Student Eligibility" and "Duration and Renewal of Awards" Sections
3. Award notification
4. Institutional disbursement to student
5. Refund or repayment (if appropriate)
6. Student's residency status
7. Enrollment and curriculum requirements
8. Student's disability (if appropriate)

H. It is the institution's responsibility to ensure that only eligible students receive the scholarship.

62-335 Duration and Renewal of Awards

A. A Palmetto Fellows Scholarship shall be initially awarded for one academic year. The institution shall adjust the amount of the scholarship award during the academic year in the event of a change in the student's eligibility.

B. Students selected as Palmetto Fellows must enter a participating college or university the fall term immediately following high school graduation. The award may not be deferred except as noted under "Enrollment in Internships, Cooperative Work Programs, Travel Study Programs, or National or International Exchange Programs" Section.

C. A Palmetto Fellows Scholarship may be renewed annually for no more than a total of eight terms (or its equivalent) of full-time study toward the first baccalaureate degree or a program of study that is structured so as not to require a baccalaureate degree and leads to a graduate degree. Renewal decisions will be made annually and are not automatically guaranteed. Students who have already been awarded their first baccalaureate or graduate degree are not eligible to receive the Palmetto Fellows Scholarship.

D. The institution shall be responsible for securing institutional certification of each recipient's cumulative grade point average and credit hours earned for purposes of determining eligibility for award renewal.

E. In order to retain eligibility for the Palmetto Fellows Scholarship after the initial year, the student must:

1. Enroll full-time at the time of the scholarship disbursement;

2. Earn at least a cumulative 3.0 grade point average (GPA) on a 4.0 scale 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.) 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 a FAFSA Form 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 Grant, Pell Grant, Supplemental Educational Opportunity Grant, Perkins Loan or Federal Stafford Loan; and

5. Certify each academic year that he/she has not been adjudicated delinquent, convicted, or pled guilty or nolo contendere to any felonies, 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 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 an alcohol or drug related misdemeanor offense is only ineligible for the next academic year of eligibility after the date of the adjudication, conviction or plea.

F. Any student who attempts to obtain or obtains a 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.

62-340 Transfer of Palmetto Fellows Scholarship

A. Palmetto Fellows enrolled at an eligible public or independent institution as defined in Chapter 103 of Title 59 of the 1976 Code may transfer the scholarship to another eligible institution upon obtaining prior approval from the Commission on Higher Education.

B. Transfer students shall receive the scholarship for no more than eight terms (or its equivalent) at all institutions attended.

C. Transfer students must comply with all standards for continued eligibility as defined under "Duration and Renewal of Awards" Section in order for their scholarship to be eligible for transferal.

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 "Student Eligibility" Section except for the full-time enrollment requirement is eligible to receive scholarship 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 to be enrolled in less than full-time status or less than the required number of annual credit hours for that academic year. Students must earn the required number of hours approved by the institutional Disability Services Provider each academic year for scholarship renewal and earn a minimum 3.0 cumulative grade point average on a 4.0 scale by the end of the academic year. 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 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.

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 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 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 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 scholarship funds to the institutions where students will participate in internships, cooperative work programs, travel study programs, or National or International Student Exchange Programs. The institution is responsible for scholarship funds according to the "Program Administration and Audits" Section.

C. Students who enroll in one term of the academic year 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 fifteen credit hours and a 3.0 cumulative grade point average on a 4.0 scale within the academic year to be eligible for scholarship renewal for the next academic year. The student may continue to be eligible to receive the Palmetto Fellows Scholarship for up to a total of eight terms (or its equivalent) at all institutions attended. Students will be required to meet 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, scholarship renewal for the next academic year will be based on the prior year's eligibility. The student may continue to be eligible to receive the Palmetto Fellows Scholarship for up to a total of eight terms (or its equivalent) at all institutions attended. Students will be required to meet 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 Palmetto Fellows Scholarship funds during this period shall be allowed to receive one term of Palmetto Fellows Scholarship funds during the succeeding summer. In order to receive Palmetto Fellows Scholarship funds for summer school, 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 for 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 27 credit hours (or its equivalent) for the academic year. The student must meet all continued eligibility requirements, except for the completion of the thirty credit hour requirement for the academic year.

F. The home institution will be responsible for securing official certification of the student's cumulative grade point average and credit hours earned for the purposes of determining eligibility for scholarship renewal for the next academic year.

G. Students enrolling in internships, cooperative work programs, travel study programs, or National or International Student Exchange Programs that are approved by the home institution but do not award full-time transfer credit immediately following high school graduation shall be allowed to defer the Palmetto Fellows Scholarship for up to twelve months immediately following high school graduation provided that: 1) the student is accepted for admission as a first time-entering freshman at a participating college or university for the fall term; and 2) the participating institution agrees to defer admission for up to twelve months. Students must enroll at the institution where the award was originally reserved and must be entering college for the first time. The next academic year's eligibility is based on C, D or E above. Credit hours earned and accepted by the home institution for internships, cooperative work programs, travel study programs, or National or International Student Exchange Programs can be used in the current academic year's credit hour requirement.

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 student wishing to appeal any non-renewal decision based on extenuating circumstances must submit the following source documents to the Commission on Higher Education by no later than the established deadline of the academic year the scholarship is requested:

1. A completed application for appeal
2. A letter requesting an appeal describing the extenuating circumstances
3. An official transcript(s)
4. Any other supporting documentation to substantiate the basis for the appeal

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. The Appeals Committee's decision is final.

62-360 Institutional Disbursement of Scholarship Funds

A. The institution will identify award amounts, which cannot exceed $6700 per academic year. Half of each scholarship shall be disbursed during the fall term and half disbursed during the spring term of each year (or its equivalent), assuming continued eligibility. Palmetto Fellows may not be funded for more than a total of eight terms (or its equivalent) of full-time study toward the first baccalaureate degree or a program of study that is structured so as not to require a baccalaureate degree and leads to a graduate degree.

B. The Palmetto Fellows Scholarship may not be applied to a second baccalaureate 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 baccalaureate degree and leads to a graduate degree as defined in the "Program Definitions" Section. In the event of early graduation, the award is discontinued.

C. The institution shall provide an award notification each academic year to Palmetto Fellows recipients, 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 terms for the award.

D. 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. According to the Scholarship and Grant Programs Policies and Procedures Manual, a listing of eligible recipients by social security number with the award amounts for the term must be sent to the Commission on Higher Education with the institution's request for funds. A year-end reconciliation report will be submitted to the Commission on Higher Education prior to June 30th.

E. The Commission will disburse awards to the participating institutions to be placed in each eligible student's account.

62-365 Refunds and Repayments

A. In the event a student who has been awarded a Palmetto Fellows Scholarship withdraws, is suspended from the institution, or drops below full-time status during any regular term of the academic year, institutions must reimburse the Palmetto Fellows Scholarship Program for the amount of the scholarship 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.

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 participating institutions. The Commission on Higher Education shall be responsible for the allocation of funds, promulgation of guidelines and regulation governing the Palmetto Fellows 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 Palmetto Fellows Scholarship 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.

62-375 Suspension or Termination of Institutional Participation

A. The Commission on Higher Education 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 on Higher Education may suspend, terminate, or place certain conditions upon the institution's continued

participation in the program and require reimbursement to the Palmetto Fellows Scholarship 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 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, guidelines, rules, and regulations.

Fiscal Impact Statement:

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

Statement of Rationale:

During the 2002 legislative session, the S.C. General Assembly approved funding from the S.C. Education Lottery to provide an increase in the maximum annual award amount for the Palmetto Fellows Scholarship. This regulation is being promulgated to provide procedures for the senior institutions in implementing this legislative change.

Document No. 2752
COMMISSION ON HIGHER EDUCATION
CHAPTER 62
Statutory Authority: 1976 Code Section 59-150-370

62-900.85–140 South Carolina HOPE Scholarship

Synopsis:

The South Carolina HOPE Scholarship, established under the South Carolina Education Lottery Act, was approved by the General Assembly during the 2001 legislative session and signed into law on June 13, 2001. Act 356 authorizes funding for scholarships to cover the cost of attendance, up to a maximum of two thousand six hundred fifty dollars (includes $150 book allowance) to eligible students attending four year public and independent institutions in South Carolina. The purpose of the SC HOPE Scholarship program is to provide funding to students who graduate from high school with a 3.0 cumulative grade point average, but are not eligible to receive the LIFE or Palmetto Fellows Scholarships. Act 356 authorizes the Commission on Higher Education to promulgate regulation for administration of the SC HOPE Scholarship Program.

Instructions: Add new R.62-900.85 through 62-900.140, South Carolina HOPE Scholarship Program, to Chapter 62 regulations.

Text:

Table of Contents:

62-900.85 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 to eligible students as SC HOPE Scholarships.

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. "Baccalaureate 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 established by Title IV Regulations 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 an eligible program of study at an eligible institution.

F. "Eligible institution" shall be defined as a public or independent bachelor's level institution.

G. "Eligible program of study" is defined as a program of study leading to the first baccalaureate degree, which meets all other Title IV regulations as authorized by the U.S. Department of Education for participation in federally funded financial aid programs.

H. "Freshmen 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 an eligible program of study and who enrolls full time, 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 coursework.

J. "High school" is defined as a high school located in South Carolina, an approved home school program as defined in the State Statute, Sections 59-65-40, 45, and 47, or a preparatory high school located outside of the state while the student is a dependent of a legal resident of South Carolina who has custody or pays child support and college expenses of the dependent high school student. 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. "Independent 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 chartered before 1962 whose major campus and headquarters are located within South Carolina; or an independent bachelor's level institution which is accredited by the Southern Association of Colleges and Secondary Schools or the New England 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 'independent institution' for purposes of this chapter. However, independent two year institutions are not eligible for participation in this program.

L. "Initial college enrollment" shall mean the first time the student matriculates into a post secondary educational institution after high school graduation or completion of an approved home school program.

M. An "offense" shall mean a violation of any law or rule in any State or Federal criminal justice system.

N. "Public institutions" are those four year baccalaureate 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 post secondary field." Public two year institutions and technical colleges are not eligible for participation in this program.

O. “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.

P. "Transfer student" shall be defined as a student who has changed enrollment from one institution to an eligible institution.

62-900.95 Student Eligibility

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

1. Be a U.S. citizen or a permanent resident that meets the definition of an eligible non citizen under State residency statutes;

2. Be a South Carolina resident for in state tuition purposes at the time of enrollment at the institution as set forth by Section 59-112-10 and graduated from a high school according to State Statute, Section 59-149-50A.

3. Earn a 3.0 cumulative grade point average (GPA) on a 4.0 scale. 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. Until 2004, students may qualify for the SC HOPE Scholarship using the Uniform Grading Scale (UGS) or the grade point calculation policy approved by the school district. Institutions shall use the final GPA as reported by the high school. If a weighted GPA is provided, the institution shall use the high school’s weighted GPA based upon the approved policies of the school district in determining whether the student meets the "B" average. The high school must specify which grading scale was used. If more than one grade point average is reported by the final official transcript, the institution may use the grading scale that would be to the student’s advantage. Beginning with students graduating in 2004, scholarship eligibility will be based upon the UGS only. No other grading policy will be allowed to qualify for a State scholarship.

4. Be admitted, enrolled full time, and classified as a degree seeking undergraduate student in an eligible institution in South Carolina; and

5. Certify that he/she has not been adjudicated delinquent, convicted, or pled guilty or nolo contendere to any felonies, alcohol or other 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 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 an alcohol or other drug related misdemeanor offense is only ineligible for the next academic year of eligibility after the date of the adjudication, conviction or plea.

B. 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. The student must request and submit a letter from the high school principal verifying that he/she has met all graduation requirements.

C. Early graduates who enroll mid year and are classified as degree seeking will officially begin their initial college enrollment.

D. Students receiving a SC HOPE Scholarship are not eligible for a LIFE or Palmetto Fellows Scholarship.

E. Students who meet all eligibility requirements for the SC HOPE Scholarship are eligible to receive scholarship funds for the freshmen year of attendance only.

F. All documents required for determining SC HOPE Scholarship eligibility must be submitted to the institution by their established deadline(s).

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 qualifies to receive the LIFE Scholarship at the end of the summer term, then the student will not be eligible to receive the SC HOPE Scholarship. 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 one institution to an eligible institution during the freshman year of attendance is eligible to receive the SC HOPE Scholarship if the student met the eligibility requirements as stated in the "Student Eligibility" Section at the beginning of the academic 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 during the first term(s) 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 SC HOPE Scholarship upon high school graduation.

C. Students who did not meet the scholarship eligibility requirements upon high school graduation and enrolled in remedial courses during the first term(s) during the freshman year will not be eligible to receive the SC HOPE Scholarship at the 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 during 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.

62-900.115 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’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.

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 six hundred fifty dollars (includes $150 book allowance) during the freshman year only. 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 or 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,
(7) Alcohol or other drug related misdemeanor offenses
(8) High school transcript(s) verifying high school graduation
or home school completion date and cumulative grade point average (freshmen only)
(9) Verification of student's disability (if appropriate)

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. It is the institution's responsibility to ensure that only eligible students receive the scholarship.

62-900.130 Institutional Disbursements

A. The eligible institution will identify award amounts, which cannot exceed two thousand six hundred fifty dollars (includes $150 book allowance) for students enrolled at four year public and independent institutions for the freshmen 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. The student must be enrolled at the time of disbursement as a full time student.

C. 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. According to the Scholarship and Grant Programs Policies and Procedures Manual, a listing of all eligible recipients by social security numbers with award amounts for the term must be sent to the Commission on Higher Education with the institution's request for funds. A year end reconciliation report will be submitted to the Commission on Higher Education prior to June 30th of each fiscal year. The reconciliation report shall include any additional requests for funds and/or return of unused funds.

D. The Commission will disburse awards to the eligible institutions to be placed in each eligible student's account.

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.

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.

Fiscal Impact:

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

Statement of Rationale:

The SC HOPE Scholarship Program was established in 2002 under the South Carolina Education Lottery Act. The S.C. Code of Laws, Section 59-150-370 authorizes the Commission on Higher Education to promulgate regulations to provide procedures to implement the program beginning academic year 2002-03.

Document No. 2805
DEPARTMENT OF INSURANCE
Chapter 69
Statutory Authority: 1976 Code Sections 38-1-20 (40); 38-3-110; 1-23-10, *et seq*.

69-64. Exempt Commercial Policies

Synopsis:

Pursuant to S.C. Code Ann. Section 38-1-20 (40), the S.C. Department of Insurance is directed to promulgate a regulation defining "exempt commercial policies" for purposes of applying the statutory exceptions for approval of rates, classifications, rules or rating plans prior to use as set forth in S.C. Code Ann. Sections 38-73-340 and 38-73-520. This regulation will establish the definition of "exempt commercial policies" as provided by Section 38-1-20 (40) and referred to in Sections 38-73-340 and 38-73-520 and will explain the effect of the exemption.

Instructions:

Add new Regulation 69-64, Exempt Commercial Policies, to Chapter 69 regulations.

Text:

69-64. Exempt Commercial Policies.

A. Purpose: The purpose of this regulation is to establish the definition of "exempt commercial policies" as provided by Section 38-1-20 (40) and referred to in Sections 38-73-340 and 38-73-520 and to explain the effect of the exemption.

B. Definition: "Exempt commercial policies" means all policies for commercial lines, as opposed to personal lines, insurance issued to commercial insureds, including all lines of commercial fire and allied insurance, inland marine insurance, commercial multi-peril insurance, casualty insurance including workers' compensation insurance, fidelity insurance and commercial automobile insurance. Insurance related to credit transactions written through financial institutions is not included within the definition of "exempt commercial policies." Professional liability insurance for physician and health care providers is not included within the definition of "exempt commercial policies."

C. Effect of Exemption: No insurer of exempt commercial policies will be required to file any classification, rate, rule, or rating plan, or modifications thereof, for any exempt commercial insurance line prior to its use in this State. However, loss cost filings by an advisory or rating organization must still be filed for approval under Sections 38-73-340 and 38-73-520 prior to an insurer's use of the loss cost component of such filings. Rates for exempt commercial policies remain subject to the provisions of Sections 38-73-330 and 38-73-430. Section 37-73-910 and Section 38-73-920 are not applicable to exempt commercial policies.

In order to maintain credible data and to encourage safety in the workplace, every workers' compensation insurer must continue to adhere to the uniform classification system and uniform experience rating system or plan developed by the nonpartisan rating bureau for workers' compensation insurance under Section 38-73-510. Workers' compensation insurers, if utilizing special rates for "exempt commercial policies" in this State, are required to maintain a desk file of all rates so used and to exhibit the desk file to the Department upon request.

D. Exempt Commercial Policy Forms: In connection with an exempt commercial policy, an insurer may use any commercial insurance policy, contract, certificate or endorsement, including any form or endorsement developed by an advisory organization. If the form or endorsement has not been previously filed with the Department by an advisory organization or by the insurer, the insurer utilizing the form or endorsement must notify the Department of its use by mailing a copy of the form or endorsement to the Department as soon as practicable after the insurer begins using it. An insurer is required to maintain a desk file of all forms or endorsements used in connection with exempt commercial policies written in this State and to exhibit the desk file to the Department upon its request.

Any policy, contract, certificate or endorsement for use with exempt commercial policies in this State may be subsequently disapproved for continued use on a prospective basis by the Director or his designee upon a finding that the policy form or endorsement:

(1) does not meet the requirements of South Carolina law;

(2) contains any provisions which are unfair, deceptive, ambiguous, misleading or unfairly discriminatory; or

(3) is solicited by means of advertising communication or dissemination of information which is deceptive or misleading.

If a policy form or endorsement is determined not to be in compliance with the above requirements, the Director or his designee must issue an order specifying in detail how a specific provision(s) of the form or endorsement fails to meet the requirements and stating the date on which the form or endorsement can no longer be used. The Director's findings shall not affect policies in force prior to the date stated in the order. The insurer must

thereafter, if required by the Director, submit to the Department a new policy form or endorsement, if any, replacing the discontinued form or endorsement.

Fiscal Impact Statement:

No additional state funding is requested.

Statement of Rationale:

The basis of this regulation is to further define "exempt commercial policies" as provided for in South Code Section 38-1-20 (40). No further studies or reports were relied upon in drafting these regulations.

Document No. 2738
DEPARTMENT OF LABOR, LICENSING AND REGULATION
SOUTH CAROLINA BOARD OF ACCOUNTANCY
CHAPTER 1
Statutory Authority: 1976 Code Sections 40-2-140 and 40-2-190.

Synopsis:

The South Carolina Board of Accountancy is recommending promulgation of a regulation pursuant to S.C. Code Section 40-2-190 to maintain access to the Uniform CPA Examination administered by the American Institute of Certified Public Accountants.

The General Assembly authorized the removal of the cap on fees for examination by 2001 Rat. 139 (signed by the Governor on August 30, 2001).

Instructions: Remove the current Regulation 1-05(D)(2) dealing with Certified Public Accountants' examination application and fees and replace with the text listed below.

Text:

1-05 Certified Public Accountant Examinations

Examination Applications and Fees.

Examination fees, as set by the AICPA, must accompany the application. If a check in payment of examination fees fails to clear the bank, the application shall be deemed incomplete and the application shall be returned to the candidate.

Fiscal Impact Statement:

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

Statement of Rationale:

This regulation is consistent with recent General Assembly action authorizing the removal of the cap on fees for the CPA Examination by 2001 Rat. 139 (signed by the Governor on August 30, 2001). The regulation, consistent with the new law, will permit the examination cost, (which is expected to exceed the maximum amount allowed by existing Regulation 1-05-(D)(2)), to be charged and thereby allow candidates to take the examination.

Scientific or Technical Basis: Not applicable

Document No. 2728
DEPARTMENT OF LABOR, LICENSING AND REGULATION
BOARD FOR BARRIER FREE DESIGN
CHAPTER 19
Statutory Authority: 1976 Code Sections 40-1-40, and 10-5-220, et seq.

Synopsis:

The Board for Barrier Free Design is amending Regulation 19 to transfer its duties and responsibilities under the Accessibility Act (§10-5-210, et seq.) to a standing committee of the Building Codes Council, to clarify certain language, to delete obsolete and redundant language, to delete language that is covered by the International Building Code or in other statutes, to eliminate conflicts between the existing statutes and regulations for the Building Codes Council and the Board for Barrier Free Design, and to renumber and reletter remaining sections of this regulation.

Instructions: Regulation 19-400 is replaced in its entirety with the following:

Text:

19-400.1. Authority.

(A) With the exception of one and two family detached dwellings and other residential buildings to be offered for sale as individual dwelling units, every building or structure shall have all levels and areas made accessible to disabled persons in accordance with the latest edition of the American National Standards Institute, Inc. (ANSI) document A117.1, and the requirements of this section.

(B) Buildings containing dwelling units that are to be offered for rent, such as apartments, hotels, dormitories, etc., shall provide the following number of fully accessible units.

Total Number of Units	Number of Accessible Units
0 thru 19	1
20 or more	5%

Fractions of 1/2 or more shall be counted as a whole unit

19-400.2. Application.

(A) There shall be no construction, alteration or leasing of a government building nor construction or renovation of a public building except in conformity with these Regulations. If the occupancy as defined in the Building Code of an existing building is changed, that building shall be made to conform to the requirements of these Regulations for the new occupancy. If the occupancy of a portion of an existing building is changed, then only such portion which is changed shall comply.

19-400.3 Administration.

(A) Interpretation - Interpretation of these Regulations and provisions herein shall be the responsibility of the local building officials, in consultation with the appropriate State Officials where necessary. However, request for interpretation may be forwarded to the Accessibility Committee for the South Carolina Building Codes Council for resolution.

(B) Enforcement - The enforcement of these Regulations including investigations shall be the responsibility of the Building Official of each county or municipality within the state. If the county or the municipality does not have a Building Official, the South Carolina Building Codes Council shall enforce these Regulations.

(C) Conflicts - Where a conflict exists between these Regulations and Section 10-5-210 through 10-5-320 of the Code of Laws of South Carolina, 1976, as amended, these Regulations shall be superseded and governed by the applicable code section. Where there is conflict between these Regulations and local and municipal ordinances, these Regulations govern and shall be followed.

(D) All meetings and conferences, of an agency of this State, in which participation by the public is invited or anticipated, must be held in a place and manner that is accessible to persons with disabilities, unless there are compelling reasons why specific elements of accessibility cannot be provided. In such instances where specific elements of accessibility cannot be provided, the meeting or conference areas shall be as accessible as reasonably possible.

Fiscal Impact Statement: There will be no additional cost incurred by the State or any political subdivision.

Statement of Rationale:

This regulation is needed to update and delete obsolete language because of the Americans with Disabilities Act which moves parts of the regulation to federal jurisdiction, the International Building Codes which uses different terms from previous Standard Code, and the devolving of Barrier Free Design Board into a committee of the Building Codes Council.

Scientific or Technical Basis: Not applicable

Resubmitted March 25, 2003

Document No. 2739
DEPARTMENT OF LABOR, LICENSING AND REGULATION
BOARD OF CHIROPRACTIC EXAMINERS
CHAPTER 25
Statutory Authority: 1976 Code Sections 40-1-40 and 40-9-30

Synopsis:

The Board of Chiropractic Examiners is amending Regulation 25-5 to require that two of the 24 hours of mandatory biennial professional continuing education shall relate to the rules and regulations of the S.C. Board of Chiropractic Examiners and two hours shall relate to risk management, including but not limited to, boundary or public health issues.

Instructions: Amend current Regulation 25-5 by replacing current language contained in sub-section D with new text as it appears below.

Text:

25-5. Professional Practices

D. Continuing Education. As a pre-requisite for biennial renewal of a practitioner's license, the licensee must complete a minimum of twenty-four (24) hours biennially of accepted professional continuing education. Of the twenty-four (24) hours, two hours are required in rules and regulations of the S.C. Board of Chiropractic Examiners and two hours in risk management which includes, but is not limited to, boundary or public health issues.

Fiscal Impact Statement: If online testing is offered as an option, the cost is estimated at approximately $5,000 to initially set up the test.

Statement of Rationale:

The Board of Chiropractic Examiners has determined the need for every licensed chiropractic practitioner to regularly receive instruction through their professional continuing education courses that relates to understanding the rules and regulations of the Board and risk management issues, including but not limited to, boundary and public health issues. These changes will help ensure that chiropractic practitioners are aware of current rules and regulations governing their profession and of current risk management issues including professional boundaries in treating patients and public health issues.

Scientific or Technical Basis: Not applicable

Document 2740
DEPARTMENT OF LABOR, LICENSING AND REGULATION
OFFICE OF ELEVATOR AND AMUSEMENT RIDE SAFETY
CHAPTER 71
Statutory Authority: 1976 Code Section 41-16-140

Synopsis:

The Office of Elevator and Amusement Ride Safety proposes to revise existing regulations concerning fees. The cost of fees will increase by $50 per elevator. The cost of a temporary and renewal of a temporary certificate will increase $150. A fee for an annual operating certificate will increase $10 per facility. A fee for a reinspection due to failure to make timely corrections will be $75.00 per hour of inspection time, including travel.

Instructions: Item 1A and 1C amended, item 2A remains the same, item 2B amended, new item C added.

Text:

71-5600. Fee Schedules.

1. Construction permit:

A. The fee for a construction permit shall include the fee for registration and the first annual operating certificate of a facility.

Contract Price/Per Facility	Fee
$ 1--$ 10,000	$200.00
$ 10,001--$ 30,000	$245.00
$ 30,001--$ 50,000	$295.00
$ 50,001--$ 80,000	$340.00
$ 80,001--$100,000	$360.00
$100,001--$200,000	$410.00
$200,001-- up	$460.00

B. Fees under 71-5600 include one turn-over inspection. Any return turn-over inspection, for failing to comply will be charged at a rate of $75.00 per hour including travel time.

C. A fee of $250.00 will be charged upon issuance of a temporary certificate, good for a period of no more than sixty (60) days. At the end of sixty (60) days the owner may a) apply for a renewal of a temporary certificate with a fee of $250.00; b) have the elevator ready for a complete turnover inspection; or c) remove the elevator from service.

2. Operating Certificate:

A. The fee for an annual operating certificate, after registration, whether initial or renewal, with inspection by the South Carolina Department of Labor shall be as follows:

Number of Floors	Fee
2 to 5	$125.00
6 to 12	$150.00
13 and above	$175.00
Handicap Lifts	$ 75.00
Dumbwaiters	$100.00
Manlifts	$200.00
TV Towers	$300.00

B. The fee for an annual operating certificate, after registration, whether initial or renewal, upon report of a special inspector shall be $35.00 per facility.

C. The fee for a reinspection due to failure to make timely corrections of all deficiencies noted in an annual inspection report will be $75.00 per hour of inspection time, including travel time.

3. License for Special Inspector:

A. The fee for an annual license as a special inspector shall be $200.00.

Fiscal Impact Statement: This regulation will have a limited impact upon the construction cost of buildings equipped with elevators and built for state and local governments. The cost of construction will increase by $50 per elevator.

Statement of Rationale:

The Office of Elevator and Amusement Ride Safety is directed to charge inspection fees, which are based upon the costs of administering the provisions of the South Carolina Elevator Safety Code. Due to the maintenance complexity of new elevators, planned reviews and inspections take longer and require more expertise. There is a direct correlation between the new elevator mechanical complexities and the training required repairing them. Travel costs have increased. Based upon these increased costs, the agency proposes increased fees for construction permits and initial operating certificates.

The Office of Elevator and Amusement Ride Safety has not proposed increased fees for most annual inspections because most facility owners maintain their equipment such that the cost of these inspections can be controlled. The Office of Elevator and Amusement Ride Safety does propose an additional fee for those who do not maintain their equipment or respond to the first notice of deficiencies. Only non-complying owners will bear the burden of paying for these additional inspections.

The Office of Elevator and Amusement Ride Safety has proposed to increase the fee for processing the reports of annual inspections by licensed special inspectors and the issuance of renewal certificates. The increased fee reflects the costs of assuring uniformity and completion of inspections as well as timely issuance of annual operating certificates.

Scientific or Technical basis: Not applicable

Document No. 2838
DEPARTMENT OF LABOR, LICENSING AND REGULATION
DIVISION OF LABOR
CHAPTER 71
Statutory Authority: 1976 Code Section 41-15-210

Synopsis:

The South Carolina Department of Labor, Licensing and Regulation, Division of Labor, Office of Occupational Safety and Health is amending the requirements for keeping records of occupational injuries and illnesses as required by the United States Department of Labor (29 CFR 1904.37 "State Recordkeeping Regulations").

Instructions:

Revise Regulation 71, Article I, Subarticle 3 – Recording and Reporting Occupational Injuries and Illnesses, as follows:
SCRR 71-300 to 309 remains the same
SCRR 71-310 Replace in its entirety. It is revised to follow federal changes on recording occupational hearing loss.
SCRR 71-311 remains the same
SCRR 71-312 (4) added to include an effective date of January 1, 2004.
SCRR 71-313 to 328 (Reserved) remains the same.
SCRR 71-329 paragraph (b)(7)(vi) replace in its entirety; revised to delay effective date
SCRR 71-330 to 346 remains the same

Text:

SCRR 71 – 310 Recording criteria for cases involving occupational hearing loss.
(a) Basic requirement.

If an employee's hearing test (audiogram) reveals that the employee has experienced a work-related Standard Threshold Shift (STS) in hearing in one or both ears, and the employee's total hearing level is 25 decibels (dB) or more above audiometric zero (averaged at 2000, 3000, and 4000 Hz) in the same ear(s) as the STS, you must record the case on the OSHA 300 Log.
(b) Implementation.

(1) What is a Standard Threshold Shift? A Standard Threshold Shift, or STS, is defined in the occupational noise exposure standard at 29 CFR 1910.95(g)(10)(i) as a change in hearing threshold, relative to the baseline audiogram for that employee, of an average of 10 decibels (dB) or more at 2000, 3000, and 4000 hertz (Hz) in one or both ears.

(2) How do I evaluate the current audiogram to determine whether an employee has an STS and a 25-dB hearing level?

(i) STS. If the employee has never previously experienced a recordable hearing loss, you must compare the employee's current audiogram with that employee's baseline audiogram. If the employee has previously experienced a recordable hearing loss, you must compare the employee's current audiogram with the employee's revised baseline audiogram (the audiogram reflecting the employee's previous recordable hearing loss case).

(ii) 25-dB loss. Audiometric test results reflect the employee's overall hearing ability in comparison to audiometric zero. Therefore, using the employee/s current audiogram, you must use the average hearing level at 2000, 3000, and 4000 Hz to determine whether or not the employee's total hearing level is 25 dB or more.

(3) May I adjust the current audiogram to reflect the effects of aging on hearing? Yes. When you are determining whether an STS has occurred, you may age adjust the employee's current audiogram results by using

Tables F-1 or F-2, as appropriate, in Appendix F of 29 CFR 1910.95. You may not use an age adjustment when determining whether the employee's total hearing level is 25 dB or more above audiometric zero.

(4) Do I have to record the hearing loss if I am going to retest the employee's hearing? No, if you retest the employee's hearing within 30 days of the first test, and the first test does not confirm the recordable STS, you are not required to record the hearing loss case on the OSHA 300 Log. If the test confirms the recordable STS, you must record the hearing loss illness within seven (7) calendar days of the retest. If subsequent audiometric testing performed under the testing requirements of the 1910.95 noise standard indicate 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 that the hearing loss is not work-related or has not been significantly aggravated by occupational noise exposure, you are not required to consider the case work-related or to record the case on the OSHA 300 Log.

(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: SCRR 71-310(b)(7) is effective beginning January 1, 2004.)
(Cross Reference: 1904.10)

71-312 Recording criteria for cases involving work-related musculosketal disorders.
(4) This section is effective January 1, 2004. From January 1, 2002 until December 31, 2003, you are required to record work-related injuries and illnesses involving muscles, nerves, tendons, ligaments, joints, cartilage and spinal discs in accordance with the requirements applicable to any injury or illness under SCRR 71-305, SCRR 71-306, SCRR 71-307, and SCRR 71-329. For entry (M) on the OSHA 300 Log, you must check either the entry for "injury" or "all other illnesses."

SCRR 71-329 (b)(7)
(vi) other illnesses, if the employee independently and voluntarily requests that his or her name not be entered on the log effective January 1, 2002. Effective January 1, 2004 Musculoskeletal disorders (MSDs) are not considered privacy concern cases.

Statement of Rationale:

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

Fiscal Impact Statement:

There will be no cost incurred by the State or any political subdivision.

Document No. 2819
DEPARTMENT OF NATURAL RESOURCES
CHAPTER 123

Statutory Authority: 1976 Code Sections 50-11-2200 and 50-11-2210

Synopsis:

This amended regulation sets seasons, bag limits and methods of hunting and taking of wildlife on Wildlife Management Areas. Amendments are needed to make changes and add new WMA's.

Instructions: Amend Regulation 123-40 to establish changes and include additional WMA's.

Text:

HUNTING IN WILDLIFE MANAGEMENT AREAS

123-40. Wildlife Management Area Regulations.

1.1 The following regulations amend South Carolina Department of Natural Resources regulation Numbers 123-40.

1.2. The regulations governing hunting including prescribed schedules and seasons, methods of hunting and taking wildlife, and bag limits for Wildlife Management Areas are as follows:

(A) Game Zone 1

Chauga, Franklin L. Gravely, Caesar's Head and Keowee WMA's

Still Gun Hunts For Deer Only (No dogs)	Oct. 11 through Oct. 16 Oct. 31- Dec. 22 (WMA) Oct. 31 – Jan. 1 (Private land)	Total of 7 deer for all gun hunts. 2 deer per day, buck ONLY, except either-sex on days specified in Reg. 4.2. Archers allowed to take either-sex during entire period.

Keowee WMA

No hunting is allowed in research and teaching areas of Keowee WMA (research and teaching areas are posted with white signs) except those special hunts for youth or mobility-impaired conducted by the Department. Archers must obtain a Fant's Grove/Keowee WMA Archery Permit through the Clemson DNR Office prior to hunting. Permits will be available beginning the first Monday in September and must be in the hunters possession while hunting during the archery only season.

Other Small Game	No hunting before Sept. 1 or after Mar. 1; otherwise Game Zones 1 and 2 seasons apply. Shotguns only north of Hwy 123, west of the Keowee Arm of Lake Hartwell to the Old Clemson Seneca Hwy. Also west of Hwy 291, north and south of the Keowee arm of Lake Hartwell upstream from the Hwy 291 bridge. All other areas archery only.	Game Zone 1 & 2 bag limits.

(B) Game Zone 2

Keowee WMA

No hunting is allowed in research and teaching areas of Keowee WMA (research and teaching areas are posted with white signs) except those special hunts for youth or mobility-impaired conducted by the Department. Archers must obtain a Fant's Grove/Keowee WMA Archery Permit through the Clemson DNR Office prior to hunting. Permits will be available beginning the first Monday in September and must be in the hunters possession while hunting during the archery only season.

Fants Grove WMA

Quality Deer Management Area - bucks must have at least 4 points on one side. A point must be at least one inch long. Hunters must sign in at the Clemson DNR check point. The Clemson DNR check point will open 2 hours before official sunrise for deer hunts. Hunters are required to wear a hat, coat or vest of international orange while hunting. Archers must obtain a Fant's Grove/Keowee WMA Archery Permit through the Clemson DNR Office prior to hunting. Permits will be available beginning the first Monday in September and must be in the hunters possession while hunting during the archery only season.

(J) Webb WMA

Deer Hunts	No open season except for hunters selected by computer drawing.	2 deer, either-sex except only 1 buck with a minimum of 4 points on one side or a 12-inch minimum antler spread.

(O) Lewis Ocean Bay Heritage Preserve WMA

Deer		Total of 5 deer for all hunts combined.

Still hunting only, no deer dogs, no buckshot, no hunting or shooting from or on any roads open to vehicular traffic. Hunting from horseback is prohibited.

Archery	1st. Mon. - Sat. on or after Sept. 15 1st Mon. - Sat. in Oct., 2nd Mon.- Sat. in Oct. 3rd Mon. – Sat. in Oct.	1 deer per day, either-sex
Archery and Muzzleloader	4th Mon. in Oct. through following Sat. 2nd Mon. - Sat. in Nov.	1 deer per day, either-sex.
Still Gun Hunts	Last Mon. in Nov. – through the following Sat. 2nd Mon. - Sat. in Dec.	1 deer per day, buck only.

(R) Santee Coastal Reserve WMA

Deer Hunts Archery (No dogs)	1st and 3rd full weeks in Nov.	2 deer per day, either-sex. Hunting on mainland only. Hogs, no limit. No possession of handguns or sidearms during archery only hunts.
Raccoon/Opossum	Tues. and Fri. nights, 1st Tues. after Jan. 20 to the last Fri. in Feb.	Game Zone 6 bag limits.

Special Hog Hunt With Dogs	1st Thurs. and Fri. in Feb.	Hogs Only, no limit, handguns only, limit of 4 bay or catch dogs per party, no live hogs to be removed from Santee Coastal.

(U) Manchester State Forest WMA

Deer		Total of 5 deer per season for all hunts.

Deer must be checked at check station. No man-drives during either-sex still gun hunts for deer. Hogs may be taken only during deer hunts or special hog hunts. No hogs may be removed alive from Manchester State Forest WMA.

Archery	3rd Mon. in Sept. through the Following Sat.	1 per day, either-sex
Archery and Muzzleloader	4th Mon. in Sept. through the following Sat.	1 per day, buck only
	Friday during Archery and Muzzleloader Season	1 deer per day, either-sex
Dog Hunts	No open season except for clubs selected by computer drawing.	10 deer per day per club, 1 per day per person. Buck only, except by tags issued the day of the hunt.
Still Gun Hunts (No Dogs, no buckshot)	5th Mon. in Sept. – following Sat. 1st Mon. in Oct. – following Sat. 2nd Mon. in Oct. – following Sat. 3rd Tues. in Oct. – following Fri. 4th Tues. in Oct. – following Thurs.	1 per day, buck only except on either-sex hunts published annually.
	5th Tues. in Oct. – following Thurs. 1st Tues. in Nov. – following Thurs. 2nd Tues. in Nov. – following Sat. 3rd Tues. in Nov. – following Thurs. 4th Mon. in Nov. – following Sat.	In years when there is a fifth Tuesday in Oct., additional deer hunts may be scheduled on Fridays and Saturdays during October and November.
Special Hog Still Gun Hunt	1st Mon. through the last Sat. in Jan.	Hogs Only, no limit, no bay or catch dogs.
Special Hog Hunt	1st Mon. through the last Sat. in Feb.	Hogs only, no limit, handguns with dogs only, limit of 4 bay or catch dogs per party, no live hogs to be removed from Manchester SF.

(W) Marsh Furniture WMA

Wild hogs may only be taken during deer hunts and designated hog hunts, buckshot and rimfire firearms not permitted.

Special Hog Still Gun Hunt	3rd Mon. in Nov. – following Sat. 1st Mon. – last Sat. in Mar.	Hogs Only, no limit, no buckshot, no bay or catch dogs.

(Z) Donnelley WMA

Deer

All hunters must sign in and out at the check station. Hunting in designated areas only. Scouting season for archery only on the day before season opens. Hogs can be taken during all deer hunts.

Archery (no dogs)	Oct. 1 - Oct. 5 Nov. 1 - Nov. 5 Dec. 1 - Dec. 5	Total 4 deer per season, either-sex except no more than 1 buck with a minimum 4 points on one side or a minimum 12-inch antler spread. Hogs-no limit.
Still Gun Hunts	No open season except for hunters selected by computer drawing.	3 deer either-sex except no more than 1 buck with a minimum 4 points on one side or a minumum 12-inch antler spread.

(AA) Little Pee Dee River Complex WMA

Deer		Total of 3 deer for all hunts and hunt periods combined. Hogs, no limit
Still Gun Hunts	2nd Mon. in Nov. - the 4th Sat. in Nov.	1 deer per day, buck only
Small Game	Delete "No small game hunting during the Week of still gun hunting for deer."	
Special Hog Still Gun Hunt	1st Mon. – last Sat. in March	Hogs only, no limit, no buckshot, no bay or catch dogs.

Wild hogs may only be taken during deer hunts and designated hog hunts. Buckshot and rimfire firearms not permitted.

(DD) Palachucola WMA

Deer Hunts

Deer hunting or shooting will not be allowed from or on roads open to vehicle traffic.

Archery (No Dogs)	Ten hunting days beginning the last Wed. in Sept.	3 deer, either-sex except only 1 buck with a minimum of 4 points on one side or a minimum 12-inch antler spread.
Still Gun Hunts (No dogs)	No open season except for hunters selected by computer drawing.	3 deer, either-sex except only 1 buck with a minimum of 4 points on one side or a minimum 12-inch antler spread.

(FF) Waccamaw River Heritage Preserve WMA

Still Gun Hunts	2nd Mon. in Nov. through the 4th Sat. in Nov.	1 per day, buck only

Small Game: Delete "No hunting small game during scheduled deer hunt periods."

(JJ) Longleaf Pine WMA

Deer		Total 2 deer for all hunts combined.
Still Gun Hunts	Last Mon. in Oct. - 3rd Sat. in Nov.	1 deer per day, either-sex during scheduled county-wide either-sex days.

(OO) Santee Dam WMA

Deer		Total of 8 deer per season.
Archery (No dogs)	Sept. 1 through Nov. 1	2 deer per day, buck only, except either-sex Sept. 15 - Nov. 1. Hogs no limit.
Muzzleloader	Sept. 15 through Nov. 1	2 deer per day, either-sex. Hogs no limit.
Special Gun Hunts For Youth and Women	No open deer season after Nov. 1 except hunters selected by drawing.	1 deer per day, either-sex. Hogs no limit.

(TT) Stumphouse WMA

In order to fish or hunt Stumphouse WMA each adult (21 or older) must have at least one youth 17 or under accompanying them. Senior Citizens over 65 years of age are exempt from carrying a youth in order to fish. No motorized vehicles or horses allowed on the property. Walk in use only. Small game hunting only from Thanksgiving Day through March 1.

No more than 5 bucks total may be taken during all seasons combined, regardless of method (archery, muzzleloader, gun)

Primitive Weapons For Deer (No dogs)	Oct. 1 through Oct. 10	Muzzleloaders, 2 deer, buck only, 2 per day; archery, 2 deer, either-sex, 2 per day.
Still Gun Hunts For Deer Only	Oct. 11 through Oct. 16 Oct. 31- Wed. before Thanksgiving.	Total of 7 deer for all gun hunts. 2 deer per day, buck ONLY, (No dogs) except either-sex on days specified in Reg. 4.2. Archers allowed to take either-sex during entire period.
Small Game	No hunting before Thanksgiving Day or after Mar. 1; no small game hunting during gun hunts for deer, otherwise Game Zone 1 seasons apply.	Game Zone 1 bag limits.

4.2 Deer either-sex days for gun hunts are as follows:

Dillon, Horry and Marlboro counties: Saturday after October 3; beginning October 11, the next 2 Fridays and Saturdays, inclusive; and the Friday and Saturday before Thanksgiving.

5.2 On all WMA lands in Game Zones 1, 2 and 4, beagles may not be used for rabbit hunting during still gun hunts for deer. Beagles may be used from the close of the gun season for deer until the close of the rabbit season. Beagles may be trained for rabbit hunting from September 1 through September 30 (no guns).

10.15 Category I Designated Waterfowl Areas include Beaverdam, Broad River, Clemson, Santee Cooper, Sandy Beach, Samworth, Santee Coastal Reserve, Santee-Delta, Bear Island, and Donnelley Wildlife Management Areas. Hunting in Category I Designated Waterfowl Areas is by special permit obtained through annual computer drawing.

10.19 Hickory Top Greentree Reservoir is closed to all public 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. Each hunter is limited to 25 non-toxic shot shells per hunt and no buck shot is allowed. No hunting from roads or the dike system. Only electric motors on boats are allowed.

123-51 Turkey Hunting Rules and Seasons

AREA	DATES	LIMIT	Other Restrictions
Oak Lea WMA	April 1 – May 1	1	Wed. Only

Fiscal Impact Statement:

This amendment of Regulation 123.40 will result in increased public hunting opportunities that should generate additional State revenue through license sales. In addition, the local economy should benefit from sales of hunting supplies, food and overnight accommodations. Sales taxes on these items will also directly benefit government.

Statement of Rationale:

Rationale for the formulation of these regulations is based on over 60 years of experience by SCDNR in establishing public hunting areas. New areas are evaluated on location, size, current wildlife presence, access and recreation use potential. Contractual agreements with the landowners provide guidelines for the use and management of the property. 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. 2737
DEPARTMENT OF NATURAL RESOURCES
CHAPTER 123
Statutory Authority: 1976 Code Sections 50-11-2200 and 50-11-2210

Synopsis:

This amended regulation sets seasons, bag limits and methods of hunting and taking of wildlife on Wildlife Management Areas. Amendments are needed to make changes and add new WMA's.

Instructions: Amend Regulation 123-40 to establish changes and include additional WMA's.

HUNTING IN WILDLIFE MANAGEMENT AREAS

123-40. Wildlife Management Area Regulations.

1.1 The following regulations amend South Carolina Department of Natural Resources regulation Numbers 123-40.

1.2. The regulations governing hunting including prescribed schedules and seasons, methods of hunting and taking wildlife, and bag limits for Wildlife Management Areas are as follows:
(B) Game Zone 2

John C. Calhoun, Cokesbury, Clarks Hill, Parsons Mountain, Key Bridge, Forks, Ninety-six, Goldmine, Murray, Enoree, Fairforest, Keowee, Fant's Grove and Carlisle WMA's.

Hogs And Coyotes: On WMA lands in Game Zone 2, hogs and coyotes may be taken during the open season for game. No hog or coyote hunting with dogs during still gun hunts for deer. Only small game weapons allowed during the small game-only seasons. During turkey season hogs may be taken using legal weapons for turkey only.

(D) Game Zone 4

Fairforest, Enoree, Carlisle, Broad River, Dutchman and Wateree WMA's

Hogs And Coyotes: On WMA lands in Game Zone 4, hogs and coyotes may be taken during the open season for game. No hog or coyote hunting with dogs during still gun hunts for deer. Only small game weapons allowed during the small game-only seasons. During turkey season hogs may be taken using legal weapons for turkey only.

(G) Francis Marion National Forest

Hellhole WMA

Deer		
Still Gun Hunts	Mon. – Sat. of the 4th, 5th, 6th And 7th Wambaw dog drives	2 deer per day, either-sex. Hogs no limit.

Waterhorn WMA

Deer		
Still Gun Hunts	Fri. and Sat. of 1st and 2nd	2 deer per day, buck only,
Wambaw Dog Drive Hunt;		
	Mon.-Sat. weeks of 1st, 4th, 5th and 6th Santee Dog Drive Hunt.	2 deer per day, buck only, except either-sex beginning Monday the weeks of the 5th And 6th Santee dog drive hunt through Sat. of those weeks. Hogs no limit.
Hog Hunts	Sat. only in Feb.	No limit.

Wambaw WMA

Deer		
Dog Hunts (Shotguns only) Still gun hunts only East of Hwy 17 . Rifles allowed.	1st Fri. and Sat. after Aug. 15; 2nd Fri. and Sat. following the opening date the WMA and Fri. and Sat. every 3rd week thereafter Through Jan. 1.	2 deer per day, buck only, except either-sex Sat. of the 2nd, 3rd and 4th Northampton dog hunt.
Seewee Special Use Area Archery (no dogs)	Sept. 1 – Jan. 1	2 deer per day, buck only, except either-sex Sept. 15 – Jan. 1.

Northampton WMA

Deer		
Dog Hunts (Shotguns only)	1st Fri. and Sat. following the 2nd Wambaw hunt and Fri. and Sat. every 3rd week thereafter through Jan. 1.	2 deer per day, buck only, except either-sex Sat. of the 2nd, 3rd and 4th Northampton dog hunt.

Santee WMA

Deer		
Dog Drive Hunts (Shotguns only)	1st Fri. and Sat. following the 1st Northampton hunt and Fri. and Sat. every 3rd +week thereafter through Jan. 1.	2 deer per day, buck only, except either-sex Sat. of the 2nd, 3rd and 4th Northampton dog hunt.

(H) Moultrie

Bluefield WMA (Adult/Youth Area)

Bluefield WMA is 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 will be allowed to carry a weapon and hunt.

North Dike WMA

Small Game (No open season on fox squirrels)	No hunting before Sept. 1 or after Mar. 1; closed to small game hunting Wed. & Fri. during Nov. & Dec. Sandy Beach Waterfowl Area open for raccoon hunting Feb. 1 – Mar. 1, otherwise Game Zone 6 seasons apply.	Game Zone 6 bag limits. Except quail 8 per day.
Small Game	1st Mon. after the closing of the State Waterfowl Season through Mar. 1 (East Side of Ferguson Landing Rd Only), Except raccoon hunting each Sat., entire area.	Game Zone 6 Bag limits, except Quail- 8 per day.

(U) Manchester State Forest WMA

Deer		Total of 5 deer per season for all hunts.

Deer must be checked at check station. No man-drives during either-sex still gun hunts for deer. Hogs may be taken only during deer hunts or special hog hunts. No hogs may be removed alive from Manchester State Forest WMA.

Archery	Sept. 15 - 3th Sat. in Sept.	1 per day, either-sex
Archery and Muzzleloader	4th Mon. in Sept. - last Sat.	1 per day , buck only
	Fri. prior to last Sat. in Sept.	1 deer per day, either-sex
Dog Hunts	No open season except for clubs selected by computer drawing.	10 deer per day per club, 1 per day per person. Buck only, except by tags issued the day of the hunt.

Still Gun Hunts (No Dogs, no buckshot)	5th Mon. - Sat. in Sept. 1st Mon. - Sat. in Oct. 2nd Mon. - Fri. in Oct. 4th Tues. - Sat. in Oct. 5th Tues. - Thur. in Oct. 1st Tues. - Fri. in Nov. 2nd Tues. - Thur. in Nov. 3rd Tues. - Sat. in Nov. 4th Mon. - Sat. in Nov.	1 per day, buck only except on either-sex hunts published annually.
Quail (Except Bland Tract)	Thanksgiving – March 1	Game Zone 8 bag limits.
Special Hog Still Gun Hunt	1st Mon. – Sat. in Feb.	Hogs only, no limit; no dogs
Special Hog Hunt with Dogs	2nd Mon. – Sat. in Feb.	Hogs only, no limit, handguns only, limit of 4 bay or catch dogs per hunt party, no limit on hogs.

(W) Marsh Furniture WMA

Deer	Total of 3 deer for all hunts combined

The scouting season is the last Mon. - Sat. in Sept.

Still hunting only, no deer dogs, no buckshot, no hunting from vehicles or from or on roads open to vehicular traffic. No bay or catch dogs allowed for hog hunting. Hogs may be taken only during scheduled deer hunts.

Still Gun Hunts	4th Mon. in Oct. – following Sat. 1st Mon. in Nov. – following Sat. 2nd Mon. in Nov. – following Sat.	1 deer per day, buck only Hogs no limit.
Raccoon	1st Wed. in Dec. – last Wed. or Sat. in Dec. Wed. – Sat. Only.	3 per party per night.

(BB) Great Pee Dee River WMA

Deer Hunts	Total 3 deer for all hunts.

For big game hunting, access is restricted from two hours before sunrise to two hours after official sunset. All individuals are required to sign in and out at the entrance. Still hunting only, no deer dogs, no buckshot, no hunting from motor vehicles or boats, no hog dogs. Hogs may be taken only during deer hunts or special hog hunts. Firearms must be unloaded and cased and not readily accessible when not in legal use.

Gray Squirrels (No fox squirrels)	Thankgiving Day - Mar. 1st. No small game hunting during deer hunt periods.	Game Zone 8 bag limits.
Woodcock	Federal Seasons.	Federal limits.
Raccoon	Wed. & Sat. nights beginning 1st Sat. after Thanksgiving – last Wed. or Sat. in Feb.	3 per party per night.
Small Game	No open season on other small game species.	
Special Hog Hunt	3rd Mon. in Dec. - the following Sat. 1st Mon. in Feb. - the following Sat.	Hogs only, no limit

(KK) Bucksport WMA

Deer		Total 5 deer per season

No hunting from motorized boats.

Archery and Muzzleloader	4th Mon. in Oct. - 3rd Sat. in Nov.	1 deer per day, buck only

(NN) Dungannon WMA

Deer Hunts (No dogs)		Total 8 deer per season.
Archery (No dogs)	Oct. 15 through Dec. 1	2 deer per day, either-sex.

(OO) Santee Dam WMA

Hogs (No dogs) Archery and Muzzleloader	Jan. 2 – Mar. 1	No limit

(QQ) Oak Lea WMA

		Total 10 deer per season.
Archery	Sept. 15 through Sept. 30.	2 deer per day, either-sex.

Still Gun Hunts	No open season except hunters selected by drawing.	3 deer per day, either-sex; 1 buck per day limit. Total 20 deer per hunt party.

(SS) Edisto River WMA

Deer		Total 8 deer per season
Archery	Sept. 15 – 30	1 per day, either-sex Hogs, no limit
Muzzle Loader	Mon. - Sat. for two weeks Beginning the 1st full week in October.	1 per day, either-sex Hogs, no limit
Still Gun Hunts	Monday following the closing of muzzleloader season Through the 3rd Sat. in Nov.	1 per day, either-sex each Fri. & Sat. in Nov. Hogs, no limit
Small Game	Monday following the closing of still gun deer hunt until Mar. 1	Game Zone 6 bag limits except Quail- 8 per day.

WILDLIFE MANAGEMENT AREA REGULATIONS

Deer

4.2 Deer either-sex days for gun hunts are as follows:

Game Zone 1: The first two Fridays and Saturdays in November.

Game Zones 2 - 11: (except Dillon, Horry and Marlboro counties) Saturday after October 3; every Friday and/or Saturday from October 11 to Thanksgiving day inclusive; Saturdays in December beginning 23 days after Thanksgiving day; and the last day of the open season.

Dillon, Horry and Marlboro counties: Saturday after October 3; beginning October 11, the next 2 Fridays and Saturdays, inclusive.

5.5 Dogs may be used to hunt bear on WMA lands in Game Zone 1 during the special bear season.

7.1 On all WMA lands during the gun and muzzleloader hunting seasons for deer and hogs, all hunters must wear either a hat, coat, or vest of solid visible international orange, except hunters for dove and duck are exempt from this requirement while hunting for those species.

10.12 Hunters may not enter Hatchery WMA prior to 3 AM and must leave the area by 1 PM. Each hunter is limited to twenty-five nontoxic shot shells (steel, bismuth/tin, bismuth, tungsten-polymer, tungsten-iron) per hunt and no buckshot allowed. Hunters must enter and leave Hatchery WMA through the Hatchery Landing and accurately complete a data card and deposit card in receptacle prior to leaving the area. No airboats are allowed in the Hatchery WMA for hunting or fishing during the period 15 Nov.-31. Jan. No fishing allowed during scheduled waterfowl hunts.

10.15 Category I Designated Waterfowl Areas include Beaverdam, Broad River, Fant's Grove, Santee Cooper, Sandy Beach, Samworth, Santee Coastal Reserve, Santee-Delta, Bear Island, and Donnelley Wildlife Management Areas. Hunting in Category I Designated Waterfowl Areas is by special permit obtained through annual computer drawing.

10.16 Category II Designated Waterfowl Areas include Biedler Impoundment, Lake Cunningham, Russell Creek, Monticello Reservoir, Parr Reservoir, Duncan Creek, Dunaway, Dungannon, Enoree River, Moultrie, Hatchery, Hickory Top, Turtle Island, Little Pee Dee River Complex (including Ervin Dargan, Horace Tilghman), Great Pee Dee River, Oak Lea, Potato Creek Hatchery, Samson Island Unit (Bear Island), Tyger River, and Marsh Waterfowl Management Areas. Hunting on Category II Designated Waterfowl Areas is in accordance with scheduled dates and times.

DESIGNATED WATERFOWL AREAS

Area	Open dates inclusive	Bag Limits
Clemson	Hunters selected by drawing during regular season.	Federal Limits
Donnelley	Hunters selected by drawing during regular season.	Federal Limits

DELETE - Fant's Grove (name changed to Clemson)

Potato Creek Hatchery	Wed. and Sat. only during regular season.	Federal Limits
Samworth	Hunters selected by drawing during regular season.	Federal Limits
Santee-Delta	Hunters selected by drawing during regular season.	Federal Limits

Fiscal Impact Statement:

This amendment of Regulation 123.40 will result in increased public hunting opportunities that should generate additional State revenue through license sales. In addition, the local economy should benefit from sales of hunting supplies, food and overnight accommodations. Sales taxes on these items will also directly benefit government.

Statement of Rational:

Rationale for the formulation of these regulations is based on over 60 years of experience by SCDNR in establishing public hunting areas. New areas are evaluated on location, size, current wildlife presence, access and recreation use potential. Contractual agreements with the landowners provides guidelines for the use and management of the property. 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. 2780
DEPARTMENT OF REVENUE
CHAPTER 117
Statutory Authority: 1976 Code Section 12-4-320

Regulations 117-1, 117-2, 117-6 and 117-7

Synopsis:

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

Instructions: Repeal SC Regulations 117-1, 117-2, 117-6 and 117-7 and create three new regulations in a new Article 10.

Text:

117-200 Recordkeeping

Code Section 12-54-210 requires all taxpayers to keep books and records as the South Carolina Department of Revenue may prescribe. Code Section 12-54-100 authorizes the Department to examine the books and records of a taxpayer to ascertain the correctness of any return or tax liability. The following concerns the recordkeeping requirements of a taxpayer.

117-200.1 Retention of Books and Records and the Use of Microfilm Reproduction of Books and Records.

A person applying for or holding a license administered by the Department; liable for any tax, fee, or surcharge administered by the Department; or required to file any return or statement with the Department shall keep books, papers, memoranda, and records sufficient to establish the right to obtain or hold a license; any amount required to be shown on any return or statement; or any tax, fee or surcharge due, whether such amount due is paid with the filing of a return, electronically, or in any other manner. For purposes of this subsection, a return includes information returns or reports.

Such books or records are required to be kept at all times available for inspection by agents or auditors of the Department, and shall be retained for at least four years after the return was filed or due to be filed, whichever is later.

Only on prior written approval of the Department may microfilm reproductions of supporting records of details, such as but not limited to documents of original entry, purchase orders, invoices, checks, vouchers and payroll records, be retained in lieu of actual documents and then only when the following conditions are met:

1. The taxpayer will retain microfilm copies as long as the contents thereof may become material in the administration of any law by the Department;

2. The taxpayer will provide appropriate facilities for preservation of the films and for the ready inspection and location of the particular records, including a projector for viewing the records in the event inspection is necessary; and

3. The taxpayer will be ready to make any transcripts of the information contained on the microfilm which may be required.

117-200.2 Model Recordkeeping and Retention.

(A) The purpose of this regulation is to define the requirements imposed on taxpayers for the maintenance and retention of books, records, and other sources of information under Code Section 12-54-210. It is also the purpose of this regulation to address these requirements where all or a part of the taxpayer's records are received, created, maintained, or generated through various computer, electronic, and imaging processes and systems.

(B) For the purposes of this regulation, these terms shall be defined as follows:

(1) "Database management system" means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

(2) "Electronic data interchange" or "EDI technology" means the computer-to-computer exchange of business transactions in a standardized structured electronic format.

(3) "Hardcopy" means any documents, records, reports, or other data printed on paper.

(4) "Machine-sensible record" means a collection of related information in an electronic format. Machine-sensible records do not include hardcopy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems.

(5) "Storage-only imaging system" means a system of computer hardware and software that provides for the storage, retention, and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hardcopy or as an optical image.

(6) "Taxpayer" as used in this regulation means a person who is liable for a tax or who is responsible for collecting and remitting a tax. "Taxpayer" includes any licensee and any applicant for a license, issued by or administered by the Department.

(7) "Department" means the South Carolina Department of Revenue.

(C)(1) Pursuant to Code Section 12-54-210, a taxpayer shall maintain all records that are necessary to a determination of the correct tax liability under laws administered by the Department. All required records must be made available on request by the Department or its authorized representatives as provided for in Code Sections 12-54-100 and 12-4-330(A).

(2) If a taxpayer retains records required to be retained under this regulation in both machine-sensible and hardcopy formats, the taxpayer shall make the records available to the Department in machine-sensible format upon request of the Department pursuant to Code Sections 12-54-100 and 12-4-330(A).

(3) Nothing in this regulation shall be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hardcopy documents or reproductions thereof, in whole or in part, whether or not such taxpayer also has retained or has the capability to retain records on electronic or other storage media in accordance with this regulation. However, this provision shall not relieve the taxpayer of the obligation to comply with this subsection.

(D)(1) Machine-sensible records used to establish tax compliance shall contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the Department upon request. A taxpayer has discretion to discard duplicated records and redundant information provided its responsibilities under the law are met.

(2) At the time of an examination, the retained records must be capable of being retrieved and converted to a standard record format.

(3) Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

(E)(1) Where a taxpayer uses electronic data interchange processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, shipping detail, etc. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method which allows the Department to interpret the coded information.

(2) The taxpayer may capture the information necessary to satisfy section (E)(1) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system captures information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the taxpayer also retains other records, such as its vendor master file and product code description lists and makes them available to the Department. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

(F) The requirements for an electronic data processing accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this law.

(G)(1) Upon the request of the Department, the taxpayer shall provide a description of the business process that created the retained records. Such description shall include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.

(2) The taxpayer shall be capable of demonstrating:

(a) the functions being performed as they relate to the flow of data through the system;

(b) the internal controls used to ensure accurate and reliable processing; and,

(c) the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records

(3) The following specific documentation is required for machine-sensible records retained pursuant to this regulation:

(a) record formats or layouts;

(b) field definitions (including the meaning of all codes used to represent information);

(c) file descriptions (e.g., data set name);

(d) detailed charts of accounts and account descriptions.

(H)(1) It is recommended but not required that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as the labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records. [The NARA standards may be found at 36 Code of Federal Regulations, Part 1234, July 1, 1995 edition.]

(2) The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records.

(I)(1) The manner in which the Department is provided access to machine-sensible records as required in subsection (C)(2) of this regulation may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

(2) Such access will be provided in one or more of the following ways:

(a) The taxpayer may arrange to provide the Department with the hardware, software, and personnel resources to access the machine-sensible records;

(b) The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records;

(c) The taxpayer may convert the machine-sensible records, including copies of files, to a standard record format specified by the Department on a magnetic medium that is agreed to by the Department;

(d) The taxpayer and the Department may agree on other means of providing access to the machine-sensible records.

(J)(1) In conjunction with meeting requirements of subsection (D), the taxpayer may create files solely for the use of the Department. For example, if a database management system is used, it is consistent with this regulation for the taxpayer to create and retain a file that contains the transaction-level detail from the data-base management system and that meets the requirements of subsection (D). The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.

(2) A taxpayer may contract with a third party to provide custodial or management services of the records. Such a contract shall not relieve the taxpayer of its responsibilities under the law or this regulation.

(K)(1) For purposes of storage and retention, taxpayers may convert hardcopy documents received or produced in the normal course of business and required to be retained under this regulation to microfilm, microfiche or other storage-only imaging systems and may discard the original hardcopy documents provided the conditions of this regulation are met. Documents that may be stored on these media include, but are not limited to, general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

(2) Microfilm, microfiche, and other storage-only imaging systems shall meet the following requirements:

(a) Documentation establishing the procedures for converting the hardcopy documents to microfilm, microfiche, or other storage-only imaging systems must be maintained and made available on request. Such documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

(b) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained.

(c) Upon request by the Department, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on microfilm, microfiche, or other storage-only imaging systems.

(d) When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

(e) All data sorted on microfilm, microfiche, or other storage-only imaging systems must be maintained and arranged in a manner that permits the location of any particular record.

(f) There is no substantial evidence that the microfilm, microfiche, or other storage-only imaging system lacks authenticity or integrity.

(L)(1) Except as otherwise provided in this regulation, the provisions of this regulation do not relieve taxpayers of the responsibility to retain hardcopy records that are created or received in the ordinary course of business as required by existing law and regulations. Hardcopy records may be retained on a recordkeeping medium as provided in subsection (K) of this regulation.

(2) If hardcopy records are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), such hardcopy records need not be created.

(3) Hardcopy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this regulation. Such details include those listed in subsection (E)(1).

(4) Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

(5) Nothing in this regulation shall prevent the Department from requesting hardcopy printouts in lieu of retained machine-sensible records at the time of examination.

(M) The Department may allow a taxpayer to use other methods of maintaining and providing records that are received, created, maintained, or generated through various computer, electronic, and imaging processes and systems where such is in the best interest of the state.

117-201. Supplying of Identifying Numbers.

Any person required to make a return, statement, or document to the South Carolina Department of Revenue shall include in such return, statement, or other document such identifying numbers as may be prescribed for securing proper identification of such person.

117-202 Definitions; reimbursement for costs incurred in complying with summons.

Section 1. For purposes of this regulation the words terms and phrases when used herein shall have the meaning ascribed thereto.

(a) A "taxpayer" is a person, firm, corporation or other entity with respect to whose income, sales or business the summons is issued.

(b) A "third party" is the person, firm, corporation or other entity upon whom the summons is served, other than:

1. a taxpayer; or

2. an officer, employee, agent, accountant, or attorney of a taxpayer who, at the time the summons is served, is acting as such.

(c) "Third party records" are books, papers, records or other information in which the taxpayer has no proprietary interest at the time the summons is served.

(d) "Directly incurred costs" are those incurred solely, immediately and necessarily as a consequence of searching for, reproducing or transporting records in order to comply with a summons. Proportionate allocation of fixed costs (overhead, equipment depreciation, etc.) is not considered to be directly incurred. However, where a third party's records are stored at an independent storage facility that charges the third party a fee to search for, reproduce or transport particular records requested, such fees are considered to be directly incurred by the summoned third party.

(e) "Search Costs" include only the amount of time incurred in locating and retrieving records or information.

(f) "Reproduction Costs" are those incurred in making copies or duplicates of summoned documents, transcripts and other similar material.

(g) "Transportation Costs" are limited to:

1. Costs incurred to transport personnel to locate and retrieve records or information requested; and

2. Costs incurred solely by the need to convey the summoned material to the place of examination.

Section 2. A third party in compliance with a summons is entitled to payment as herein provided for directly incurred costs for searching, reproducing or transporting such party's records, books or papers.
The payment shall be in accordance with the following:

1. For reproduction costs

(a) ten (10) cents for each page reproduced;

(b) the actual cost of each photograph, film, or other material reproduced.

2. For search costs

The amount of Five (5) Dollars per hour;

3. For transportation costs

The actual costs.

No payment will be made, however, until the third party satisfactorily complies with the summons and submits an itemized bill reflecting a specific accounting for the search, reproduction and transportation costs. The payment shall be made only to third parties and not to the taxpayer.

Fiscal Impact Statement:

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

Statement of Rationale Pursuant to Code Section 1-23-120(B)

The purpose of this proposal is to reorganize the Department's Administrative Regulations by subject matter so as to maintain regulations in an orderly manner and to simplify a taxpayer's search for information on a particular subject matter. The experience and professional judgment of the Department's staff were relied upon in reorganizing these regulations.

Document No. 2807
DEPARTMENT OF REVENUE
CHAPTER 7
Statutory Authority: 1976 Code Section 12-4-320 and 61-2-60

Articles 1 through 5 of Chapter 7 of the SC Code of Regulations (SC Regulations 7-1 through 7-99)

Synopsis:

The South Carolina Department of Revenue is considering repealing Articles 1 through 5 of Chapter 7 of the SC Code of Regulations (SC Regulations 7-1 through 7-99) and creating nineteen new regulations concerning the regulation of alcoholic beverages in new Articles 6, 7, 8, and 9 of Chapter 7 of the SC Code of Regulations. Under the proposal, alcoholic beverage regulations are combined so that all regulations concerning one subject matter can be found in one regulation and therefore one place in the regulation code. In addition, most regulations would have several "subsections" numbered in a manner to allow future issues concerning the subject matter to be added on and still be in the same place in the regulation code as other similar issues. For example, all issues concerning the requirements for a retail location licensed to sell minibottles for on-premise consumption can be found in one regulation under Regulation 7-401. This regulation has several "subsections" numbered 117-401.1, 117-402.2, and so on. The project reduces the number of regulations from 60 to 19 This proposal also combines several regulations that dealt with the same subject matter for each type of alcoholic beverage (liquor, beer or wine) and placed this single regulation in a "General Provisions" article. For example, the proposal combines all regulations concerning applications for permits and licenses into one regulation applicable to liquor licenses and beer and wine permits. Regulation 7-200.1(D) and Regulation 7-701.5 of this proposal were changed to reflect recent legislation concerning the issuance of licenses and permits to publicly traded corporations and the increase in the alcoholic content of natural wine. Provisions prohibiting any inducements to purchase liquor, now found in Regulation 7-43, have been deleted to reflect recent legislation. In addition, Regulations 7-300.5, 7-400(D), 7-401.3(B)(2), and 7-404 of this proposal include longstanding Department policy regarding removal of liquor from a retail liquor store after closing, the definition of "luggage compartment," the amount of refrigerated space in a kitchen, the requirement of having a stove in a kitchen and the disposal of empty or broken sealed minibottles. Requirements for the storage space in a retail liquor store, now found in SC Regulation 7-58, have been deleted as outdated.

This proposal organizes and numbers the regulations as follows:

Regulation Number	Subject
Article 6 General Provisions	
7-200	General Provisions
Article 7 Alcoholic Liquors	
Subarticle 1 General Provisions Applicable to Alcoholic Liquors	
7-300	Purchases, Transfers and Deliveries to and from Retail Locations
7-301	Restrictions
7-302	Underage Violations
7-303	Measurements from Location to School, Church or Playground
Subarticle 2 Minibottles	
7-400	Definitions
7-401	Requirements for Premises
7-402	Purchases of Minibottles
7-403	Private Functions
7-404	Destruction of Two-Ounce Container
Subarticle 3 Retail Liquor Stores	
7-500	Requirements of Premises
7-501	Open Containers of Wine as well as Alcoholic Liquors in Retail Liquor Stores
Subarticle 4 Food Preparation License	
7-600	Definitions
7-601	Storage and Inventory
7-602	Violations
Article 8 Beer and Wine	
7-700	Definition of Licensed Premises
7-701	Restrictions on Sales
7-702	Purchases, Transfers and Deliveries to and from Retail Locations
Article 9 Hospitality Cabinets in Hotel Rooms	
7-800	Hospitality Cabinets

Instructions: Repeal Articles 1 through 5 of Chapter 7 of The SC Code of Regulations (SC Regulations 7-1 through 7-99) and create nineteen new regulations in new Articles 6, 7, 8, and 9 of Chapter of the SC Code of Regulations.

Text:

7-200 General Provisions

Title 61 of the South Carolina Code of Laws concerns the regulation of alcoholic liquor, beer and wine in the State of South Carolina. The following subsections address various general provisions applicable to the regulation of all alcoholic beverages.

7-200.1 Applications

A. Filing fees. All applications filed with the South Carolina Department of Revenue must be accompanied by the appropriate filing fee before any application can be processed.

B. Contents of application. All applications shall describe with particularity the specific areas upon which the licensee shall store, sell and/or serve liquor, beer or wine. This description shall include but not be limited to the building or buildings affected, floors, rooms, patios, and recreation areas where authorization to conduct any of the above mentioned functions is requested.

C Permits and licenses must be in same name. When a person applies for a beer and wine permit and/or a sale and consumption permit, a retail liquor store license, and/or a food preparation license, all permits and licenses must be applied for in the same name

D. Change in Designee – Publicly Traded Corporation. A new license or permit is not necessary, provided no violations are pending, if the officer or employee designated to hold the permit or license on behalf of the publicly traded corporation is replaced by a different officer or employee. The replacement must be of good moral character, over the age of twenty-one and a resident of this State and notice of the substitution must be filed with the Department in writing.

E. Violation of license. A licensee or permittee, who permits or knowingly allows the storage, serving, sale or delivery of liquor, beer or wine in or upon those areas of this licensed establishment which were not specifically designated in the application shall be deemed to have violated said license or permit; provided, however, this regulation shall not be construed to prohibit the delivery of such containers within licensed hotels and motels to rooms which are leased and used primarily for lodging purposes.

F. Sale and Consumption License Required. No application for a food preparation license will be accepted unless the applicant also has a license for the sale and consumption of alcoholic beverages in sealed containers of two (2) ounces or less.

G. Retail Liquor Dealers. Must procure permit. Every holder of a retail liquor license in this State must make application for and procure from the Department a permit to sell alcoholic beverages in sealed containers of two (2) ounces or less before any such sale is made. This permit will be issued by the Department free of charge. Any holder of a retail liquor license will be in violation of Title 61 of the 1976 Code, if such sales are made prior to obtaining this permit from the Department.

H. Partnership--Change to Corporation Must Have New Permit. A permit or a license is a personal privilege granted by the State and cannot be transferred from one person to another. A corporation is a distinct entity, and is as a matter of law, a person. Therefore, if a partnership holding a beer license incorporates, even though the stockholders are the same persons as the partners were, a new permit or license must be secured for the corporation.

I. Stipulations. Any written stipulation and/or agreement which is voluntarily entered into by an applicant for a permit or license between the applicant and the Department, if accepted by the Department, will be incorporated into the basic requirements for the enjoyment and privilege of obtaining and retaining the permit or license and shall have the same effect as any and all laws and any and all other regulations pertaining to the permit or license.

Knowing violation of the terms of the stipulation or agreement shall constitute sufficient grounds to revoke said license.

J. Refund on Permit Applications. When an application for a permit or license is approved by the Department and is not used, a request for the refund of the application fee must be received by the Department within the fiscal year for which the permit was issued, and in no event will a refund of an application fee be made unless a request is received by the Department within sixty (60) days of the date the permit was issued. An agent of the Department or the State Law Enforcement Division must verify in writing that the permit was not used.

7-200.2 Records

Every holder of a valid permit or license issued by the Department is hereby required to keep and maintain upon the licensed premises records of all of his purchases of liquor, beer or wine and business transactions. Such records shall include the name of the seller and the date and quantity of the purchase. These reports of purchases must be kept for a period of two (2) years and shall at all times be open to the inspection of any authorized representative of the Department or the State Law Enforcement Division

7-200.3 Display of Permits and Licenses

The holder of a permit or a license shall display such license in a conspicuous place upon the premises; however, the license required by Section 61-6-700 shall be conspicuously displayed in the area in which the wines, liqueurs, and similar alcoholic beverages are used in the cooking and preparation of foods.

7-200.4 Person Under 21--Violation to Allow Possession and Consumption of Alcoholic Liquors, or Possession and Consumption of Beer or Wine, on Premises.

To permit or knowingly allow a person under twenty-one year of age to purchase or possess or consume alcoholic liquors, beer or wine in or on a licensed place of business which holds a license or permit issued by the Department is prohibited and constitutes a violation against the license or permit. Such violation shall be sufficient cause to suspend or revoke the license or permit by the Department.

7-200.5 Signs Required Under Section 61-4-70 and 61-6-1530; Size and Lettering.

The lettering on the signs required under Section 61-4-70 and 61-6-1530 shall be no smaller than one-half inch and the sign shall be posted in a conspicuous place behind the bar if the permit or license is for on-premise consumption or at the check-out counter if the permit or license is for off-premise consumption. Failure to post this sign in a proper manner shall constitute a violation against the permit or license.

Article 7 Alcoholic Liquors

Subarticle 1 General Provisions Applicable to Alcoholic Liquors

7-300 Purchases, Transfers and Deliveries to and from Retail Locations

This regulation concerns the purchases, transfers, and deliveries of alcoholic liquors to and from locations licensed to sell alcoholic liquors.

7-300.1 Deliveries by Wholesaler to Licensed Retailer Only.

A wholesaler may deliver alcoholic liquors to a licensed dealer only. Delivery may be made only in vehicle owned and operated by the wholesaler, or by a common carrier, but in no other way; and delivery may be made only at the licensed premises of the purchaser.

7-300.2. Purchases by Retail Dealer from Licensed Wholesaler Only; Purchases for Exclusive Use Prohibited.

No retail liquor dealer shall be permitted to purchase any alcoholic liquors except from a licensed wholesale dealer in this State. The purchase, or negotiation for purchase, of alcoholic liquors from without the State by a retail dealer is strictly forbidden. No wholesale liquor dealer shall be permitted to purchase alcoholic liquors for the exclusive use of any retailer.

7-300.3 Dishonored Checks to Wholesalers

As Section 61-6-940 requires the retail liquor license to be revoked when such licensee is indebted to a licensed wholesale liquor dealer, the giving of a check which is dishonored by the bank is in violation of this Section of the Code.

Upon receipt by a wholesaler of such a dishonored check, the wholesaler must notify all the other licensed wholesalers that the particular licensee is in violation of the law, and all licensed wholesalers must put the individual licensee on a cash only basis.

7-300.4 Transfers of Alcoholic Liquor Between Retail Stores.

(A) No alcoholic liquors may be transferred from one retail liquor location to any other retail liquor location without special permission in advance of the South Carolina Department of Revenue, provided, however, that where the same person holds more than one retail liquor license, liquor may be transferred from one of such person's licensed locations to another of that person's licensed locations without prior permission from the Department subject to the following conditions:

(a) The transfer is made by common carrier, or

(b) A licensed wholesaler's truck, or

(c) By vehicle owned and operated by the licensee;

(d) All transfers must be properly documented in the form of an invoice in triplicate, as follows:

(1) Showing the number of the store license from which transfer is to be made and the number of the store license to which transfer is to be made, and

(2) The brand, size, and quantity to be transferred,

(3) The date the transfer is to be made.

(B) A copy of the invoice must, prior to the transfer, be mailed to the Department. A copy of the invoice must be in the possession of the driver until delivery is complete, and then retained by the store to which transfer is made. A third copy of the invoice must be retained by the store from which the transfer is made.

For any violation of the foregoing, the Department may either suspend or revoke the retail licenses of the dealers involved or impose monetary penalty upon the holders thereof within the limits prescribed by law.

7-300.5 Liquor Not to be Removed During Restricted Hours.

No licensed liquor dealer shall remove, or permit the removal of, alcoholic liquors from his licensed place of business during the hours such business is required to be closed.

7-300.6 Credit Cards Allowed for the Purchase of Liquor.

The use of bank or other credit cards for the purchase of Alcoholic Liquors is approved by the Department, provided the issuing bank or other organization guarantees payment of the instrument representing a purchase through the credit card plan immediately upon presentation by the merchant. Any card plan which in any way has recourse upon the dealer is not approved.

7-301 Restrictions

This regulation concerns various restrictions that are applicable to liquor wholesalers, liquor retailers or both. The restrictions listed in the following subsections are not all inclusive.

7-301.1 Retail License by Wholesaler Prohibited--No Interest in Retail Store.
No license for the operation of a retail store shall be issued to any employee of a wholesaler, nor shall such employee be permitted to have any interest, directly or indirectly, in any retail store.

7-302 Underage Violations--Multiple Offenses.

Whenever a licensed retail liquor dealer has been found by the South Carolina Department of Revenue to have sold alcoholic liquors to a person under the age of twenty-one years or permitted the sale of alcoholic liquors to a person under the age of twenty-one years four (4) or more times within three (3) years, the retail liquor license shall be suspended or revoked and no monetary penalty will be accepted in lieu of suspension of revocations.

7-303 Measurements from Location to School, Church or Playground.

Section 61-6-120, provide that a retail liquor license or a possession and consumption license may not be granted if the place of business is within three hundred feet of any church, school, or playground situated within a municipality, or within five hundred feet of any church, school, or playground situated outside of a municipality. This Regulation is for the purpose of further clarifying the distance and how it shall be measured.

With respect to a church or a school, the distance shall be measured from the nearest entrance of the place of business by following the shortest route of ordinary pedestrian or vehicular travel along the public thoroughfare to the nearest point of entrance to the grounds of the church or school, or any building in which religious services or school classes are held, whichever is the closer. The South Carolina Department of Revenue has determined that the grounds in use as part of the church or school is restricted to the grounds immediately surrounding the building or buildings which provide ingress or egress to such building or buildings and does not extend to the grounds surrounding the church which may be used for beautification, cemeteries, or any purpose other than such part of the land as is necessary to leave the public thoroughfare and to enter or leave such building or buildings. Only one entrance to the grounds of a church or school shall be considered, to wit: the entrance to the grounds nearest an entrance to the church or school building. Where no fence is involved, the nearest entrance to the grounds shall be in a straight line from the public thoroughfare to the nearest door. The nearest point of the grounds in use as part of a playground shall be limited to the grounds actually in use as a playground and the grounds necessary for ingress or egress to such grounds from the public thoroughfare.

Subarticle 2 – Minibottles

7-400 Definitions

A. Private residence. The term “private residence” shall mean a domestic establishment, home, or dwelling place wherein one resides, actually lives, lodges or abides and shall include places of temporary lodging or abode.

B. Hotel room. The term “hotel room” shall mean any room of a hotel that is customarily rented or leased and is used primarily for lodging purposes.

C. Motel room. The term “motel room” shall mean any room of a motel that is customarily rented or leased and is used primarily for lodging purposes.

D. Luggage compartment. The term “luggage compartment” shall mean the trunk of a motor vehicle which possesses such; however, with respect to a motor vehicle which does not contain a trunk, the term “luggage compartment” shall refer to the area of the motor vehicle in which the manufacturer designed that luggage be carried or to the area of the motor vehicle in which luggage is customarily carried. In regard to a station wagon, sport utility vehicle, minivan or similar vehicle, the term “luggage compartment” shall refer to the area behind the last seat. In regards to a motorcycle, the term “luggage compartment” shall refer to the saddlebags.

E. Cargo area. The term “cargo area” shall mean the area without and behind the cab of a truck which is designed by the manufacturer for the boarding of goods or materials or the area without and behind the cab of a truck which is customarily used for the boarding of goods or materials.

F. Glove compartment. A glove compartment shall not constitute either a luggage compartment or a cargo area.

7-401 Requirements for Premises

This regulation concerns various requirements a retail location must meet in order to be licensed to sell minibottles for on-premise consumption. The requirements listed in the following subsections are not all inclusive.

7-401.1 Licensed Premises.

A. Definitions. As used in Article 5 of Chapter 6 of Title 61 of the 1976 Code: (1) The word "premises" means the physical place at which a licensee is or may be licensed to engage in the sale, serving and storage of alcoholic beverages in sealed containers of two (2) ounces or less; (2) The words "licensed premises" mean any premises for which a license under Article 5 of Chapter 6 of Title 61 of the 1976 Code, is in force and effect.

B. Premises must be separate and distinct. No nonprofit organization shall qualify for a sale and consumption license unless the premises to be licensed are located in a place separate and distinct from the premises of any business operation including establishments licensed to sell alcoholic beverages in sealed containers of two (2) ounces or less. Premises which are "separate and distinct" from such business operations must bear a different address, have a separate entrance and not be connected by common doors or passageways with the business premises.

C. Parking lots. Notwithstanding the provisions of any other section of these regulations, the licensed premises of a business establishment which is bona fide engaged primarily and substantially in the preparation and service of meals and which holds a valid license for the sale and consumption of alcoholic beverages in sealed containers of two (2) ounces or less shall not extend to any portion of the business establishment or the property upon which it is located which is designed as or used for a parking area even though food may be served in such area.

7-401.2 Lighting of Licensed Establishments.
Every establishment licensed for the sale and consumption of alcoholic beverages in sealed containers of two (2) ounces or less, must have the bar or area used for storing and dispensing such containers properly lighted. The lighting must be sufficient to afford customers a clear view of all activities taking place in this area.

7-401.3 Restaurants.

A. Any business establishment that applies for or holds a sale and consumption license pursuant to Section 61-6-1610 of the Code and is not engaged in the furnishing of lodging, must:

1. Be equipped with a kitchen that is utilized for the cooking, preparation, and serving of meals; and

2. Have readily available to its guests and patrons either "menus" with the listings of the various meals offered for service or a listing of available meals and foods, posted in a conspicuous place readily discernible by the guest or patrons; and

3. Prepare for service to customers hot meals at least once each day the business establishment chooses to be open.

4. If such establishment advertises, a substantial portion of its advertising must be devoted to its food services.

B. The following definitions shall be used in conjunction with Section 61-6-1610 of the Code and this Regulation:

1. "Meal" means an assortment of various prepared foods which shall be available to guests on the licensed premises during the normal "mealtimes" which occur when the licensed business establishment is open to the public. Sandwiches, boiled eggs, sausages and other snacks prepared off the licensed premises but sold thereon, shall not constitute a meal.

2. "Kitchen" means a separate and distinct area of the business establishment that is used solely for the preparation, serving and disposal of solid foods that make up meals. Such area must be adequately equipped for the cooking and serving of solid foods, and the storage of same, and must include at least twenty-one cubic feet of refrigerated space for food and a stove.

3. "Primarily" means that the serving of meals by a business establishment constitutes a regular and substantial source of business to the licensed establishment and that meals shall be served upon the demand of guests and patrons during the normal "mealtimes" which occur when the licensed business establishment is open to the public and that an adequate supply of food is present on the licensed premises to meet such demand.

7-401.4 Nonprofit Organizations

A. Every initial and/or renewal application for a Sale and Consumption of Alcoholic Liquors License to a bona fide nonprofit organization shall be an association, organization or a nonprofit corporation organized and existing under the laws of the State of South Carolina and operated solely and exclusively for social, benevolent, patriotic, recreational or fraternal purposes but not for pecuniary gain or profit, no part of the net earnings of which inures to the direct benefit of any member or shareholder, it being the intent of Section 61-6-1600 of the Code that a license shall not be granted to or held by an organization which is, or has been, organized and operated primarily to obtain or hold a license to sell alcoholic beverages, but only to a bona fide nonprofit organization with limited membership to which the sale of alcoholic beverages is incidental to the main purpose of the organization.

B. The bona fide nonprofit organization must have a definite fixed method of electing persons on an individual basis to membership in the organization; such method must be described in the club's bylaws and must bear some reasonable relation to the object and purpose of the organization.

C. It shall be maintained by its bona fide members through the payment of monthly, quarterly or annual fees or dues.

D. The affairs and management of such nonprofit organization shall be conducted by a board of directors, executive committee or similar governing body chosen by the members at a regular meeting held at some periodic

interval but at least on an annual basis. Provided, however, that nonprofit organizations operated for the benefit of universities and similar public institutions [IRS Code Section 501 (c) (3)] may be governed by a board or committee notwithstanding this provision as provided in the by-laws of the organization.

E. Upon dissolution, liquidation or final termination of the operations of the organization, its residual assets must not inure to the direct benefit of any member or shareholder but must be turned over to one or more nonprofit organizations which are organized and operated for charitable purposes or for such other purposes as are authorized under Section 61-6-1600.

F. No member, officer, agent or employee of such nonprofit organization shall be paid, or directly or indirectly receive, in the form of salary or other compensation any of the profit from the sale or distribution of alcoholic beverages beyond the amount of such salary as may be fixed and voted at a regular meeting by the members of the organization or at a regular meeting by the governing body out of the general revenue of the organization, nor shall such salaries or compensation be in excess of reasonable compensation for the services actually performed.

G. Each nonprofit organization shall file with its application for a license the following information:

(1) A certified copy of its charter, articles of incorporation or constitution;

(2) A copy of its bylaws;

(3) A list of its officers and directors showing names, ages, correct mailing addresses and business employment.

H. After receiving a license, each organization shall file the following information with the Department:

(1) Changes in the board of directors, executive committee or similar governing body shall be reported within thirty days of the effective date of such change;

(2) Changes in the organization's constitution, articles of incorporation, bylaws and membership effected during the preceding twelve (12) months must be filed with each application for license renewal;

(3) A financial statement and a profit and loss statement for the latest calendar year or fiscal year, as the case may be, must be filed with each application for license renewal;

(4) A sworn statement by an authorized officer of the organization that it is still being operated on a nonprofit and limited membership basis.

I. Licensees under this section shall maintain the following records on their premises and make them available for inspection by any authorized representative of the South Carolina Department of Revenue or the State Law Enforcement Division:

(1) A complete membership record showing the date of application of the proposed member, the date of admission after election, the date initiation fees and dues are paid, the amounts paid and the member's correct mailing address.

(2) All books and records relating to the financial transactions and activities of the licensee, including an income record, expenditure record and bank account all to be maintained in such form as is established by regulation of the Commission.

J. Only bona fide members and bona fide guests of members of such organizations may consume alcoholic beverages sold in sealed containers of two ounces or less upon the licensed premises.

K. Bona fide guests shall be limited to those who accompany a member onto the premises or for whom the member has made prior arrangements with the management of the organization.

7-402 Purchases of Minibottles

A. Purchase of Minibottles from Retail Liquor Dealers. In the event a Sale and Consumption of Alcoholic Liquors licensee pays a retail liquor dealer for purchases of liquor in containers of two ounces or less, or for purchases of wine, by check, said check must be honored by the bank upon its first presentation to the bank for collection. If said check is dishonored by the bank, the sale and consumption license will be subject to suspension or revocation, as a dishonored check by the licensee is a violation against his license.

B. Purchase from Retailers by Agents. No person, partnership, association or corporation can act as the designated agent for the purchase of alcoholic beverages in sealed containers of two ounces or less from licensed liquor retailers for more than one person, business, or nonprofit organization holding sale and consumption licenses pursuant to Article 5 of Chapter 6 of Title 61 of the 1976 Code.

7-403 Private Functions

A. Lease must be written. When a separate and private area of an establishment is leased by a holder of a sale and consumption license to a specific individual or individuals for a function not open to the general public pursuant to Section 61-6-1620(B), the terms of the lease agreement shall be reduced to writing and a copy of that instrument shall be retained by the licensee upon the licensed premises.

B. Purchase, Delivery and Possession of Alcoholic Beverages. When a separate and private area of an establishment is leased by a specific individual or individuals for a function not open to the general public pursuant to Section 61-6-1620(B), the host or sponsor of said function, or the designated agent or representative of said host or sponsor must purchase and deliver to the leased area any alcoholic beverages to be possessed and consumed therein and must remain constantly in actual possession of these beverages until such time as the function is concluded, at which time all alcoholic beverages must be removed from the leased area and taken to a location where they may be legally stored. Nothing contained herein shall prohibit the host or sponsor or his designated agent or representative from having other persons, whether employed by the licensee or employed by the host or his agent or representative, from mixing and serving alcoholic beverages belonging to the host of the party.

C. Termination of Lease. In the event that the area leased pursuant to Section 61-6-1620(B), is located upon the premises of an establishment holding either a sale and consumption license or a retail beer and wine permit, the lease agreement shall automatically terminate at two o'clock in the morning. To permit or knowingly allow the possession and consumption of any alcoholic beverages upon the premises of the establishment after two o'clock in the morning shall constitute a violation against the license or permit. Such violation shall constitute sufficient cause for the South Carolina Department of Revenue to revoke or suspend said license or permit.

7-404 Destruction of Two-ounce Containers.

All holders of a license authorizing the sale and consumption of alcoholic beverages in sealed containers of two (2) ounces or less are required to destroy, as soon as reasonably possible, (1) all empty or partially empty containers of two (2) ounces or less, (2) all other beverage containers on which the seals have been broken, and (3) the contents of any partially empty alcoholic beverage containers of two (2) ounces or less, any of which shall have accumulated upon the licensed premises either from use or from any other source.

"Destroy", in terms of two (2) ounce containers, is defined as any breaking, crushing or smashing which prevents the possible re-use of these receptacles as containers of alcoholic beverages or the disposal of all empty two (2) ounce containers, and all two (2) ounce containers with broken seals, in an outside trash receptacle each business day.

"Destroying", in terms of the remaining contents of partially empty two (2) ounce containers and containers upon which the seal has been broken, is defined as the pouring out of such contents through a sewer, disposal, or similar type system so as to prevent any possible re-use.

"As soon as reasonably possible" is defined as immediately upon use, serving, or consumption of the contents, or as frequently thereafter as the business operation permits, but, in any event, not less than once each business day.

Subarticle 3 Retail Liquor Stores

7-500 Merchandise Other Than for Wines or Alcoholic Liquors Cannot be Advertised or Displayed.

Except as specifically authorized by statute, it is a violation to have an open container of beer, wine, or liquor in or on the premises of a licensed retail liquor store or to have a container of beer, wine or liquor with a broken seal in or on the premises of a licensed retail liquor store.

7-501 Open Containers of Wine as Well as Alcoholic Liquors in Retail Liquor Stores.

The South Carolina Department of Revenue has determined that a violation has occurred against a retail liquor licensee if any wine as well as alcoholic liquors is found in containers in or on the licensed premises with the seal broken thereon and, therefore, will be subject to suspension, revocation or a monetary penalty placed thereon.

Subarticle 4 Food Preparation License

7-600 Definitions.

A. Foods. The term “foods” shall mean nutritive material taken into the body by means of eating and does not include liquids or drinks to which liqueurs or similar alcoholic beverages are added and served for consumption as beverages.

B. Similar Alcoholic Beverages. The term “similar alcoholic beverages” shall include liqueurs, brandies, cordials, and only such other related alcoholic beverages as are commonly used in the cooking and preparation of foods by establishments for service to the public.

7-601 Storage and Inventory

This regulation concerns the requirements for the storage of alcoholic liquors used in the preparation of food. This list of requirements is not all-inclusive.

7-601.1 Storage.

All liqueurs and similar alcoholic beverages in containers of more than two ounces which are possessed on the premises of an establishment pursuant to a food preparation license are to be locked in a cabinet, locker or similar compartment, located in the cooking area at all times except when physically being used in the preparation and cooking of foods.

7-601.2 Inventory.

No food preparation licensee shall possess on his premises any liqueurs or similar alcoholic beverages in containers of more than two (2) ounces to be used in the preparation of foods in excess of the amount necessary to meet normal usage requirements for a fifteen (15) day period.

7-602 Violations.

A. Beverages to be used for Cooking Only. Any liqueurs or similar alcoholic beverages stored on the premises of a licensed establishment for cooking purposes shall be used solely and exclusively in the preparation of food for service to the public.

B. Sale and Consumption Prohibited. No liqueurs or similar alcoholic beverages stored on the premises of a licensed establishment for cooking purposes shall be sold in any quantity as a beverage or consumed as a beverage by the licensee, the management, staff and employees of the licensee, or any other person.

C. Other Alcoholic Beverages Prohibited. No alcoholic beverages in containers of more than two ounces shall be allowed on the premises of the licensed establishment except as provided by law.

D. Revocation. Any violation of these regulations or of any other regulations promulgated under the authority of Section 61-2-60, shall constitute grounds for the revocation of the food preparation license (and of any other license or permit the licensee may hold from the South Carolina Department of Revenue).

Article 8 Beer and Wine

7-700 Definition of Licensed Premise.

Licensed premises shall include those areas normally used by the permittee or licensee to conduct his business and shall include but are not limited to the following: selling areas, storage areas, food preparation areas and parking areas. A separate permit and/or license shall be required for each separate and distinct area in which beer, wine and/or alcoholic liquors are sold.

7-701 Restrictions on Sales

This regulation concerns the various restrictions on the sale and delivery of beer or wine. The restrictions listed in the following subsections are not all inclusive.

7-701.1 Beer Not to Exceed 5% Alcohol by Weight.

Beer, ale, porter or other similar malt beverages containing more than five percent (5%) of alcohol by weight cannot be distributed by wholesale beer and wine dealers or wholesale liquor dealers and cannot be treated as wine for tax purposes under the laws of the State of South Carolina.

7-701.2 USDA Food Stamps Not Accepted in Payment for Beer or Wine.

No holder of a permit authorizing the retail sale of beer and wine, nor any agent or servant of said permittee, shall accept USDA food coupons (or any other food coupons) in exchange for beer or wine. Any violation of this regulation shall constitute sufficient cause for the South Carolina Department of Revenue to revoke or suspend the permit or to impose a monetary penalty thereon.

7-701.3 Vending Machines for Beer Prohibited.

No beer and/or wine may be sold or dispensed through any type of vending machine.

7-701.4 Wines Sold by Beer and Wine Wholesalers.

Under the provisions of Section 61-4-10, wine containing alcohol not exceeding twenty-one percent (21%) by volume has been declared to be non-alcoholic and non-intoxicating.

The sale of such wine may be made by wholesale beer and wine dealers to retail liquor dealers, and wine not exceeding sixteen percent (16%) by volume may be sold to licensed retail beer and wine dealers.

It is a violation against any retail beer and wine permittee to have on the licensed premises any wine that is over sixteen percent (16%) alcohol by volume.

7-701.5 Natural Wines Defined.

Natural wines are defined as those wines produced by fermentation without any distilled alcohol being added thereto; provided the alcoholic content thereof shall not exceed sixteen percent (16%) by weight.

7-702 Purchases, Transfers and Deliveries to and from Retail Locations

This regulation concerns the purchases, transfers, and deliveries of beer or wine to and from locations licensed to sell beer or wine.

7-702.1 Delivery or Removal of Beer and Wine During Restrictive Hours Prima Facie Evidence of Sale.

Any beer or wine sold, offered for sale or delivered to anyone from any licensed place of business or the removal therefrom of any beer or wine between the hours of twelve o'clock Saturday night and sunrise Monday morning is a violation against the beer and wine permit and such permit will be subject to suspension or revocation, or the South Carolina Department of Revenue may accept a monetary penalty in lieu of suspension or revocation. Any delivery or removal of beer or wine between these restrictive hours shall be prima facie evidence that a sale was made.

7-702.2 Beer and Wine must be Delivered to Licensed Premises by Wholesaler.

No licensed beer wholesaler shall deliver beer or wine to anyone or any place other than a duly licensed retailer at his licensed place of business or to a duly licensed retailer from the platform of the licensed wholesaler. Nor shall a wholesaler sell or deliver to a licensed retail dealer from the platform of the licensed wholesale dealer without the licensed retail dealer possessing and first showing the wholesaler the retail dealer's copy of his retail beer and wine permit. No beer or wine shipped interstate to a licensed wholesaler may be diverted in route or shipped direct or reshipped to a beer or beer and wine retail licensee for purposes of storage or distribution by said retail licensee.

7-702.3 When Beer Sold on Credit, Dishonored Check, etc.

Any holder of a beer permit or a beer and wine permit who purchases beer and/or wine on credit, whether by a dishonored check, unpaid note, or invoice, or in any other manner, from a licensed beer and wine wholesale dealer, is in violation of this Regulation and the retail dealer's permit will be subject to be suspended, cancelled or revoked or, in lieu thereof, a monetary penalty be assessed against said permit.

7-702.4 Sales by Retailer to Another Retailer for Resale.

It shall be unlawful for a person who holds a retail beer and wine permit or a retail beer permit to sell to any other holder of a retail beer and wine permit or retail beer permit for the purpose of resale of beer and/or wine.

Every holder of a valid wholesale beer and wine permit shall service every holder of a valid retail beer, or beer and wine permit, with store-door delivery on at least a weekly basis within the territory designated by the producer. The violation of this regulation shall result in the suspension or revocation of the wholesale beer and wine permit, or a monetary penalty in lieu thereof.

Article 9 Hospitality Cabinets in Hotel Rooms

7-800 Hospitality Cabinets.

Code Sections 61-6-2300 through 61-6-2370 authorize the sale by a hotel, motel, or inn of alcoholic beverages by means of hospitality cabinets located in the rooms of its guests, provided the hotel, motel, or inn is licensed to sell alcoholic beverages for on-premises consumption and the governing body of the county or municipality has approved by ordinance the sale of alcoholic beverages by means of hospitality cabinets. A hotel, motel, or inn licensed to sell alcoholic beverages for on-premises consumption may also place hospitality cabinets in condominiums owned or managed by it, whether or not the condominiums are located on the same property as the hotel, motel, or inn.

A hotel, motel, or inn licensed only to sell beer and wine for on-premises consumption may sell only beer and wine by means of hospitality cabinets located in the rooms of its guests. A hotel, motel, or inn licensed to sell alcoholic liquors for on-premises consumption may sell alcoholic liquors, beer, and wine by means of hospitality cabinets located in the rooms of its guests. All sales of alcoholic beverages by means of a hospitality cabinet must be in sealed containers in individual portions. Nothing in this regulation prevents a hotel, motel, or inn from selling nonalcoholic beverages, food or others items by means of a hospitality cabinet.

When a hotel, motel, or inn is selling alcoholic beverages by means of a hospitality cabinet, either the entire hospitality cabinet or the portion of it containing the alcoholic beverages must be restricted by means of a locking device which requires the use of a key, magnetic card or similar device.

In making such sales, hotels, motels, and inns must comply with the following:
(1) A hospitality cabinet may only be placed in rooms used for sleeping accommodations and may not be placed in rooms used for meetings or other functions, whether public or private. Empty cabinets, however, may be placed for storage purposes in an area of the hotel, motel, or inn not open to the public.
(2) The key, magnetic card, or other similar device required to obtain access to a hospitality cabinet may only be provided to a guest that requests it, whether on his own or upon being informed by the hotel of the availability of the hospitality cabinet. Such a request may be made at the time of check-in or at any time during the guest's stay at the hotel, motel, or inn. However, before the key, magnetic card, or other similar device is provided, the hotel, motel, or inn must verify that the guest is of legal drinking age.
(3) The hotel, motel, or inn must inform the guest in some manner of the specific areas of the hotel, motel, or inn where alcoholic liquors purchased from the hospitality cabinet may and may not be consumed by the guest.
(4) The hotel, motel, or inn may <u>not</u> advertise, sell, or dispense alcoholic liquors, beer or wine from the hospitality cabinets for free, at a price less than one-half the price regularly charged, or on a two or more for the price of one basis.
(5) The hospitality cabinet may only be restocked and replenished with alcoholic liquors by an employee twenty-one years of age or older. In addition, only employees meeting these age requirements may take inventory of alcoholic liquors contained in hospitality cabinets.
A hotel, motel, or inn selling alcoholic beverages by means of hospitality cabinets located in the rooms of its guests must comply with all of the provisions of Code Sections 61-6-2300 through 61-6-2370 and any other applicable provisions of Title 61 of the South Carolina Code of Laws.

Fiscal Impact Statement:

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

Statement of Rationale Pursuant to Code Section 1-23-120(B):

The purpose of this proposal is to reorganize the Department's Alcoholic Beverage Regulations by subject matter so as to maintain regulations in an orderly manner and to simplify a taxpayer's search for information on a particular subject matter. In addition, some regulations, as stated in the Synopsis, were amended or deleted due to

recent law changes or were deleted as outdated. The experience and professional judgement of the Department's staff were relied upon in reorganizing, amending or deleting these regulations.

Document No. 2808
DEPARTMENT OF REVENUE
CHAPTER 7
Statutory Authority: 1976 Code Section 12-4-320 and 61-2-60

7-201 Requirements for Protesting Beer and Wine Permits or Alcoholic Liquor Licenses

Synopsis:

The South Carolina Department of Revenue is considering adding a regulation concerning the requirements for protesting the issuance or renewal of beer or wine permits or alcoholic liquor licenses, including, but not limited to, the information a protest must contain and what constitutes a timely protest.

Instructions: Add a new Regulation – 7-201 Requirements for Protesting Beer and Wine Permits or Alcoholic Liquor Licenses.

Text:

Code Sections 61-4-525, 61-6-185 and 61-6-1825 set forth the requirements a person must follow when protesting the issuance or renewal of a beer and wine permit, retail liquor store license and a minibottle license. See Act No. 363 of 1998.

The following will address these requirements:

1.Q. Who may protest the issuance or renewal of a beer and wine permit or an alcoholic liquor license?

A. Any person who:

1. resides in the county in which the permit or license is requested to be granted; or

2. resides within five miles of the location for which the permit or license is requested

may protest the issuance or renewal of a beer and wine permit or an alcoholic liquor license.

2. Q. Is the protest required to be in writing?

A. Yes.

3. Q. Where is the protest mailed?

A. All protests must be mailed to:

SC Department of Revenue
ABL Licensing Section - Protest
P.O. Box 125
Columbia, South Carolina 29214

A protest concerning the issuance of a new permit or license must be mailed to the department and postmarked on or before the date set forth in the Notice of Application published in the newspaper or the Notice posted at the site. If a valid protest is received with respect to the issuance of a new permit or license, the new permit or license will not be issued until the protest is resolved and the determination is made that the permit or license must be issued.

Since renewal notices are mailed to permittees and licensees sixty days before the existing license or permit expires, a protest concerning the renewal of an existing permit or license must be filed with the Department at least sixty days prior to the expiration of the existing permit or license. However, an exception will be made and a protest will be considered timely if the protest is received by the ABL Licensing Section after the renewal notice has been mailed but before the renewal permit or license has been issued. If a valid and timely protest is received by the Department with respect to the renewal of a permit or license and the permittee or licensee made a timely and sufficient application for the renewal, the existing permit or license of the permittee or licensee does not expire until the application has been finally determined by the Department, and, in case the application is denied, until the last day for seeking review of the Department's final agency determination or a later date fixed by order of the reviewing court. (See Code Section 1-23-370(b).)

4. Q. What information must the protest contain?

A. A protest must contain the following information:

1. the name, address, and telephone number of the person filing the protest;

2. the name of the applicant for the permit or license and the address of the premises sought to be licensed, or the name and address of the permit or license holder if the application is for renewal;

3. the specific reasons why the application should be denied; and

4. a statement by the person protesting the application as to whether or not he or she wishes to attend a contested case hearing before the Administrative Law Judge Division. Important: If the protest states that the protestant does not wish to attend a contested case hearing before the Administrative Law Judge Division, then the protest is invalid and the department must continue to process the application and must issue the permit or license if all other statutory requirements are met. See Question #6 below.

Note: If the protestant does not reside in the same county in which the permit or license is requested, then the protestant must state that he or she lives within five miles of the location for which a permit or license is requested.

5. Q. If a protest does not contain all of the above information, is the protest a valid protest?

A. No. The protest is invalid and the department must continue to process the application and must issue the permit or license if all other statutory requirements are met.

6. Q. If the protest states that the protestant does not wish to attend a contested case hearing before the Administrative Law Judge Division, is the protest valid?

A. No. The protest is invalid and the department must continue to process the application and must issue the permit or license if all other statutory requirements are met.

7. Q. If the protest states that the protestant wishes to attend a contested case hearing before the Administrative Law Judge Division, is the protest valid?

A. Yes, provided the protest contains all the information listed in the answer to Question #4 and the department has determined, via letter, e-mail, fax or some other method, that the protestant does intend to attend the contested case hearing and offer testimony before the Administrative Law Judge Division.

8. Q. If the protestant advised the department of his or her intention to attend the contested case hearing before the Administrative Law Judge Division, but does not attend the hearing, what are the consequences for not attending the hearing?

A. A person who files a protest and fails to appear at a hearing after affirming a desire to attend the hearing may be assessed by the Administrative Law Judge Division a fine or penalty to include court costs.

9.Q. Does the department publish a form that can be used to protest the issuance or renewal of a permit or license?

A. Yes, the following form that can be used to protest the issuance or renewal of a permit or license. However, please note that this form is not required. Any letter containing the information required by the law, as discussed in this revenue ruling, is sufficient to constitute a valid protest provided the protestant affirms to the department a desire to attend the hearing before the Administrative Law Judge Division.

SOUTH CAROLINA DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE PROTEST FORM

PERSON FILING THE PROTEST:

Name:

Address: _____ City:_____

County: _____ State:_____ Zip Code: _____

Phone No.: (____)_____Fax No. (____)_____

E-Mail Address:_____

If you do not live within the same county as the location that is being protested, do you live within five (5) miles of the location being protested: Yes: ____ No:_____(Check One)

LOCATION BEING PROTESTED:

Name of Applicant or Permit/License Holder: _____

_____

Location Being Protested:

Address: _____ City: _____

County: _____ Zip Code: _____

Type of Permit or License Being Protested (Check All Appropriate Spaces):

Beer and Wine Permit: ____ Liquor License: _____

New Location: ____ Renewal: _____

SPECIFIC REASONS WHY THE APPLICATION OR RENEWAL SHOULD BE DENIED (Attached Additional Pages If Needed):

_____

_____

_____

(REASONS CONTINUED)

_____

_____

_____

_____

I, _____, will___will not ____ (Check Only One) attend a contested case hearing before the Administrative Law Judge Division and offer testimony as to why I believe the location listed in this protest should not be issued a new beer and wine permit and/or liquor license or should not have its beer and wine permit and/or liquor license renewed. (See item 1 below.)

Please note the following:

(1) If the protest states that the protestant does not wish to attend a contested case hearing before the Administrative Law Judge Division, then the protest is invalid and the department, by law, must continue to process the application and must issue the permit or license if all other statutory requirements are met.

(2) If the protest is valid and states that the protestant wishes to attend a contested case hearing before the Administrative Law Judge Division, then the department must determine, via letter, e-mail, fax or some other method, that the protestant does intend to attend the contested case hearing and offer testimony before the Administrative Law Judge Division.

(3) If the protestant advised the department of his or her intention to attend the contested case hearing before the Administrative Law Judge Division, but does not attend the hearing, then such protestant may, by law, be assessed a fine or penalty to include court costs.

(4) The protestant must either live in the same county as the location that is being protested or must live within five (5) miles of the location being protested.

Under penalties of perjury, the information contained in this protest form is true and correct to the best of my knowledge.

_____
Signature of Person Protesting Permit/License

_____
Date

Fiscal Impact Statement:

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

Statement of Rationale Pursuant to Code Section 1-23-120(B):

The purpose of this proposal is to clarify the requirements set forth Code Sections 61-4-525, 61-6-185 and 61-6-1825 for protesting the issuance or renewal of a beer and wine permit, retail liquor store license and a minibottle license The experience and professional judgement of the Department's staff were relied upon in clarifying in this regulation these requirements.

Document No. 2809
DEPARTMENT OF REVENUE
CHAPTER 117
Statutory Authority: 1976 Code Section 12-4-320

Regulations: Article 5 of Chapter 117 of the SC Code of Regulations
(SC Regulations 117-60 through 117-95.1

Synopsis:

The South Carolina Department of Revenue is considering repealing Article 5 of Chapter 117 of the SC Code of Regulations (SC Regulations 117-60 through 117-95.1) and creating fifteen new regulations concerning income tax, withholding and the corporate license fee and annual reports in Articles 12 (Income Tax), 18 (Withholding) and 20 (Corporate License Fee and Annual Reports). Under the proposal, regulations are combined so that all regulations concerning one subject matter can be found in one regulation and therefore one place in the regulation code. In addition, a regulation may have several "subsections" numbered in a manner to allow future issues concerning the subject matter to be added on and still be in the same place in the regulation code as other similar issues. This proposal organizes the regulations in the same manner the income tax, withholding, and corporate license fee code of laws are organized. Proposed Regulation 117-850.1 (presently Regulation 117-78) was revised to eliminate outdated references to Internal Revenue Service procedures and require conformity with Department standards for reproduced or computer prepared forms. Proposed Regulation 117-850.2 (presently Regulation 117-91.10) concerning the submission of information on magnetic tape was revised and streamlined to address modern and changing technology and to conform with Department standards for submitting tax information using non-paper methods. This proposal also repeals regulations concerning trucking and bus companies (117-87.9), commercial fishermen (117-87.71), the franchise tax and decrease of capital stock (117-89.2), and nonresident employees operating common carriers (117-91.1) since these regulations are outdated or unnecessary due to recent legislation.

Instructions: Repeal Article 5 of Chapter 117 of the SC Code of Regulations (SC Regulations 117-60 through 117-95.1) and create fifteen new regulations.

Text:

Article 12 - Income Tax

Subarticle 1 - Adoption of Internal Revenue Code (#600 - 609) - Reserved

Subarticle 5 - Tax Rates and Imposition (#610 – 619) - Reserved

Subarticle 9 - Taxable Income Calculation (#620 – 674)

117-620 This regulation contains general rules in determining legal residency.

117-620.1 Legal Residence When Domiciled in a Foreign Country

Where it can be shown that an individual has become domiciled in a foreign country and, therefore, no longer a resident of this state and has severed all connections with this state and has clearly shown his or her intention to reside abroad permanently with no intention of returning to South Carolina, such individual is not subject to the income tax laws of this state.

117-640 This regulation concerns the taxable income calculation of military personnel, military retirees, and their families.

117-640.1 Military Pay, Non-Service Income, and Income Earned by Military Spouses

1. Military pay in general: Under the provisions of Sections 12-6-510, 12-6-560, and 12-6-570, military pay is reportable for South Carolina income tax purposes.

2. Nonresident armed services personnel: Under the Soldiers' and Sailors' Civil Relief Act, members of the armed services, who are legal residents of other states stationed within South Carolina by virtue of military orders, are not subject to South Carolina income tax on their service pay. They are, however, subject to tax on any other income earned in South Carolina which would be taxable to a nonresident. Income earned in South Carolina by a spouse of a military servicemember is taxable to South Carolina.

The personal exemptions and deductions of a nonresident servicemember's spouse must be prorated in ratio to the spouses adjusted gross income within this State to the spouses entire adjusted gross income wherever earned. The spouse would not be entitled to claim exemptions for dependents unless the spouse can prove that he or she furnishes more than fifty percent of their support for the entire year.

3. Establishment of New Domicile: There is nothing in the Soldiers' and Sailors' Civil Relief Act or in the South Carolina statutes which would prevent a servicemember from changing his or her legal residence. To effect a change of legal residence, however, there must not only be an intention of making the new location the domicile of the servicemember, but also there must be the factual establishment of a domicile in the new location.

The establishment of a permanent residence (or domicile) in a new state ordinarily requires physical presence of the person in the state long enough to establish evidence of having taken up residence in the state. Some of the tests or factors to consider in determining such permanent residence (or domicile) include the following:

(a) Place of birth.
(b) Permanent residence of parents.
(c) Family connections, close friends.
(d) Address given for military purposes.
(e) Payment of state bonus (in most cases when a state pays a bonus to a servicemember, the servicemember must be a permanent resident to be eligible).
(f) Civic ties, church membership, club or lodge membership.
(g) Bank account or business connections.
(h) Payment of state income taxes.
(i) Continuous car registration and driver's license.
(j) Listing of "legal" or "permanent" address on Federal tax returns.
(k) Voting by absentee ballot.
(l) Occasional visits or spending one's leave "at home."
(m) Ownership of a home.
(n) Execution of approved certificates or other statements indicating permanent residence.
(o) Expression of intention.

Our administrative policy is in accord with the military services and the courts, including Federal courts, which, when arbitrating disputes over residency, have consistently held that a legal residence (or domicile) is not abandoned until a definite residence is established elsewhere.

4. Resident armed services personnel: For the purpose of reporting military income to South Carolina, the word "resident" means an individual who is a legal resident of this State, whether stationed in this State or in some other State or country. Unless a member of the armed services submits evidence that he or she has established legal residence in another State of territory and abandoned any domicile in this State, an individual will be presumed to be a resident of South Carolina if he or she entered military service while a resident of this State. As a resident, such individual is required to report income from all sources to South Carolina.

The following may be used as a guide to determine the income tax liability of servicemembers determined to be South Carolina residents:

(a) Taxable service income: Taxable service income includes base pay, longevity pay, flight pay, foreign service pay, submarine pay, jump pay, and re-enlistment pay bonus.
(b) Exempt service income: Income not taxable to servicemembers includes enlisted personnel's subsistence and quarters allowances, officers' subsistence and quarters allowances, and family allowances under the Career Compensation Act.
(c) Allowable deductions: Deductions may be claimed by servicemembers for insignia, swords, excessive cost of caps (for naval commanders, army and air force colonels, and officers of higher rank), and cost of altering uniforms necessitated by change in rank. (The expenses for which a deduction is allowed are only those expenses actually paid for which no reimbursement is received. The cost of uniforms and cleaning of same is not allowed to members of the armed forces on full-time duty on the basis that the uniform replaces ordinary street clothes and as such is a personal expense.)
(d) Non-deductible items: In the case of individuals on full-time duty, no deduction is allowed for such items as uniforms, fatigues, laundering or cleaning, or ordinary tailoring of uniforms.

117-640.2 Legal Residence When Military Personnel is Domiciled in a Foreign Country

The Soldiers' and Sailors' Civil Relief Act protects the rights of U.S. Armed Forces personnel, restricting the servicemember's liability for state income tax to his or her state of domicile. Domicile is defined legally as "that place where a man has his true, fixed, and permanent home and principal establishment and to which, whenever he is absent therefrom, he has the intention of returning". A residence, on the other hand, generally is defined as a "factual place of abode" at a particular time.

A member of the armed forces who entered military service while domiciled in this state will be presumed to be a resident of South Carolina, for tax purposes, unless the servicemember submits evidence that he or she has established legal residence in another state and abandoned domicile in this state.

117-640.3 National Guard or Reserve Pension or Retirement Income

That portion of pension or retirement income received by retired service personnel, residents of this State, that can be attributed to time served in the National Guard or Reserve components of the Armed Forces of the United States, is not taxable.

The non-taxable portion is determined by using a ratio of the time actually served in the National Guard or Reserve to the total time spent in military service, times total yearly pension or retirement.

117-670 Reporting Final Income When Planning to Cease Doing Business in State

A taxpayer planning to cease doing business in this State by the incorporation of an existing business or, in the case of a corporate taxpayer other than a subsidiary corporation, by the dissolution or surrender of its Charter, shall make a complete accounting of all items of income and expense not previously taken into account because the accounting method used by the taxpayer did not require the reporting of the items.

An individual taxpayer shall report all items of such income in his personal return for the year of incorporation. A corporate taxpayer shall report all items of such income in its final return.

Subarticle 13 - Nonresident and Part Year Resident Individuals (#675 – 699) - Reserved

Subarticle 17 - Allocation and Apportionment (#700 – 744)

117-700 This regulation contains definitions used in the allocation and apportionment provisions.

117-700.1 Definition of Related Expense as Used for Allocation

The term "related expenses" as used in Section 12-6-2220 means any cost incurred, directly or indirectly, in connection with investments for the production of income or future income which is or will be specifically and directly allocable under this section or costs incurred in the acquisition, sale or exchange of real, tangible or intangible property.

117-705 This regulation contains provisions for allocation of out of state income by a resident.

117-705.1 Allocation of Out-of-State Income and Losses

Income or loss realized by resident individuals or partnerships from an established business, or from the lease or rental of tangible personal property or real property, the situs of which is in another state, shall be allocated to the state in which the business or property is located. Except, income of a resident individual or partnership, derived from personal services, is allocated to this State as provided in Section 12-6-2220(6).

However, in the case of a resident individual or partnership, conducting a business of a unitary or homogenous nature, partly within and partly without this State, such income or loss is apportioned in accordance with the provisions of Sections 12-6-2250 through 12-6-3360.

117-705.2 Personal Service Income of a Resident

Income received by a dentist, doctor, lawyer, architect, or other professional domiciled in the State of South Carolina is income from personal services and is subject to South Carolina income taxes, even though such services are performed in another state, and even though the professional has an office located in such other state.

A tax credit may be allowed as provided in Regulation 117-755.

117-710 This regulation contains general allocation and apportionment provisions.

117-710.1 Proper Allocation and Apportionment of Income

The phrase "transacting or conducting his business partly within and partly without this State" as used in Section 12-6-2210, is applicable to a single business operation, which is unitary or homogenous and is carried on both within and without the State. A taxpayer operating two or more unrelated businesses, each of which is entirely within and without the State, is not subject to the provisions of this section, but each business determines its South Carolina net income separately. A taxpayer operating a unitary or homogenous business within and without the State and an unrelated business either entirely within or without is subject to the apportionment formulas with respect to the unitary or homogenous business but not with respect to the unrelated business. The income from the unrelated business is allocated and apportioned separately as appropriate to the State where such business is conducted.

117-740 This regulation contains specific apportionment provisions.

117-740.1 Apportionment of Gains/Losses from Asset Retirement

Any taxpayer electing the non-recognition of gains or losses realized upon the normal retirement of assets from productive use in the taxpayer's trade or business pursuant to IRS Regulation 1.167(a)-8, in effect on December 31, 1975, shall remove all such dispositions from the denominator of the property factor and, if the property disposed of had a situs in this State, from the numerator of the property factor in computing the property ratio for

the purposes of the three factor apportionment formula (with a double weighted sales factor) prescribed by Section 12-6-2250.

Subarticle 21- Foreign Trade Receipts (#745 – 749) - Reserved

Subarticle 25 Credits (#750 – 799)

117-750 This regulation contains definitions used in the credit provisions.

117-750.1 "Facility" Defined

A "facility" is generally a single physical location, where a taxpayer's business is conducted or where its services or industrial operations are performed. Where two or more distinct and separate economic activities are performed at a single physical location, each separate economic activity will be treated as a separate facility when: (1) each activity has its own separate and dedicated personnel; (2) separate reports can be prepared on the numbers of employees, their wages and salaries, sales, or receipts and expenses; (3) and employment and output are significant as to the activity. For purposes of item (2) above, it is irrelevant if separate reports are actually prepared, so long as separate reports can be prepared, this criteria is met.

117-755 This regulation provides for a credit to individuals for taxes paid in other states.

117-755.1 Credit for Taxes Paid to a Political Subdivision of a State

The tax credit granted in Code Section 12-6-3400 to a resident individual of South Carolina for taxes paid to another state subject to South Carolina income tax is granted to a resident individual of South Carolina for taxes paid to a political subdivision of a state and computed in the manner provided in Code Section 12-6-3400.

117-755.2 Tax Credit to Residents of this State Upon Income from a Partnership Taxed in Another State

Where an individual resident of this State is a partner of a partnership rendering personal services in South Carolina and another State, the distributive share of the partnership income received by the resident partner is taxable in this State. The resident partner is allowed the tax credit provided in Section 12-6-3400.

Subarticle 29 - Estimated Tax Payments (#800 – 824) - Reserved

Subarticle 33 - Tax Years, Accounting Methods, and S Corporation Elections (#825 – 849) - Reserved

Subarticle 37 - Tax Returns (#850 – 874)

117-850 This regulation provides specifications for forms and other information submitted to the Department.

117-850.1 Income Tax Forms and Acceptable Reproductions

All income tax returns required to be filed must be made on prepared blank forms furnished by the Department or on substitute forms which are provided for as follows:

1. Reproduced or computer prepared forms must conform to the standards issued by the forms management section of the Department.
2. The Department reserves the right to reject any reproduction or computer prepared form.
3. Returns made on forms that do not conform to Department standards will not be accepted and will be returned to the taxpayer and the taxpayer will be deemed to have failed to file a return.

117-850.2 Rules and Specifications for Non paper Methods of Submitting Tax Information.

The specifications for submitting tax information using non paper methods must conform to the standards published by the section of the Department overseeing these methods. The Department reserves the right to reject the use any non paper reporting method.

117-855 This regulation provides requirements for information returns and withholding statements.

117-855.1 Withholding Statements Required with Paper Return

The copy of the withholding statement furnished to the employee by the employer, as required under Section 12-8-1540, designated for attachment to the employee's income tax return, must be attached to the income tax return of the employee if the employee files a paper return. A copy of Form 1099 or other information return reflecting South Carolina withholding must be attached to the income tax return of the taxpayer if the taxpayer files a paper return. Failure to comply may result in the disallowance of the withholding claimed.

117-855.2 Information Returns Not Required To Be Given To Certain Entities

Information returns required under Section 12-6-4950, do not apply to payments made to banks or to any organization exempt from South Carolina income tax, under Section 12-6-550.

117-870 This regulation provides requirements and liability for filing of returns when ceasing to do business in South Carolina.

117-870.1 Stockholders Liable for Tax When Business Operates After Charter Cancelled

When a business continues operating, after cancellation of the corporation charter as a result of non-payment of license fee, the stockholders are required to file a Partnership Return, and each stockholder/partner is liable for income tax on his or her individual share of the profits, as provided in Section 12-6-510.

117.870.2 Reporting Final Income When Planning to Cease Doing Business in State

A taxpayer planning to cease doing business in this State by the incorporation of an existing business or, in the case of a corporate taxpayer other than a subsidiary corporation, by the dissolution or surrender of its Charter, shall report all items of income as described in Regulation 117-670.

Subarticle 41 – Miscellaneous Provisions (#875 – 899) - Reserved

Article 18 - Withholding

Subarticle 1 - Definitions (#900 – 909) - Reserved

Subarticle 5 - Withholding Required (#910 – 939)

117-910. This regulation contains specific withholding requirements.

117-910.1 Determination of Withholding When Receiving Taxable Wages and Exempt Compensation

A particular employee may receive wages subject to withholding and also remuneration that is exempt from withholding. In such a case all remuneration paid during the payroll period is treated alike; that is, it is all treated as wages on which withholding is required, or it is all treated as exempt from withholding. The following rules apply:

(1) If one-half or more of any payroll period (not in excess of 31 days) is spent in earning wages subject to withholding, then withholding is required on all remuneration paid to the employee (including the "exempt" remuneration).

(2) If more than one-half of any payroll period (not in excess of 31 days) is spent in earning exempt remuneration described in Section 12-8-520, then no withholding is required on any wages paid to the employee.

Subarticle 9 - Procedure for Withholding on Wages (#940 – 974) - Reserved

Subarticle 13 - Depositing and Filing Returns in Connection with Withholding (#975 – 989) - Reserved

Subarticle 17 - Enforcement and Administration Provisions (# 990 – 999) - Reserved

Article 20 - Corporate License Fee and Annual Reports (#1000 – 1199)

117-1000 This regulation contains general annual report provisions.

117-1000.1 What Constitutes an Officer of a Corporation

An officer of a corporation is a person who by election or appointment is empowered to perform official functions of a corporation. By official functions is meant any duty devolving a President, Vice-President, Treasurer, Assistant Treasurer, Secretary, Assistant Secretary, or other officer elected by the Board of Directors.

Where the Board of Directors delegated the power to the President to name other officers, such appointees are deemed appointed officers.

117-1075. This regulation contains general provisions of the license fee imposed on gross receipts and property.

117-1075.1 Items Included in Gross Receipts

Gross receipts, as used in Section 12-20-100, include all receipts from operations within the State, and also other profit and loss items with a local situs. Intangible income from intangibles used in the conduct of the business within this State is included in gross receipts.

Fiscal Impact Statement:

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

Statement of Rationale Pursuant to Code Section 1-23-120(B):

The purpose of this proposal is to reorganize the Department's Income Tax, Withholding, and Corporate License Fees and Annual Reports Regulations by subject matter so as to maintain regulations in an orderly manner and to simplify a taxpayer's search for information on a particular subject matter. The experience and professional judgement of the Department's staff were relied upon in reorganizing these regulations.

Document No. 2751
DEPARTMENT OF REVENUE
CHAPTER 129
Statutory Authority: 1976 Code Section 12-4-320

Chapter 129 of Code of Regulations (SC Regulation 129-1) – Tax Board of Review

Synopsis:

The South Carolina Department of Revenue is considering repealing Chapter 129 of the Code of Regulations, which consists of only SC Regulation 129-1, concerning the Tax Board of Review. This chapter is no longer needed since the Tax Board of Review no longer exists due to changes in the law.

Instructions: Repeal Chapter 129 of the Code of Regulations.

Text:

No text is necessary since the proposal is only repealing a chapter in the code of regulations that is no longer needed since the Tax Board of Review no longer exists due to changes in the law.

Fiscal Impact Statement:

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

Statement of Rationale Pursuant to Code Section 1-23-120(B):

The purpose of this proposal is to repeal a chapter in the code of regulations that is no longer needed since the Tax Board of Review no longer exists due to changes in the law.

Document No. 2781
DEPARTMENT OF REVENUE
CHAPTER 117
Statutory Authority: 1976 Code Section 12-4-320

Regulations: Articles 2, 3 and 4 of Chapter 117 and SC Regulations 117-92.1, 117-92.2, 117-92.3, 117-92.5, 117-88.1, 117-88.2 and 117-88.3

Synopsis:

The South Carolina Department of Revenue is considering repealing Articles 2, 3 and 4 of Chapter 117 and repealing SC Regulations 117-92.1, 117-92.2, 117-92.3, 117-92.5, 117-88.1, 117-88.2 and 117-88.3 and creating eight new regulations concerning various miscellaneous taxes in a new Article 24. Under the proposal, regulations are combined so that all regulations concerning one subject matter can be found in one regulation and therefore one place in the regulation code. In addition, each regulation would have several "subsections" numbered in a manner to allow future issues concerning the subject matter to be added on and still be in the same place in the regulation code as other similar issues. For example, all issues concerning alcoholic liquor taxes can be found in one regulation under Regulation 117-1200. This regulation has several "subsections" numbered 117-1200.1, 117-1200.2, and so on.

Instructions: Repeal Articles 2, 3, and 4 of Chapter 117 and repeal SC Regulations 117-92.1, 117-92.2, 117-92.3, 117-92.5, 117-88.1, 117-88.2 and 117-88.3 and create eight new regulations in a new Article 24.

Text:

117-1200 Alcoholic Liquor Taxes

Chapter 33 of Title 12 imposes various taxes on alcoholic liquors. The following subsections address various aspects of these taxes as administered by the South Carolina Department of Revenue.

117-1200.1 Sales to Governmental Reservations.
Any wholesale liquor dealer is permitted to deliver from his stock of alcoholic liquors to Officer's Clubs, Canteens, or other such organizations located on government reservations when such purchases are permitted under the regulations of the Federal Government. Such deliveries by wholesalers to be made in a vehicle owned and operated by such wholesaler or by a common carrier. The wholesaler will be required to pay the additional taxes on wholesale sales as imposed in Sections 12-33-410 and 12-33-420 as amended.

117-1200.2 Purchases by Retail Liquor Dealers.

No retail liquor dealer shall be permitted to purchase any alcoholic liquors except from a licensed dealer in this State. The purchase, or negotiation for purchase, of alcoholic liquors from without the State by a retail dealer is strictly forbidden. No wholesale liquor dealer shall be permitted to purchase alcoholic liquors for the exclusive use of any retailer.

117-1200.3 Collection and Payment of Tax and the Maintaining of Records.
The General Assembly in Section 12-33-250, provided for the collection and payment of the license taxes levied by Sections 12-33-230 and 12-33-240 in the same manner and under the same conditions as the taxes imposed by Sections 12-33-410 and 12-33-460. The payment of taxes levied by Sections 12-33-410 and 12-33-460 is provided for by Section 12-33-480 and requires the same on or before the tenth day of the month next succeeding the month in which the tax accrues. A report is required on or before the tenth of each month on forms prescribed by the Department stating the number of cases of alcoholic liquors sold during the preceding month.

The licensed wholesaler must maintain adequate and complete records. Such records shall be available for examination and review by the Department.

117-1250 Beer and Wine Taxes

Article 7 of Chapter 21 of Title 12 imposes various taxes on beer and wine. The following subsections address various aspects of these taxes as administered by the South Carolina Department of Revenue.

117-1250.1 Sales or Exchanges with other Wholesalers.
Each wholesale beer and wine dealer shall report all sales purchases or exchanges of their products with other wholesale dealers to the Department on such forms as may be prescribed by the Department. Such information must be reported to the Department along with the wholesale dealer's monthly report not later than the 20th day of the month following the month in which the sale purchase or exchange occurred. Failure to timely report such information in full as provided herein for any reason shall constitute a violation of this Regulation for which the Department may suspend or revoke all permits held by such dealer or impose a monetary penalty of not less than $20.00 nor more than $100.00 upon the holder thereof.

117-1250.2 Change in Distributors.

It has been called to the attention of the Department by certain members of the General Assembly, who have filed statements thereabout with the said Department, that it was not the intention of the South Carolina General Assembly in enacting Section 12-21-1330 of the 1976 Code to require the filing of the ninety day written notice with the Department by manufacturers and wholesalers prior to any change in their distributors, or in the territories of their distributors, where both the manufacturer and the wholesaler mutually agree in writing to waive the said ninety day written notice requirement.

Based upon the aforementioned declaration of legislative intent pertaining to the enactment of Section 12-21-1330, the Department, in instances where both the manufacturer affected and the wholesaler affected mutually agree in writing to waive the aforesaid ninety day notice prior to change in their distributors or in the territory of their distributors, will consider the filing of the waiver agreement with the Department sufficient compliance with the provisions of said Section 12-21-1330. Until the mutually executed waiver agreement is duly filed with the Department, and in form and content acceptable to the Department, the waiver of the notice requirements of Section 12-21-1330 shall not become effective.

117-1300. Coin-operated Devices.

Article 19 of Chapter 21 of Title 12 imposes various taxes on coin-operated and other devices as well as the owner of these devices. The following subsections address various aspects of these taxes as administered by the South Carolina Department of Revenue.

117-1300.1 Application for License

Every person applying for a license under the provisions of Section 12-21-2720 shall, in making application for such license, specify the serial number, the manufacturer's name, the model number and classification, of each machine to be licensed. All machines subject to the provisions of Section 12-21-2720 must have a permanently attached identifying serial number visible on the outside of such machine. This number shall be the manufacturer's serial number if such serial number is visible on the outside and if such serial number is not visible on the outside, then and in that event, a permanently attached identifying serial number must be assigned and affixed to every such machine.

117-1300.2 Free Play Feature

The words "which has a free-play feature" shall mean and include any machine which is designed and made with such feature by the manufacturer of such machine, provided, however, that where the mechanism constituting a free-play feature has been completely and wholly removed from the machine, and a certificate to that effect is filed at the time of application for license, the machine shall be licensed as one without a free-play feature.

117-1350 Deed Fee - Assumption of a Mortgage in the Conveyance of Real Property.

To set forth the true, full, and complete consideration, paid or to be paid, where any mortgage is assumed in the conveyance of real property, it is necessary for the deed or affidavit to state the Number of the Real Estate Mortgage Book and the Page Number, and the remaining balance assumed.

117-1400 Electric Power Tax - Classification of Industrial Customers.

Hereafter, the South Carolina Department of Revenue will use Division (D), Manufacturing, Standard Industrial Classification Manual, Bureau of the Budget, 1967, as a guide to classify "industrial customers", as such term is used in Section 12-23-10.

Persons engaged in the business of manufacturing, generating and selling electric power must furnish to the Department a list, on or before January 31 and July 31 of each year, of industrial customers for which an exemption is claimed for the preceding periods, June through December and January through June, respectively. Such lists must show the name, address, KWH consumption and the standard two-digit classification code as provided in the Standard Industrial Classification Manual.

117-1450 Motor Fuel Tax - LP Gas.

When LP gas is used as a fuel in motor vehicles that are operated on the public highways and the amount of LP gas thus used cannot be determined using any other method, the following miles per gallon will be used for computing taxable gallons on the following specified types of vehicles:

(1) Transport tractors that pull trailer type vehicles and trucks with more than two axles--three miles per gallon.
(2) Tank wagons and two-axle vehicles, one ton and over--five miles per gallon.
(3) Trucks less than one ton and passenger vehicles--ten miles per gallon.

The above miles per gallon schedule is to be used to determine the tax liability only when LP gas is used from the cargo supply tank to propel a vehicle. When a separate supply tank is connected to the engine of a motor vehicle, the tax is due on the actual number of gallons of fuel placed into the tank. It is absolutely necessary for taxpayers, paying tax on a mileage basis, to keep accurate records of the miles driven and to keep their speedometers in good working condition.

117-1500 Bank Tax

Chapter 11 of Title 12 imposes a franchise tax on banks. The following subsections address various aspects of this franchise tax as administered by the South Carolina Department of Revenue.

117-1500.1. Entire Net Income.
The term "entire net income" as used in Section 12-11-10 shall include income derived from any source whatsoever including interest on obligations of the United States, the United States Government or its possessions or of any state and any political subdivision thereof.

117-1500.2. Method of Reporting.

The net income of the taxpayer as provided for in Section 12-11-20 shall be computed on either a cash or an accrual basis. A bank may request permission to change from a cash to an accrual basis or from an accrual basis to a cash basis over a ten year period.

117-1500.3. Federal Income Tax Deduction.

Banks reporting on a cash basis may deduct Federal income estimated tax payments in the year in which they are paid. Cash basis banks using a method other than above may convert by using ten year conversion period as permitted under SC Regulation 117-1500.2.

117-1500.5. Mergers.
A bank which merges into another bank or consolidates with one or more banks, must file a final return for a portion of the year prior to the merger or consolidation and pay the tax shown to be due thereon.

The liability for filing the final return for the bank or banks ceasing to exist shall vest in the surviving bank since it assumes all assets and liabilities of the bank or banks merging or consolidating.

117-1550 Income Tax on Building and Loan Associations

Chapter 13 of Title 12 imposes an income tax on building and loan associations. The following subsections address various aspects of this income tax as administered by the South Carolina Department of Revenue.

117-1550.1. Determining Net Income of Building and Loan Associations.
In accordance with Section 12-13-30, any additions to reserves which are required by law, regulation or direction of appropriate supervisory agency must be allowed as a deduction in determining net income but the burden is upon the savings and loan association and/or building and loan association to show what the regulatory agency required.

117-1550.2. Earnings Paid to Shareholders.

For the purposes of Section 12-13-20, a deduction shall be allowed for earnings paid to shareholders in an amount equal to the earnings actually paid out and/or credited to each shareholder's account. Earnings credited to a reserve account for future payments shall not qualify for this deduction.

117-1550.3. Measure of Tax
The income tax imposed by Section 12-13-30 shall be measured by the net income from all sources except interest income as is specifically exempted by law from such tax. Exempt income items are: (1) Income from obligations of the State of South Carolina and its political subdivisions. (2) Income from obligations of the United States and its possessions.

Fiscal Impact Statement:

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

Statement of Rationale Pursuant to Code Section 1-23-120(B):

The purpose of this proposal is to reorganize the Department's Miscellaneous Tax Regulations by subject matter so as to maintain regulations in an orderly manner and to simplify a taxpayer's search for information on a particular subject matter. The experience and professional judgement of the Department's staff were relied upon in reorganizing these regulations.