

## **SOUTH CAROLINA STATE REGISTER DISCLAIMER**

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# SOUTH CAROLINA STATE REGISTER

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

# ***SOUTH CAROLINA STATE REGISTER***

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

## **STYLE AND FORMAT**

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

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

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

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

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

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

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

**Executive Orders** are actions issued and taken by the Governor.

## **2017 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	1/13	2/10	3/10	4/14	5/12	6/9	7/14	8/11	9/8	10/13	11/10	12/8
Publishing Date	1/27	2/24	3/24	4/28	5/26	6/23	7/28	8/25	9/22	10/27	11/24	12/22

## **REPRODUCING OFFICIAL DOCUMENTS**

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## **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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4656		SR41-5	At-Risk Students	5/10/17	State Board of Education
4664		SR41-5	Hotels, Motels, and Similar Facilities	5/10/17	Department of Revenue
4683		SR41-5	Transportation Project Prioritization	5/10/17	Department of Transportation
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4685		SR41-5	Commission Approval of Actions	5/10/17	Department of Transportation
4719		SR41-5	Maximum Time for Certification	5/10/17	LLR-Building Codes Council
4714		SR41-5	Adoption of Model Codes	5/10/17	LLR-Building Codes Council
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4718		SR41-5	IRC Section R802.10.1 Wood Truss Design	5/10/17	LLR-Building Codes Council
4721		SR41-5	Board of Registration for Foresters	5/10/17	LLR
4713		SR41-5	Barbershop Requirements; Applications for Inspection and Registration and Shop License	5/10/17	LLR-Board of Barber Examiners
4712		SR41-5	Purpose and Definitions	5/10/17	LLR-Office of Amusement Rides
4711		SR41-5	Real Estate Commission	5/10/17	LLR
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4720		SR41-5	Sanitary and Safety Rules for Salons and Schools	5/10/17	LLR-Board of Cosmetology
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4724		SR41-5	Amend Regulations 105-2 through 105-13 to Comport with 2016 Act 170	5/10/17	LLR-Real Estate Commission
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4715		SR41-5	Energy Standards Appeal Procedure	5/10/17	LLR-Building Codes Council
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4676		SR41-5	Employment Records to be Retained for Six Months	5/10/17	South Carolina Human Affairs Commission
4677		SR41-5	Investigation and Production of Evidence	5/10/17	South Carolina Human Affairs Commission
4679		SR41-5	Issuance of Complaint	5/10/17	South Carolina Human Affairs Commission
4680		SR41-5	Pleadings, Motions and Discoveries	5/10/17	South Carolina Human Affairs Commission
4681		SR41-5	Preservation of Records in Event of Charge of Discrimination	5/10/17	South Carolina Human Affairs Commission
4682		SR41-5	Procedure for the Institution of Civil Actions as Provided in Section 1-13-90(d) of the Act	5/10/17	South Carolina Human Affairs Commission
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4686		SR41-5	General Regulations; and Additional Regulations Applicable to Specific Properties	5/10/17	Department of Natural Resources
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4710	Board of Barber Examiners		LLR
4658	Operation of Public Pupil Transportation Services		State Board of Education
4687	Wildlife Management Area Regulations; and Turkey Hunting Rules and Seasons		Department of Natural Resources

# COMMITTEE LIST OF REGULATIONS SUBMITTED TO GENERAL ASSEMBLY 3

In order by General Assembly review expiration date  
 The history, status, and full text of these regulations are available on the  
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4625	Licensing Standards for Continuing Care Retirement Communities	Regulations and Admin. Procedures	Medical Affairs
4649	Securities Division	Regulations and Admin. Procedures	Banking and Insurance
4656	At-Risk Students	Regulations and Admin. Procedures	Education
4664	Hotels, Motels, and Similar Facilities	Regulations and Admin. Procedures	Finance
4683	Transportation Project Prioritization	Regulations and Admin. Procedures	Transportation
4684	Secretary of Transportation Approval of Actions	Regulations and Admin. Procedures	Transportation
4685	Commission Approval of Actions	Regulations and Admin. Procedures	Transportation
4719	Maximum Time for Certification	Regulations and Admin. Procedures	Labor, Commerce and Industry
4714	Adoption of Model Codes	Regulations and Admin. Procedures	Labor, Commerce and Industry
4716	IRC Section R502.11.4 Truss Design	Regulations and Admin. Procedures	Labor, Commerce and Industry
4718	IRC Section R802.10.1 Wood Truss Design	Regulations and Admin. Procedures	Labor, Commerce and Industry
4721	Board of Registration for Foresters	Regulations and Admin. Procedures	Fish, Game and Forestry
4713	Barbershop Requirements; Applications for Inspection and Registration and Shop License	Regulations and Admin. Procedures	Labor, Commerce and Industry
4712	Purpose and Definitions	Regulations and Admin. Procedures	Labor, Commerce and Industry
4711	Real Estate Commission	Regulations and Admin. Procedures	Labor, Commerce and Industry
4717	IRC Section R703.4 Flashing	Regulations and Admin. Procedures	Labor, Commerce and Industry
4720	Sanitary and Safety Rules for Salons and Schools	Regulations and Admin. Procedures	Labor, Commerce and Industry
4723	Examinations; Apprenticeship; and Continuing Education Requirements	Regulations and Admin. Procedures	Medical Affairs
4724	Amend Regulations 105-2 through 105-13 to Comport with 2016 Act 170	Regulations and Admin. Procedures	Labor, Commerce and Industry
4722	Administrator-in-Training Program Requirements	Regulations and Admin. Procedures	Medical Affairs
4689	Check Cashing Services	Regulations and Admin. Procedures	Banking and Insurance
4690	Mortgage Lending	Regulations and Admin. Procedures	Banking and Insurance
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4686	General Regulations; and Additional Regulations Applicable to Specific Properties	Regulations and Admin. Procedures	Fish, Game and Forestry
4703	State Emergency Management Standards	Regulations and Admin. Procedures	General
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4705	Drycleaning Facility Restoration	Regulations and Admin. Procedures	Medical Affairs
4693	Work Search	Regulations and Admin. Procedures	Labor, Commerce and Industry
4731	Exemption Meals Sold to School Children	Regulations and Admin. Procedures	Finance
4697	Career or Technology Centers/Comprehensive High Schools	Regulations and Admin. Procedures	Education
4707	Discount Medical Plan Certificate of Registration	Regulations and Admin. Procedures	Banking and Insurance
4708	Motor Club Certificate of Authority	Regulations and Admin. Procedures	Labor, Commerce and Industry
4709	Prepaid Legal Services Certificate of Registration	Regulations and Admin. Procedures	Banking and Insurance
4696	Advanced Placement	Regulations and Admin. Procedures	Education
4704	The Evaluation of School Employees for Tuberculosis	Regulations and Admin. Procedures	Medical Affairs
4706	Underground Storage Tank Control Regulations	Regulations and Admin. Procedures	Medical Affairs
4671	WIC Vendors	Regulations and Admin. Procedures	Medical Affairs
4736	Shellfish	Regulations and Admin. Procedures	Medical Affairs
4691	Appeals to Appeal Tribunal	Regulations and Admin. Procedures	Labor, Commerce and Industry
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4659	School Resource Officers	Regulations and Admin. Procedures	Education
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4657	Minimum Standards of Student Conduct and Disciplinary Enforcement Procedures to be Implemented by Local School Districts	Regulations and Admin. Procedures	Education
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4730	South Carolina National Guard College Assistance Program	Regulations and Admin. Procedures	Education

#### 4 COMMITTEE LIST OF REGULATIONS SUBMITTED TO GENERAL ASSEMBLY

4695	Administrative and Professional Personnel Qualifications, Duties and Workloads	Regulations and Admin. Procedures	Education
4735	Chapter Revisions	Regulations and Admin. Procedures	Judiciary
4678	Investigation Procedures	Regulations and Admin. Procedures	Judiciary
4665	Examples of the Application of Tax to Various Charges Imposed by Hotels, Motels, and Other Facilities	Regulations and Admin. Procedures	Finance
4741	Seasons, Limits, Methods of Take and Special Use Restrictions on Wildlife Management Areas	Regulations and Admin. Procedures	Fish, Game and Forestry
4727	Term and Conditions for the Public's Use of State Lakes and Ponds Owned or Leased by the Department of Natural Resources	Regulations and Admin. Procedures	Fish, Game and Forestry
4746	Articles 4, 5, 7 and 8 of Chapter 126	Regulations and Admin. Procedures	Medical Affairs
<b>Committee Request Withdrawal</b>			
4729	Determination of Rates of Tuition and Fees	Regulations and Admin. Procedures	Education
<b>Resolution Introduced to Disapprove</b>			
4734	Minimum Specifications and Practice Standards Governing Pharmacies and Pharmacists Engaged in Nonsterile and Sterile Compounding	Regulations and Admin. Procedures	Medical Affairs
<b>Permanently Withdrawn</b>			
4710	Board of Barber Examiners	Regulations and Admin. Procedures	Labor, Commerce and Industry
4658	Operation of Public Pupil Transportation Services	Regulations and Admin. Procedures	Education
4687	Wildlife Management Area Regulations; and Turkey Hunting Rules and Seasons	Regulations and Admin. Procedures	Fish, Game and Forestry

**Executive Order No. 2017-08**

**WHEREAS**, as the State's chief magistrate, commander-in-chief, and supreme executive authority, it is the responsibility of the Governor of the State of South Carolina to protect the citizens of South Carolina from foreign and domestic threats and, as such, to promote and implement initiatives to increase our State's cybersecurity; and

**WHEREAS**, the State must protect its critical infrastructure and key resources ("CIKR") from sophisticated cyber threats in order to maintain the stability of our State's economic and commercial activity and ensure the health, safety, and well-being of its citizens and businesses; and

**WHEREAS**, the State must take proactive measures to develop and implement a comprehensive, strategic, and sustainable framework for addressing future cyber threats, attacks, and disruptions to the State's CIKR; and

**WHEREAS**, facilitating regular collaboration among State and Federal government agencies and public- and private-sector organizations will aid the State in further developing and improving its CIKR protections against sophisticated cyber threats; and

**WHEREAS**, representatives from the South Carolina Law Enforcement Division ("SLED"), the South Carolina Department of Administration, the Military Department of South Carolina, and the South Carolina Attorney General's Office formed the South Carolina Critical Infrastructure Cybersecurity Working Group ("Working Group"); and

**WHEREAS**, the mission of the Working Group was to document the strategic framework for the creation of a collaborative effort among cybersecurity professionals in government, private industry, and academia that will develop, implement, and maintain a comprehensive program and operational effort to evaluate and enhance the State's CIKR cybersecurity posture ("SC CIC Program"); and

**WHEREAS**, the Working Group recommended developing a prioritized plan to incorporate cybersecurity risk management practices for the State's critical infrastructure into existing programs and coordinate the State's CIKR cybersecurity endeavors through SLED's Office of Homeland Security and fusion center; and

**WHEREAS**, the State must use its resources in an efficient manner to prevent unproductive competition for limited resources; and

**WHEREAS**, on January 11, 2016, the Working Group published a report, titled "Critical Infrastructure Protection: An Overview of Cybersecurity State Government Efforts in South Carolina" ("Critical Infrastructure Protection Report"), which specifically identifies certain cybersecurity gaps pertaining to the State's CIKR; and

**WHEREAS**, the Working Group thereafter developed a plan to address the Critical Infrastructure Protection Report's findings and, in September 2016, published the "South Carolina Critical Infrastructure Cybersecurity Strategic Plan" ("Plan"), which articulates and proposes a strategic framework for initiating and operationalizing the SC CIC Program.

**NOW, THEREFORE**, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the powers conferred upon me by the Constitution and Laws of this State, I hereby approve the Plan, as modified and amended herein, and establish the South Carolina Critical Infrastructure Cybersecurity Executive Oversight Group ("Executive Oversight Group"), which shall be constituted and shall execute its duties and responsibilities as set forth below:

## 6 EXECUTIVE ORDERS

1. **Mission.** The Executive Oversight Group shall serve as the task force under the Plan and shall execute the SC CIC Program, which will focus on sharing cybersecurity information and preventing cyber threats, incidents, or attacks affecting the State's CIKR and analyzing, protecting, responding to, mitigating, and recovering from the effects and consequences of any such incidents or attacks on the State's CIKR to ensure the health, safety, and well-being of South Carolina's citizens and businesses.

2. **Membership.** The Executive Oversight Group shall consist of the following individuals or officials, or their designees, all of whom shall report to and serve at the pleasure of the Governor:

a. The Governor of the State of South Carolina or an employee or official from the Office of the Governor;

b. Chief of SLED;

c. Director of the South Carolina Department of Administration;

d. The State of South Carolina's Chief Information Security Officer; and

e. One (1) Cyber Executive, designated by the Chief of SLED, upon consultation with the Office of the Governor, to lead the SC CIC Program at the direction of the Executive Oversight Group.

The Executive Oversight Group shall be governed and conduct itself as follows:

a. The Governor or his designee shall designate the Chairman and Vice-Chairman of the Executive Oversight Group;

b. The Executive Oversight Group shall act as an advisory committee to the Governor on various cybersecurity matters that affect the State's CIKR;

c. The Cyber Executive may, with the advice and consent of the Executive Oversight Group, appoint or engage, on an *ad hoc* basis, additional individuals or officials, including representatives from academia, S.C. Cyber, and other public- or private-sector agencies or organizations, to serve in an advisory capacity or otherwise counsel the Executive Oversight Group, or any portion thereof, on certain cybersecurity-related issues affecting the State's CIKR; and

d. As necessary and appropriate, the Executive Oversight Group may, upon approval of the Governor or his designee, pursue, engage, and retain consultants, advisors, auditors, and specialists to provide information or advice, develop strategic plans, or otherwise assist in connection with the Mission of the Executive Oversight Group.

3. **Duties and Responsibilities.** The Executive Oversight Group shall initiate and implement Phases One and Two of the Plan, as amended and as funding from the General Assembly becomes available, and operationalize, mobilize, and administer, with the assistance of the Cyber Executive, the SC CIC Program.

This Order is effective immediately.

**GIVEN UNDER MY HAND AND THE GREAT  
SEAL OF THE STATE OF SOUTH CAROLINA,  
THIS 19th DAY OF APRIL 2017.**

**HENRY MCMASTER  
Governor**

**Executive Order No. 2017-09**

**WHEREAS**, in order to unleash and facilitate the innovation, investment, vision, creativity, and prosperity which are the hallmarks of the American free-enterprise system, it is important that the regulatory standards and procedures enacted in South Carolina be reasonable, practical, productive, and not unduly burdensome; and

**WHEREAS**, the people are served by the government limiting the number, length, and complexity of rules and regulations, implementing only those which are clearly necessary for the public good; and

**WHEREAS**, inconsistent, impractical, and redundant regulations impede the creation and growth of small, independently-owned businesses and large businesses alike; and

**WHEREAS**, the State of South Carolina must continuously enhance the competitiveness of its business climate in order to support South Carolina's "main street" businesses and also to encourage new businesses, innovation, and entrepreneurial growth, all of which are vital to the economic prosperity of our people, today and in future generations; and

**WHEREAS**, the State of South Carolina, to these ends, should constantly review and remove unnecessary regulations and government impediments to progress and ensure that any new regulations are consistent with a common-sense regulatory framework; and

**WHEREAS**, businesses and individuals thrive when regulatory enforcement is smart, limited, consistent, and free of undue influence.

**NOW, THEREFORE**, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, I hereby establish a regulatory framework to promote responsible regulation, directing agencies to: (1) utilize a four-part test in promulgating new regulations; (2) work with the Governor's Office to reduce current regulations; and (3) promote transparency in the rule-making process. This Executive Order applies to all Cabinet agencies and all boards and commissions with rule-making powers which are part of, or within, a Cabinet agency. I ask that the other executive agencies join in this process to enhance and prioritize our State's competitive business climate by improving upon the existing regulatory framework and environment.

**Section 1. New Regulations:**

All proposed regulations shall be reviewed and vetted by the agency using a practical, common-sense test, borrowing from the well-known Four-Way Rotary test, to instill and improve South Carolina's commitment to a competitive business climate and positive regulatory culture and the freedom of its citizens:

**1. Is it the truth?** Regulations should be promulgated only for identified needs supported by fact-based evidence. Regulations should address the clear, identified need for the regulation to promote the health, safety, and economic well-being of the citizens and should not be susceptible to misuse or abuse to provide financial or competitive advantage for any individual, business, or industry over another.

**2. Is it fair to all concerned?** Regulations should be fair to citizens, businesses, and the state at large. They should not unnecessarily burden one party at another's expense. Agencies should weigh the impact on each affected party and determine whether a less restrictive or less costly alternative could be utilized to achieve the same objectives. The agency should describe the risk associated with the problem the regulation is designed to remedy and consider alternatives.

## 8 EXECUTIVE ORDERS

3. **Will it build goodwill and better friendships?** Any and all regulations should build goodwill among businesses and communities, minimize requirements, educate those interested, and protect the citizens at large. An overly-burdensome, unnecessary, or misguided requirement creates hardship and diminishes the people's confidence in their government.

4. **Will it be beneficial?** Regulations should benefit all South Carolinians. They should not stifle our competitive economic environment, our ingenuity, or any particular licensee from responsible, lawful, and environmentally sound growth. Agencies should declare how a regulation is beneficial to all.

### **Section 2. Reduction of Current Regulations:**

All agencies should reduce their regulatory scope and impact and withdraw or amend regulations when their purpose can be accomplished in a less burdensome manner. Thus, agencies must continue to parse current regulations, analyzing risk and determining which regulations are necessary to protect the public and which regulations should be withdrawn or amended. Section 1-23-120(J) of the South Carolina Code of Laws requires agencies to conduct a formal review of all regulations every five (5) years and directs agencies to file a report with the Code Commissioner identifying those regulations:

1. for which the agency intends to begin the process of repeal in accordance with this article;
2. for which the agency intends to begin the process of amendment in accordance with this article; and
3. which do not require repeal or amendment.

Yet, filing a report with the Code Commissioner does not highlight needed regulatory reform to the public or require agencies to critically assess regulations outside of agency personnel. Thus, to provide appropriate oversight and strengthen agencies' positions in amending and withdrawing regulations, agencies shall hereinafter provide the Governor's Office with a copy of the periodic report required under section 1-23-120(J) of the South Carolina Code of Laws prior to filing with the Code Commissioner.

Agencies shall use the required review to critically assess regulations for the purpose of identifying wasteful and unnecessary regulations that should be repealed or modified. Based on the report and input from the agency, the Governor's Office will assist agencies in identifying, amending, and repealing unnecessary and overly burdensome regulations. To begin this process, agencies shall provide to the Governor's Office a copy of the most recent report submitted to the Code Commissioner. Should any agency not have filed the requisite report within the previous five (5) years, it shall prepare and file said report in calendar year 2017 and provide the Governor's Office a copy when filed.

### **Section 3. Transparency:**

As with all aspects of State government, transparency and availability are necessary to ensure an effective, efficient, and accountable regulatory environment. Therefore, agencies shall post online the report required under section 1-23-120(J) of the South Carolina Code of Laws so that citizens, businesses, and other interested parties alike can easily access the reports. Access to such information is particularly important for citizens and small businesses which often are not familiar with the rule-making process. Such availability will ensure that those involved in and welcomed to the formulation and consideration of rules and regulations include those with special interests, large and small associations, and also our citizens, "main street" businesses, and entrepreneurs and innovators of every kind.

Directors are accountable for ensuring that the policies and objectives in this Executive Order are implemented forthwith. They shall report their progress, plans, deficits, and accomplishments in achieving the goals and purposes of this Executive Order at each annual review.



This Order is effective immediately.

**GIVEN UNDER MY HAND AND THE GREAT  
SEAL OF THE STATE OF SOUTH CAROLINA,  
THIS 20th DAY OF APRIL 2017.**

**HENRY MCMASTER  
Governor**

## 10 NOTICES

### DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

#### NOTICE OF GENERAL PUBLIC INTEREST

In accordance with Section 44-7-200(D), Code of Laws of South Carolina, the public is hereby notified that a Certificate of Need application has been accepted for filing and publication May 26, 2017 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 Nic Gerrald, Certificate of Need Program, 2600 Bull Street, Columbia, SC 29201 at (803) 545-3495.

#### Affecting Beaufort County

##### **Hilton Head Island System, L.P. d/b/a Hilton Head Hospital**

Development of inpatient psychiatric services with the addition of 16 psychiatric beds at a total project cost of \$2,195,355.

In accordance with Section 44-7-210(A), Code of Laws of South Carolina, and S.C. DHEC Regulation 61-15, the public and affected persons are hereby notified that for the following projects, applications have been deemed complete, and the review cycle has begun. A proposed decision will be made as early as 30 days, but no later than 120 days, from May 26, 2017. "Affected persons" have 30 days from the above date to submit requests for a public hearing to Nic Gerrald, Certificate of Need Program, 2600 Bull Street, Columbia, S.C. 29201. If a public hearing is timely requested, the Department's decision will be made after the public hearing, but no later than 150 days from the above date. For further information call (803) 545-3495.

#### Affecting Beaufort County

##### **Hilton Head Island System, L.P. d/b/a Hilton Head Hospital**

Development of inpatient psychiatric services with the addition of 16 psychiatric beds at a total project cost of \$2,195,355.

#### Affecting Berkeley County

##### **Trident Medical Center, LLC d/b/a Summerville Freestanding ED**

Construction of a freestanding emergency department in Berkeley County at a total project cost of \$13,079,900.

#### Affecting Charleston County

##### **Bishop Gadsden Episcopal Retirement Community**

Conversion of 9 existing institutional beds to 9 non-institutional community nursing home beds for a total of 50 non-institutional beds at a total project cost of \$0.00.

#### Affecting Chesterfield County

##### **Liberty Home Care, LLC d/b/a Liberty Home Care – Bennettsville**

Establishment of a Home Health Agency in Chesterfield County at a total project cost of \$0.00.

#### Affecting Georgetown County

##### **Liberty Home Care, LLC d/b/a Liberty Home Care - Myrtle Beach**

Establishment of a Home Health Agency in Georgetown County at a total project cost of \$0.00.

## DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

## NOTICE OF GENERAL PUBLIC INTEREST

May 26, 2017

The S.C. Department of Health and Environmental Control  
Bureau of Water - Water Quantity Permitting Section  
2600 Bull Street, Columbia, South Carolina 29201  
Refer to: Public Notice # 30WS003-01 – May 26, 2017

Pursuant to the South Carolina Surface Water Withdrawal, Permitting, Use and Reporting Act [49-4-10] and Regulation 61-119, Surface Water Withdrawal, Permitting, Use and Reporting, an application was received by the Department from: Laurens County Water & Sewer Commission (LCWSA) – Laurens SC requesting a surface water withdrawal from Lake Greenwood. The application specifies a proposed withdrawal from Lake Greenwood at Latitude/Longitude 34.26667, - 82.035556 (end of State Spur S-30-222). The requested maximum amount of the proposed withdrawal is 540.0 million gallons per month (MGM). The water will be used to supply potable water within the LCWSA service area and under established water contracts to other entities.

**Of the requested total withdrawal amount (540.0 MGM), the application requests an Interbasin Transfer (IBT) of up to 92.07 MGM. The requested IBT proposes to transfer water out of the Saluda River Basin and move it into the Broad River Basin. Of the maximum 92.07 MGM removed from the Saluda River Basin for transfer, 11.70 MGM will be returned to the Saluda River Basin and 80.37 MGM will remain and either be consumed or discharged in the Broad River Basin. Withdrawals from Lake Greenwood are subject to review by the Federal Energy Regulatory Commission (FERC) and Greenwood County.**

The Department will hold a Public Hearing regarding the application on June 29, 2017 starting at 6:00 P.M. The Hearing will be held at the Cedarwood Community Church, 17194 SC-72, Waterloo, SC 29384. A person wishing to make comments on this application may do so at the public hearing, or they may submit written comments to the Department. Any comments submitted, other than verbal comments at the public hearing, shall be made in writing to the office listed above, shall be received by the date listed below, and shall include the name and legal address of the person making the comment.

In order to give all interested parties an opportunity to express their views -NOTICE- is hereby given that written statements regarding the proposed withdrawal will be received by the Department at the address listed above until 5:00 P.M. July 14, 2017 from any parties interested in the proposed withdrawal and those whose interests may be affected by the proposed withdrawal.

If there are any questions concerning this public notice or if you would like a copy of the application, please contact Michael Bishop at 803-898-3553 or [bishopma@dhec.sc.gov](mailto:bishopma@dhec.sc.gov). Interested parties wishing to be notified of the final permit decision must make comment on the application and/or make a request to receive notice of the final decision and must provide the SCDHEC with a correct name and mailing address.

## 12 NOTICES

### DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

#### ERRATA

May 26, 2017

R.61-47, Shellfish, was last amended by Document No. 4736 that was published in the S.C. State Register on April 28, 2017. This Errata is to correct several minor scrivener errors as follows:

**In the Section-by-Section Discussion of Amendments, the discussion is revised to correct an error in the citation to change it from 61-47.C.3.(b)(4) to 61-47.C.3(c)(3)(b)(4) as follows:**

**61-47.C.3(c)(3)(b)(4)**

Subsection cross reference added to include newly added text.

**In the text revision section, correct citation instruction for Code publishers to change 61-47.C.3.(b)(4) to 61-47.C.3(c)(3)(b)(4) to read:**

**Revise 61-47.C.3(c)(3)(b)(4) to read:**

(4) Nothing in item C.3.(c)(3) shall be construed to make unlawful the intrastate shipment of shellstock harvested from within the State provided such shellstock have not exceeded any maximum allowable time period for temperature control as established by item C.2.(c) and C.2.(e).

**At 61-47.I.6 – Correct to remove the extra space in the reference in this sentence and the word “Of” in this sentence by putting it in lower case to read:**

6. Shell stock identification. Certified shippers shall identify shell stock in accordance with item C.2.(g)(1) of this Regulation.

**At 61-47.I.7 – Correct to remove the extra space in the reference in this sentence and the word “Of” in this sentence by putting it in lower case to read:**

7. Shucked Shellfish Labeling. Certified shippers shall label shucked shellfish in accordance with item C.2.(i)(1) of this Regulation.

**Section 61-47.O.6 was amended to include the Section O.6 introductory plus O.6(a)-(f). This errata is to correct O.6(f) to remove the extra space in the reference in this sentence and by putting the word “For” located before the word “maricultured” in lower case to read:**

(f) Record keeping to document compliance with the requirements described in item C.2.(e)(2) for maricultured shellfish harvested during months that do require additional temperature controls.

**STATE BOARD OF EDUCATION**

## CHAPTER 43

Statutory Authority: 1976 Code Sections 30-4-10 et seq., 59-13-60, 59-13-70, 59-13-80, 59-13-90, 59-13-140, 59-17-100, 59-20-10, et seq., 59-21-510, et seq., 59-25-140, 59-33-10, et seq.

**Notice of Drafting:**

The South Carolina Board of Education proposes to amend Regulation 43-172, Accounting and Reporting. Interested persons may submit their comments in writing to Melissa Myers, Director, Office of Auditing Services, 1429 Senate Street, Columbia, South Carolina 29201 or by e-mail to [mmyers@ed.sc.gov](mailto:mmyers@ed.sc.gov). To be considered, all comments must be received no later than 5:00 p.m. on June 26, 2017.

**Synopsis:**

State Board of Education Regulation 43-172 governs the requirements for school districts, county board of educations, and career and technical education centers to obtain an annual audit of financial records by a certified or licensed public accountant. Amendments to Regulation 43-172 will revise the due date of the annual audit report from November 15 to December 1 to coincide with the deadline listed in the SC Code of Law 59-17-100. The amendment will also remove the reference to the “Office of School District Auditing” and replace it with the “SC Department of Education” and revise the term “occupational education center” to “career and technical education center” to coincide with current terms. The amendment will also update the Financial Resources to remove the reference to the Staff Accountability Manual which does not exist and replace with the Student Accountability Manual.

Legislative review is required.

**STATE BOARD OF EDUCATION**

## CHAPTER 43

Statutory Authority: 1976 Code Sections 59-5-60, 59-24-30, and 59-24-40

**Notice of Drafting:**

The South Carolina Board of Education proposes to amend Regulation 43-165.1, Program for Assisting, Developing, and Evaluating Principal Performance (PADEPP). Interested persons may submit their comments in writing to Vicki Traufler, Ph.D., PADEPP Coordinator, Office of Educator Effectiveness, Division of Innovation and Effectiveness, 8301 Parklane Road, Columbia, South Carolina 29223 or by e-mail to [vtraufler@ed.sc.gov](mailto:vtraufler@ed.sc.gov). To be considered, all comments must be received no later than 5:00 p.m. on June 26, 2017.

**Synopsis:**

Regulation 43-165.1 governs the principal evaluation system (PADEPP) for all principals in South Carolina. The proposed amendment is being made to realign and clarify language for two purposes: (1) to clarify that the evaluation instrument is available from the South Carolina Department of Education, and (2) to clarify that identified areas of student growth will be included in the Principal’s Professional Development Plan. There will be no fundamental changes.

Legislative review is required.

## 14 DRAFTING NOTICES

### DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

#### CHAPTER 61

Statutory Authority: 1976 Code Section 44-7-260

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

The Department of Health and Environmental Control proposes drafting a new regulation for the licensure of Crisis Stabilization Unit Facilities. Interested persons may submit written comments to Gwen C. Thompson, Bureau Chief, Bureau of Health Facilities Licensing, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201 or via email at [HealthRegComm@dhec.sc.gov](mailto:HealthRegComm@dhec.sc.gov). Comments may also be submitted electronically at the following address: <http://www.scdhec.gov/Agency/RegulationsAndUpdates/PublicComments/>, under the Notice of Drafting for Crisis Stabilization Units. To be considered, all comments must be received no later than 5:00 p.m., June 26, 2017, the close of the comment period.

#### **Synopsis:**

On April 24, 2017, Governor Henry McMaster signed into effect Act No. 10 amending Article 3 of Chapter 7, Title 44 to require the Department to license and regulate Crisis Stabilization Unit Facilities. These facilities provide a short-term residential program, offering psychiatric stabilization services and brief, intensive crisis services to individuals eighteen and older, twenty-four hours a day, seven days a week.

Legislative review of this new regulation is required.

Document No. 4749

**DEPARTMENT OF CONSUMER AFFAIRS**

**CHAPTER 28**

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

**Preamble:**

The South Carolina Department of Consumer Affairs proposes to promulgate R.28-55 addressing the revocable assignment of wages.

Sections 37-2-410, 37-2-710 and 37-3-403 permit a revocable assignment of wages in consumer transactions. Sections 37-6-104, 37-6-402, 37-6-403 and 37-6-506 allow the Department to promulgate regulations necessary to effectuate the purposes of Title 37.

The proposed regulation will require legislative review.

Notice of Drafting for the proposed regulation was published in the *State Register* on August 26, 2016. A proposed regulation was published in the *State Register* on November 25, 2016. Comments were received resulting in substantive changes to the proposal.

Section-by-Section Discussion

28-55            Added to provide a framework for the provision of a revocable assignment of wages, including required content of an assignment and disclosures.

**Notice of Public Hearing and Opportunity for Public Comment:**

Interested persons are invited to submit their views in writing to Kelly Rainsford, Deputy for Regulatory Enforcement, South Carolina Department of Consumer Affairs, P.O. Box 5757, Columbia, South Carolina 29250-5757. To be considered, comments must be received no later than June 27, 2017, the close of the comment period. Should a public hearing be requested, the hearing will be held at the Department on July 11, 2017, at 2:00 p.m. in the Conference Room, 2221 Devine Street, Suite 200, Columbia, S.C. 29204.

**Preliminary Fiscal Impact Statement:**

The Department of Consumer Affairs estimates the costs incurred by the State in complying with the proposed regulation will be approximately \$0.

**Statement of Need and Reasonableness:**

DESCRIPTION OF REGULATION: Revocable Assignment of Wages.

Purpose: The purpose of the regulation is to provide a framework for the provision of a revocable assignment of wages, including required content of an assignment authorization and consumer disclosures.

Legal Authority: 1976 Code Sections 37-2-410, 37-2-710, 37-3-403, 37-6-104, 37-6-402, 37-6-403 and 37-6-506.

Plan for Implementation: Administrative.

## 16 PROPOSED REGULATIONS

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

The regulation is needed to clarify when an assignment of earnings would be deemed revocable, thus compliant with the South Carolina Consumer Protection Code.

### DETERMINATION OF COSTS AND BENEFITS:

Implementation of this regulation will not require additional resources. There is no anticipated additional cost to the Department or state government due to any inherent requirements of the regulation. The framework provided by the regulation will provide guidance to consumers and businesses.

### UNCERTAINTIES OF ESTIMATES:

None.

### EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

None.

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

None.

### Statement of Rationale:

Sections 37-2-410, 37-2-710 and 37-3-403 prohibit an assignment of earnings unless a consumer has the ability to revoke the assignment. Sections 37-6-104, 37-6-402, 37-6-403 and 37-6-506 allow the department to promulgate regulations necessary for the implementation of the South Carolina Consumer Protection Code. It is necessary to promulgate a regulation to clarify when an assignment of earnings would be deemed revocable, thus compliant with the South Carolina Consumer Protection Code.

### Text:

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

Document No. 4750

## DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL CHAPTER 61

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

61-62. Air Pollution Control Regulations and Standards

### Preamble:

1. Pursuant to the South Carolina Pollution Control Act, S.C. Code Section 48-1-10 et seq. (2008), along with the federal Clean Air Act, 42 U.S.C. Sections 7410, 7413, and 7416, the S.C. Department of Health and Environmental Control must ensure national primary and secondary ambient air quality standards are achieved and maintained in South Carolina. No state may adopt or enforce an emission standard or limitation less stringent than these federal standards or limitations pursuant to 42 U.S.C. Section 7416.



2. The United States Environmental Protection Agency (“EPA”) promulgates amendments to the Code of Federal Regulations (“CFR”) throughout each calendar year. Recent federal amendments to 40 CFR Parts 50, 51, 52, 60, 61, 63 and 70 include clarification, guidance and technical amendments regarding state implementation plan (“SIP”) requirements promulgated pursuant to 42 U.S.C. Sections 7410 & 7413, New Source Performance Standards (“NSPS”) mandated by 42 U.S.C. Section 7411, federal National Emission Standards for Hazardous Air Pollutants (“NESHAP”) for Source Categories mandated by 42 U.S.C. Section 7412, and Prevention of Significant Deterioration (“PSD”) and Title V Operating Program provisions promulgated under title I and title V of the CAA.

3. The Department proposes to amend Regulation 61-62.1, Definitions and General Requirements; Regulation 61-62.5, Standard No. 7, Prevention of Significant Deterioration; Regulation 61-62.60, South Carolina Designated Facility Plan and New Source Performance Standards; Regulation 61-62.61, National Emission Standards for Hazardous Air Pollutants; Regulation 61-62.63, National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories; Regulation 61-62.70, Title V Operating Permit Program; and the South Carolina SIP, to adopt the federal amendments to these standards promulgated from January 1, 2016, through December 31, 2016.

4. The Department also proposes to add Regulation 61-62.97, Cross-State Air Pollution Rule (CSAPR) Trading Program, to incorporate the EPA’s CSAPR trading program for South Carolina in 40 CFR Part 97 for NO<sub>x</sub> (Annual) and SO<sub>2</sub> (Annual), as published in the Federal Register on August 8, 2011 (76 FR 48208) and subsequently amended on June 12, 2012 (77 FR 34830), December 3, 2014 (79 FR 71663), and October 26, 2016 (81 FR 74504). This regulation will address mandatory transport and regional haze SIP infrastructure elements pursuant to 42 U.S.C. Sections 7410 and 7491.

5. The Department is also proposing other changes to Regulation 61-62 that include corrections for internal consistency, clarification, reference, punctuation, codification, formatting, and spelling to improve the overall text of Regulation 61-62 as necessary.

6. South Carolina industries are already subject to these national air quality standards as a matter of federal law. Thus, there will be no increased cost to the State or its political subdivisions resulting from codification of these amendments to federal law. The state of South Carolina is already reaping the environmental benefits of these amendments.

7. In accordance with S.C. Code Section 1-23-120(H) (Supp. 2016), legislative review is not required because the Department proposes promulgating the amendments to maintain compliance with federal law. As such, neither a preliminary assessment report nor a preliminary fiscal impact statement is required.

8. A Notice of Drafting was published in the State Register on January 27, 2017, to initiate the statutory process to amend Regulation 61-62. Notice was also published on the Department’s Regulatory Information website in the DHEC Regulation Development Update. The Notice of Drafting was also sent via Department list serve to interested stakeholders on January 27, 2017. The public comment period ended on February 27, 2017, and the Department received no comments.

**Section-by-Section Discussion of Proposed Amendments:**

SECTION CITATION/EXPLANATION OF CHANGE:

**Regulation 61-62.1, Definitions and General Requirements**

Regulation 61-62.1, Section I, Definitions:

Definition 100.c. is stricken in its entirety to address the revision to the regulatory definition of volatile organic compounds (VOCs) at 81 FR 9339, February 25, 2016.

## 18 PROPOSED REGULATIONS

### **Regulation 61-62.5, Standard No. 5.2, Control of Oxides of Nitrogen (NO<sub>x</sub>)**

Regulation 61-62.5, Standard No. 5.2, Section III, Table 1:

Table 1 is amended at Pulverized Coal-Fired Boilers to remove the bold font from the phrase “Selective Catalytic Reduction” for appropriate codification and consistency.

Regulation 61-62.5, Standard No. 5.2, Section III, Table 1:

Table 1 is amended at Internal Combustion Engines to remove the italics font from the phrases “Timing Retard ≤ 4 degrees”, “Turbocharger with Intercooler”, “490 ppmv”, “15”, and “O<sub>2</sub>” for appropriate codification and consistency.

Regulation 61-62.5, Standard No. 5.2, Section IV, Monitoring, Record Keeping, and Reporting Requirements for New Affected Sources:

Paragraph A(2)(a) is amended to strike the word “or” from the phrase, “greater or permitted for solid fuels” for clarity and accuracy.

Regulation 61-62.5, Standard No. 5.2, Section IV, Monitoring, Record Keeping, and Reporting Requirements for New Affected Sources:

Paragraph B(5) is amended to strike the word “of” and replace with the word “or” in the phrase “owner of operator,” to read “owner or operator” for clarity and correctness.

### **Regulation 61-62.5, Standard No. 7, Prevention of Significant Deterioration**

Regulation 61-62.5, Standard No. 7, Section (b), Definitions:

Paragraph (b)(34)(vi)(b) is amended to add the word “and” following the semi-colon, and Paragraph (b)(34)(vi)(c) is amended to strike the semi-colon and the word “and” following the semi-colon, and replace with a period, for correct codification.

Regulation 61-62.5, Standard No. 7, Section (q), Public Participation:

Paragraphs (q)(2)(ii), (iii), (vi), and (viii) are amended to address federal revisions to public notice provisions for Clean Air Act permitting programs at 81 FR 71613, October 18, 2016.

Regulation 61-62.5, Standard No. 7, Section (w), Permit Rescission:

Paragraph (w) is amended to change “(w)” to bold font for consistency in codification.

Regulation 61-62.5, Standard No. 7, Section (w), Permit Rescission:

Paragraphs (w)(1), (2), and (3) are amended to address federal revisions concerning rescission of preconstruction permits issued under the Clean Air Act at 81 FR 78043, November 7, 2016.

Regulation 61-62.5, Standard No. 7, Section (w), Permit Rescission:

Paragraph (w)(4) is amended to address federal revisions to public notice provisions in Clean Air Act Permitting Programs at 81 FR 71613, October 18, 2016.

Regulation 61-62.5, Standard No. 7, Section (aa), Actuals PALs:

Paragraph (aa) is amended to change “(aa)” to bold font for consistency in codification, and amended to strike the citation “(15)” and replace with “(aa)(15)” for correct codification.

Regulation 61-62.5, Standard No. 7, Section (aa), Actuals PALs:

Paragraph (aa)(1)(i) is amended to remove the underline from the citation “(aa)(15)” for consistency and appropriate codification.

Regulation 61-62.5, Standard No. 7, Section (aa), Actuals PALs:

Paragraph (aa)(9) is amended to strike the citation “(aa)(9)(i)(v)” and replace with “(aa)(9)(v)” for correct codification.

Regulation 61-62.5, Standard No. 7, Section (aa), Actuals PALs:

Paragraph (aa)(11)(i) is amended to strike the citation “(aa)(10)(iv)(d)” and replace with “(aa)(11)(i)(d)” for correct codification.

Regulation 61-62.5, Standard No. 7, Section (aa), Actuals PALs:

Paragraph (aa)(14)(i) is amended to add a close parenthesis to the citation “(aa)(14(i)(g)” to read, “(aa)(14)(i)(g)” for correct codification.

Regulation 61-62.5, Standard No. 7, Section (bb):

Paragraph (bb) is amended to change “(bb)” to bold font for consistency in codification.

**Regulation 61-62.60, South Carolina Designated Facility Plan and New Source Performance Standards**

Regulation 61-62.60, Subpart A, “General Provisions”:

Subpart A, Table, is amended to incorporate federal revisions at 81 FR 35824, June 3, 2016; 81 FR 42542, June 30, 2016; 81 FR 59276 and 59332, August 29, 2016; and 81 FR 59800, August 30, 2016 by reference.

Regulation 61-62.60, Subpart Cf, “Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills”:

Subpart Cf, Table, is added to incorporate newly promulgated federal regulations at 81 FR 59276, August 29, 2016 by reference.

Regulation 61-62.60, Subpart Da, “Standards of Performance for Electric Utility Steam Generating Units for Which Construction Is Commenced After September 18, 1978”:

Subpart Da, Table, is amended to incorporate federal revisions at 81 FR 20172, April 6, 2016 by reference.

Regulation 61-62.60, Subpart Ja, “Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007”:

Subpart Ja, Table, is amended to incorporate federal revisions at 81 FR 45232, July 13, 2016 by reference.

Regulation 61-62.60, Subpart GG, “Standards of Performance for Stationary Gas Turbines”:

Subpart GG, Table, is amended to incorporate federal revisions at 81 FR 42542, June 30, 2016 by reference.

Regulation 61-62.60, Subpart BBB, “Standards of Performance for the Rubber Tire Manufacturing Industry”:

Subpart BBB, Table, is amended to incorporate federal revisions at 81 FR 42542, June 30, 2016; and 81 FR 43950, July 6, 2016 by reference.

Regulation 61-62.60, Subpart DDD, “Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry”:

Subpart DDD, Table, is amended to incorporate federal revisions at 81 FR 42542, June 30, 2016 by reference.

Regulation 61-62.60, Subpart III, “Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes”:

Subpart III, Table, is amended to incorporate federal revisions at 81 FR 42542, June 30, 2016; and 81 FR 43950, July 6, 2016 by reference.

Regulation 61-62.60, Subpart LLL:

Subpart LLL is retitled “Standards of Performance for SO<sub>2</sub> Emissions from Onshore Natural Gas Processing for Which Construction, Reconstruction, or Modification Commenced After January 20, 1984, and on or Before

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August 23, 2011” for consistency with federal regulations, and Subpart LLL, Table, is amended to incorporate federal revisions at 81 FR 42542, June 30, 2016, and 81 FR 43950, July 6, 2016 by reference.

Regulation 61-62.60, Subpart NNN, “Standards of Performance for Volatile Organic Compounds (VOC) Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations”:  
Subpart NNN, Table, is amended to incorporate federal revisions at 81 FR 42542, June 30, 2016; and 81 FR 43950, July 6, 2016 by reference.

Regulation 61-62.60, Subpart XXX, “Standards of Performance for Municipal Solid Waste Landfills that Commenced Construction, Reconstruction, or Modification After July 17, 2014”:  
Subpart XXX, Table, is added to incorporate newly promulgated federal regulations at 81 FR 59332, August 29, 2016 by reference.

Regulation 61-62.60, Subpart CCCC:  
Subpart CCCC is retitled “Standards of Performance for Commercial and Industrial Solid Waste Incineration Units” for consistency with federal regulations, and Subpart CCCC, Table, is amended to incorporate federal revisions at 81 FR 40956, June 23, 2016 by reference.

Regulation 61-62.60, Subpart DDDD:  
Subpart DDDD is retitled “Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units” for consistency with federal regulations, and Subpart DDDD, Table, is amended to incorporate federal revisions at 81 FR 40956, June 23, 2016 by reference.

Regulation 61-62.60, Subpart IIII, “Standards of Performance for Stationary Compression Ignition Internal Combustion Engines”:  
Subpart IIII, Table, is amended to incorporate federal revisions at 81 FR 44212, July 7, 2016 by reference.

Regulation 61-62.60, Subpart JJJJ, “Standards of Performance for Stationary Spark Ignition Internal Combustion Engines”:  
Subpart JJJJ, Table, is amended to incorporate federal revisions at 81 FR 59800, August 30, 2016 by reference.

Regulation 61-62.60, Subpart KKKK, “Standards of Performance for Stationary Combustion Turbines”:  
Subpart KKKK, Table, is amended to incorporate federal revisions at 81 FR 42542, June 30, 2016 by reference.

Regulation 61-62.60, Subpart OOOO:  
Subpart OOOO is retitled “Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution for which Construction, Modification or Reconstruction Commenced after August 23, 2011, and on or before September 18, 2015” for consistency with federal regulations, and Subpart OOOO, Table, is amended to incorporate federal revisions at 81 FR 35824, June 3, 2016; 81 FR 42542, June 30, 2016; and 81 FR 43950, July 6, 2016 by reference.

Regulation 61-62.60, Subpart OOOOa, “Standards of Performance for Crude Oil and Natural Gas Facilities for Which Construction, Modification, or Reconstruction Commenced After September 18, 2015”:  
Subpart OOOOa, Table, is added to incorporate newly promulgated federal regulations at 81 FR 35824, June 3, 2016 by reference.

### **Regulation 61-62.61, National Emission Standards for Hazardous Air Pollutants (NESHAP)**

Regulation 61-62.61, Subpart A, “General Provisions”:  
Subpart A, Table, is amended to incorporate federal revisions at 81 FR 59800, August 30, 2016 by reference.

**Regulation 61-62.63, National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories**

Regulation 61-62.63, Subpart A, “General Provisions”:

Subpart A, Table, is amended to incorporate federal revisions at 81 FR 59800, August 30, 2016 by reference.

Regulation 61-62.63, Subpart CC, “National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries”:

Subpart CC, Table, is amended to incorporate federal revisions at 81 FR 45232, July 13, 2016 by reference.

Regulation 61-62.63, Subpart GG, “National Emission Standards for Aerospace Manufacturing and Rework Facilities”:

Subpart GG, Table, is amended to incorporate federal revisions at 81 FR 51114, August 3, 2016 by reference.

Regulation 61-62.63, Subpart LLL, “National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry”:

Subpart LLL, Table, is amended to incorporate federal revisions at 81 FR 48356, July 25, 2016 by reference.

Regulation 61-62.63, Subpart RRR, “National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production”:

Subpart RRR, Table, is amended to incorporate federal revisions at 81 FR 38085, June 13, 2016 by reference.

Regulation 61-62.63, Subpart UUU, “National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units”:

Subpart UUU, Table, is amended to incorporate federal revisions at 81 FR 45232, July 13, 2016 by reference.

Regulation 61-62.63, Subpart UUUUU, “National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units”:

Subpart UUUUU, Table, is amended to incorporate federal revisions at 81 FR 20172, April 6, 2016 by reference.

Regulation 61-62.63, Subpart EEEEE, “National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting Area Sources”:

Subpart EEEEE is amended to add the phrase “and as subsequently amended upon publication in the Federal Register” for clarity.

Regulation 61-62.63, Subpart JJJJJ:

Subpart JJJJJ is retitled “National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources” for consistency with federal regulations, and Subpart JJJJJ, Table, is amended to incorporate federal revisions at 81 FR 63112, September 14, 2016 by reference.

**Regulation 61-62.70, Title V Operating Permit Program**

Regulation 61-62.70, Section 70.7, Permit issuance, renewal, reopening, and revisions:

Paragraph (e)(2)(ii)(C) is amended to strike the section symbol “§” and replace with the word “Section” to provide clarity and consistency.

Regulation 61-62.70, Section 70.7, Permit issuance, renewal, reopening, and revisions:

Paragraphs (h)(1) and (2) are amended to address federal revisions to public notice provisions for Clean Air Act permitting programs at 81 FR 71613, October 18, 2016.

Regulation 61-62.70, Section 70.9, Fee determination and certification:

Paragraph (b)(2)(ii)(A) is amended to strike the section symbol “§” and replace with the word “Section” to provide clarity and consistency.

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### Regulation 61-62.97, Cross-State Air Pollution Rule (CSAPR) Trading Program

Regulation 61-62.97 is added to incorporate the EPA's CSAPR trading program for South Carolina in 40 CFR Part 97 for NO<sub>x</sub> (Annual) and SO<sub>2</sub> (Annual), as published in the *Federal Register* on August 8, 2011 (76 FR 48208) and subsequently amended on June 12, 2012 (77 FR 34830), December 3, 2014 (79 FR 71663), and October 26, 2016 (81 FR 74504). This regulation will address mandatory transport and regional haze SIP infrastructure elements pursuant to 42 U.S.C. Sections 7410 and 7491.

#### Notice of Public Hearing and Opportunity for Public Comment:

Interested persons may submit written comments on the proposed regulation by writing to Marie F. Brown by mail at Bureau of Air Quality, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201; by facsimile at (803) 898-4487; or by e-mail at [brownmf@dhec.sc.gov](mailto:brownmf@dhec.sc.gov). To be considered, comments must be received no later than 5:00 p.m. on June 26, 2017, the close of the comment period. Comments received during the write-in public comment period by the deadline set forth above shall be submitted to the Board of Health and Environmental Control ("Board") in a Summary of Public Comments and Department Responses for the Board's consideration at the public hearing.

Interested persons may also make oral and/or written comments on the proposed amendments to R. 61-62, Air Pollution Control Regulations and Standards, at a public hearing to be conducted by the Board of Health and Environmental Control at its regularly scheduled meeting on August 10, 2017. The Board will conduct the public hearing in the Board Room, Third floor, Aycock Building of the Department of Health and Environmental Control at 2600 Bull Street, Columbia, South Carolina 29201. The Board meeting commences at 10:00 a.m. at which time the Board will consider items on its agenda in the order presented. The order of presentation for public hearings will be noted in the Board's agenda published by the Department twenty-four (24) hours in advance of the meeting at the following address: <http://www.scdhec.gov/Agency/docs/AGENDA.PDF>. 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. Due to admittance procedures at the DHEC Building, all visitors should enter through the Bull Street entrance and register at the front desk.

Copies of the proposed amendments for public comment as published in the *State Register* May 26, 2017 may be obtained online in the DHEC Regulation Development Update at <http://www.scdhec.gov/Agency/RegulationsAndUpdates/RegulationDevelopmentUpdate/>. A copy can also be obtained by contacting Marie F. Brown at the above address or by email at [brownmf@dhec.sc.gov](mailto:brownmf@dhec.sc.gov).

#### Statement of Need and Reasonableness:

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

#### DESCRIPTION OF REGULATION:

Amendment of Regulation 61-62, Air Pollution Control Regulations and Standards, and the South Carolina Air Quality Implementation Plan ("SIP").

#### Purpose:

(1) The United States Environmental Protection Agency ("EPA") promulgated amendments to national air quality standards in 2016. The recent federal amendments include clarification, guidance and technical revisions to SIP requirements promulgated pursuant to 42 U.S.C. Sections 7410 & 7413, New Source Performance Standards ("NSPS") mandated by 42 U.S.C. Section 7411, federal National Emission Standards for Hazardous Air Pollutants ("NESHAP") for Source Categories mandated by 42 U.S.C. Section 7412, and Prevention of

Significant Deterioration (“PSD”) and Title V Operating Program provisions promulgated under title I and title V of the CAA.

(2) The Department, therefore, proposes to amend Regulation 61-62.1, Definitions and General Requirements; Regulation 61-62.5, Standard No. 7, Prevention of Significant Deterioration; Regulation 61-62.60, South Carolina Designated Facility Plan and New Source Performance Standards; Regulation 61-62.61, National Emission Standards for Hazardous Air Pollutants; Regulation 61-62.63, National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories; Regulation 61-62.70, Title V Operating Permit Program; and the SIP, to adopt the federal amendments to these standards promulgated from January 1, 2016, through December 31, 2016.

(3) The Department also proposes to add Regulation 61-62.97, Cross-State Air Pollution Rule (CSAPR) Trading Program, to incorporate the EPA’s CSAPR trading program for South Carolina in 40 CFR Part 97 for NO<sub>x</sub> (Annual) and SO<sub>2</sub> (Annual), as published in the Federal Register on August 8, 2011 (76 FR 48208) and subsequently amended on June 12, 2012 (77 FR 34830), December 3, 2014 (79 FR 71663), and October 26, 2016 (81 FR 74504). This regulation will address mandatory transport and regional haze SIP infrastructure elements pursuant to 42 U.S.C. Sections 7410 and 7491.

(4) The Department is also proposing other changes to Regulation 61-62 that include corrections for internal consistency, clarification, reference, punctuation, codification, formatting, and spelling to improve the overall text of Regulation 61-62 as necessary.

**Legal Authority:**

The South Carolina Pollution Control Act, 1976 Code Section 48-1-10 et seq. (“Pollution Control Act”), authorizes the Department to adopt emission control regulations, standards, and limitations, and take all actions necessary or appropriate to secure to the State the benefits of federal air pollution control laws. Pursuant to the Pollution Control Act, along with the federal Clean Air Act, 42 U.S.C. Sections 7410, 7413, and 7416, the Department must ensure national primary and secondary ambient air quality standards are achieved and maintained in South Carolina. No state may adopt or enforce an emission standard or limitation less stringent than these federal standards or limitations pursuant to 42 U.S.C. Section 7416.

**Plan for Implementation:**

The proposed amendments will take effect upon approval by the Board of Health and Environmental Control and publication in the State Register. These requirements are in place at the federal level and are currently being implemented. The proposed amendments will be implemented in South Carolina by providing the regulated community with copies of the regulation, publishing associated information on our website at <http://www.scdhec.gov/Agency/RegulationsAndUpdates/>, sending an email to stakeholders, and communicating with affected facilities during the permitting process.

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

The EPA promulgates amendments to 40 CFR Parts 50, 51, 52, 60, 61, 63, and 70 throughout each calendar year. Federal amendments in 2016 included new and revised NSPS rules, NESHAPs, and NESHAPs for Source Categories, and amendments to PSD and Title V permitting provisions. The Department is adopting these federal amendments to maintain compliance with federal law. The EPA has also promulgated regulations under 40 CFR Part 97 establishing CSAPR trading provisions for South Carolina for NO<sub>x</sub> (Annual) and SO<sub>2</sub> (Annual). Adoption of the federal CSAPR trading program is necessary to address mandatory transport and regional haze SIP infrastructure elements pursuant to 42 U.S.C. Sections 7410 and 7491. The above amendments are reasonable as they promote consistency and ensure compliance with both state and federal regulations.

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### DETERMINATION OF COSTS AND BENEFITS:

The proposed regulations are not subject to the requirements of a fiscal impact statement or a preliminary assessment report. The Department does not anticipate an increase in costs to the State or its political subdivisions resulting from these proposed revisions. The standards to be adopted are already in effect and applicable to the regulated community as a matter of federal law, thus the regulated community has already incurred the cost of these regulations. The proposed amendments incorporate the revisions to the EPA regulations, which the Department implements pursuant to the authority granted by Section 48-1-50 of the Pollution Control Act. The proposed amendments will benefit the regulated community by maintaining State implementation of the federal requirements, as opposed to federal implementation.

### UNCERTAINTIES OF ESTIMATES:

There are no uncertainties of estimates relative to the costs to the State or its political subdivisions.

### EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

Adoption of the recent changes in federal regulations through the proposed amendments to Regulation 61-62, Air Pollution Control Regulations and Standards, will continue State-focused protection of the environment and public health.

### DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATIONS ARE NOT IMPLEMENTED:

The State's authority to implement federal requirements, which is beneficial to the public health and environment of South Carolina, would be compromised if these amendments are not adopted.

### **Text:**

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



Filed: May 9, 2017 9:13am

Document No. 4748  
**DEPARTMENT OF LABOR, LICENSING AND REGULATION**  
**COMMISSIONERS OF PILOTAGE**  
CHAPTER 136

Statutory Authority: 1976 Code Sections 54-15-120 and 54-15-140

136-18. Temporary Restricted Licenses.

**Emergency Situation:**

S.C. Code. Section 54-15-2701 requires that all vessels entering the pilotage area of the port of Charleston must have on board a pilot licensed by the Commissioners of Pilotage for the Port of Charleston. Charleston Harbor will host nine “tall ships” during the period May 15 through May 23, 2017. Commercial ships must also be provided with pilots during this period.

Scheduled within the event are at least two group sails where all participating vessels will be underway at the same time. In addition, the vessels may be grouped on their initial arrival. Staffing and fatigue standards for the Lower Coastal Pilots are based on typical commercial activity within the Port’s capacity at its commercial facilities. A group of vessels participating in an exhibition is an anomalous and infrequent event that can severely tax the pilot’s rotation amongst typical commercial activity in any given day, and impose fatigue limits that could trigger removing pilots from the rotation, which in turn could deplete the roster of pilots available for commercial traffic. The last such event requiring special regulation was seventeen years ago.

Tall ships are significantly smaller and therefore less restricted by waters in which they can maneuver. Of the vessels participating in this event, four require a South Carolina State Licensed Pilot. Three of these four are relatively small ships, measuring between 226 and 394 gross tons. In comparison, the average gross tonnage of all vessels piloted in the Port of Charleston in 2016 was 54,577 gross tons. These tall ships are each less than one percent of the size of the average commercial vessel piloted in Charleston Harbor.

Four vessels participating in a harbor wide exhibition represents a greater than 30% increase in the number of piloted moves in a typical day, according to 2016 port activity. Tall ship events, which are for the purpose of providing a public display, tend to be longer in duration than a typical piloted move. Therefore, these four ships, though small in size, could cause a surge of demand of pilot resources of 40% or more beyond a typical day’s workload.

There are currently three apprentices appointed by the Commissioners. They have been in the regulated apprentice program since January 1, 2015. They have been evaluated and found satisfactory in their progress as apprentices by all licensed pilots, and their evaluations have been reported to the Commissioners, semiannually as required. To date, they each have completed over 1,300 supervised transits.

The emergency regulation would allow these three apprentices, who have satisfactorily completed 75% of their apprenticeship, to serve as pilots onboard the three smallest compulsory vessels in the event, none of which are larger than one percent of the size of the average commercial vessel. The purpose is to mitigate potential fatigue on fully licensed pilots resulting from a 40% workload surge, during an exhibition that poses comparably minimal risk to navigation in the port.

## **26 EMERGENCY REGULATIONS**

### **Text:**

136-18. Temporary Restricted Licenses.

A. The Commissioners of Pilotage may issue a temporary, restricted license to any certified Apprentice Pilot who has completed at least twenty-four (24) months of his or her three-year term of apprenticeship, provided:

(1) Such apprentice has been recommended by a majority of licensed pilots for restricted licensure as a marine pilot, for the bar and harbor of Charleston; and

(2) Said license shall be restricted to include only vessels of 1600 gross registered tons or less with drafts of less than 20 feet; and

(3) Such license under no circumstances shall be valid beyond the date the holder of such a license ceases to be a Certified Apprentice Pilot.

### **Statement of Need and Reasonableness:**

To provide safe vessel movement in the Charleston harbor during a period of unusual traffic. The cost to the Port of Charleston of delays in vessel movement due to a shortage of pilots would be high without this emergency regulation. The risk to safety of persons and cargo from the use of apprentice pilots on small vessels during the period of unusual traffic would be low. The emergency regulation would allow three apprentices, who have satisfactorily completed 75% of their apprenticeship, to serve as pilots onboard the three smallest compulsory vessels as Charleston hosts nine “tall ships” during the period May 15 through May 23, 2017, none of which are larger than one percent of the size of the average commercial vessel. The purpose is to mitigate potential fatigue on fully licensed pilots resulting from a 40% workload surge, during an exhibition that poses comparably minimal risk to navigation in the port.

### **Fiscal Impact Statement:**

The emergency regulation will present no costs to the State of South Carolina, or to any piloted vessel.

Document No. 4655  
**CLEMSON UNIVERSITY**  
**STATE CROP PEST COMMISSION**  
 CHAPTER 27  
 Statutory Authority: 1976 Code Section 46-9-40

27-160. Plant Nursery Regulations.

**Synopsis:**

The State Crop Pest Commission proposes to update and add language regarding the regulation of nursery plant shipments and install fees for nursery dealers in South Carolina.

A Notice of Drafting regarding the subject matter of the proposed regulation was published in the *State Register* on January 22, 2016.

**Instructions:**

Replace Regulation 27-160 as listed below.  
 Add Regulation 27-161 as listed below.  
 Add Regulation 27-162 as listed below.  
 Add Regulation 27-163 as listed below.  
 Add Regulation 27-164 as listed below.

**Text:**

27-160. Plant Nursery Regulations.

A. Definitions

- (1) Application: The process of requesting services from the Department of Plant Industry.
- (2) Department: The Department of Plant Industry (DPI).
- (3) Director: The Director, Regulatory and Public Service Programs, Clemson University.
- (4) Greenhouse: A building, room, or area, where the temperature and/or climate is maintained and is used for growing, propagating and/or maintaining nursery stock for sale.
- (5) Infestation: The presence of any plant pests which is regarded as injurious or noxious.
- (6) Inspector: Any authorized employee or agent of the State Crop Pest Commission or any other person authorized by the Director to enforce the provisions of these regulations.
- (7) Inspection: The physical observation by the Department of Plant Industry to verify freedom of plant pests, condition of general environment, and compliance with all relevant State and Federal regulations and/or laws.
- (8) Location: Any place where nursery stock is grown, collected or distributed.
- (9) Nursery: Any place where nursery stock is grown for sale.

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(10) Nursery Certificate: A required document issued by the Department or the equivalent agency of another state, declaring that the Nursery Stock grown for sale or distribution by the person named on the document has been inspected and registered.

(11) Nursery Certificate Tag: A document issued by the Department which accompanies individual shipments of nursery stock and declares apparent freedom from major plant pests and compliance with all relevant state and federal quarantines.

(12) Nursery Dealer: Any person not a grower of nursery stock who buys certified nursery stock for resale and any nurseryman who operates a sales lot separately from his nursery.

(13) Nursery Dealer Certificate: A document issued by the Department, or the equivalent agency of another state, declaring that the nursery stock being sold by the person named on the document have been registered and the nursery stock sources have been verified to be certified/licensed nursery stock in their place of origin.

(14) Nurseryman: Any person engaged in the production or collection of nursery stock for sale or distribution.

(15) Nursery Stock: All trees (fruit, nut, shade and ornamental), ornamental plants, turfgrass, bush fruits, buds, grafts, scions, vines, roots, bulbs, seedlings, slips, tissue culture or other portions of plants (excluding true seeds) grown, collected or kept for propagation, sale or distribution. Also includes any other plant or plant part included by the Director, if regulating its movement is necessary to control any plant pest.

(16) Person: Individual, firm, corporation, partnership, association, state and federal agencies, schools, groups, or organizations.

(17) Plant Pest: Any living stage of insects, mites, nematodes, slugs, animals, protozoa, snails or other invertebrate animals, bacteria, weeds, fungi, other parasite plants or their reproductive parts, or viruses, or organisms similar to or allied with the foregoing, including genetically engineered organisms or infectious substances which directly or indirectly may injure or cause disease or damage in plants or their parts or processed, manufactured, or other products of plants, and which may be a serious agricultural threat to the State, as determined by the Director.

(18) Quarantine: Limitations placed upon the free movement of plant pests, animals, plants, equipment, machinery, goods, genetically engineered organisms, or means of transportation, or all of the foregoing, considered reasonably necessary to prevent the spread of a plant pest.

(19) Turfgrass: The top layer of earth comprised of grass leaf blades, stolons, thatch, and roots grown for commercial harvesting and sale as sod, sprigs, or any other part thereof, excluding seed.

### 27-161. Nursery Registration.

#### A. Application

A Nursery Certificate is required for any person operating a Nursery in South Carolina. To obtain a Nursery Certificate, applications must be made to the Department. After the initial application, all Nurseries with a current Nursery Certificate will receive automatic renewal applications annually. Nurseries with an expired Nursery Certificate must submit a new application for a Nursery Certificate.

#### B. Inspection

Following receipt of initial or renewal application, any nursery in South Carolina must be inspected *at least annually* by the Department. Inspection must reveal that the Nursery possesses good environmental conditions and the Nursery Stock is sufficiently free from Plant Pests. All inspections, announced or otherwise, shall be

performed to ensure compliance with these regulations, and to identify and monitor any Plant Pests. Should inspection reveal poor environmental conditions and/or Plant Pests at an unacceptable level, the Nursery Certificate may be revoked until the situation is corrected per the guidelines of the Department.

### C. Registration

In addition to Application and Inspection, any person operating a Nursery in South Carolina must register with the Department. Nursery registration fees shall be on a graduated scale and all fees charged and collected shall be used by the Department to fund and support activities related to fulfilling the Department's responsibilities regarding the regulation of the nursery industry in South Carolina. All Nursery Certificates expire annually. In cases where nursery stock is grown at more than one location by one nursery, the fees shall be based upon the nursery's aggregate number of acres in production of the nursery. In cases where the nursery consists of a combination of greenhouses, turfgrass, and other nursery stock acreage, a single license fee must be assessed at the higher rate of the three categories.

The following annual Nursery Registration fee schedule is in effect:

- (i) Nursery stock (except turfgrass) production acres of 10 or less, greenhouses with less than 6,000 square feet, or turfgrass production acres of 250 or less: \$75.00
- (ii) Nursery stock (except turfgrass) production acres of 11 to 25, greenhouses with 6,000 to 30,000 square feet, or turfgrass production acres of 251 to 500: \$125.00
- (iii) Nursery stock (except turfgrass) production acres of 25 or more, greenhouses with more than 30,000 square feet, or turfgrass production acres of 501 or more: \$ 200.00

Growers who produce transplants or seedlings grown solely for the purpose of being distributed for production of agricultural commodities must complete Registration with the Department but are exempt from nursery registration fees. If Nursery Stock is grown in conjunction with the aforementioned category of plants, the Nursery will remain subject to the fee schedule of this section.

Hobbyist or backyard gardener mean any person selling nursery stock who has less than \$5,000 in gross sales per calendar year and are exempt from the fees required by registration, but will remain subject to all other requirements of this section. Hobbyist and backyard gardeners are required to produce sales records to the Department upon request.

The Forestry Commission and governmental and nonprofit organizations which are not in the business of commercial sale of nursery stock are exempt from the fees required by registration, but will remain subject to all other requirements of this section. All persons selling cut Christmas trees from November to January who are not otherwise required to adhere to this section are exempt from the requirements of this section.

## 27-162. Nursery Dealer.

### A. Application

A Nursery Dealer Certificate is required for any Nursery Dealer who buys certified nursery stock for resale in South Carolina with annual gross sales of \$5,000 or more, and any person who operates a sales lot separately from their nursery in South Carolina with annual gross sales of \$5,000 or more. The Nursery Dealer Certificate application requires a list of all nursery stock sources and all South Carolina sales locations. A separate Nursery Dealer Certificate is required for each sales location. Nursery Dealers with annual gross sales of less than \$5,000 may request a Nursery Dealer Certificate subject to approval by the Department. All Nursery Dealer Certificate application and inspection rules in this section still apply. Once all Nursery Stock Sources have been verified as being certified/licensed nurseries or dealers in their state of origin, a Nursery Dealer Certificate will be issued. Application must be made to the Department. All Nursery Dealers with a current Nursery Dealer Certificate will receive automatic renewal applications annually.

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### B. Inspection

All Nursery Dealers holding a Nursery Dealer Certificate in South Carolina will be inspected, announced or otherwise, as deemed necessary by the Department. New Nursery Dealers in South Carolina, upon Nursery Dealer Certificate application approval, will be inspected by the Department within one year of the Nursery Dealer Certificate issuance date. Inspection must reveal that the Nursery Dealer possesses good environmental conditions and the Nursery Stock is sufficiently free from Plant Pests. Subsequent inspections, announced or otherwise, shall be performed to ensure compliance with these regulations, and to identify and monitor any Plant Pests. Should inspection reveal poor environmental conditions and/or Plant Pests at a level deemed unacceptable by the Department, the Nursery Dealer Certificate may be revoked until the situation is corrected per the guidelines of the Department.

### C. Registration

Any person operating a Nursery Dealer in South Carolina must register with the Department and produce sales records upon request. Nursery Dealer registration fees shall be on a graduated scale. All Nursery Dealer Certificates expire annually.

The following annual Nursery Dealer Registration fee schedule is in effect:

Nursery Dealer locations whose annual gross sales are \$5,000 or less: \$0.00.

Nursery Dealer locations whose annual gross sales are between \$5,000 and \$100,000: \$50.00

Nursery Dealer locations whose annual gross sales are over \$100,000: \$100.00

### 27-163. Nursery Stock Shipment.

#### A. Nursery Certificate Tags Application

Nursery and Nursery Dealer shipments of nursery stock within South Carolina for resale or outside of South Carolina must have attached a Nursery Certificate Tag. Nurseries and Nursery Dealers must have a current Nursery Certificate or Nursery Dealer Certificate and meet all relevant State and Federal requirements as determined by the Department before applying for Nursery Certificate Tags. Application for Nursery Certificate Tags must be made to the Department.

#### B. Nursery Certificate Tags Usage

A current Nursery Certificate Tag approved by the Department must accompany appropriate shipments including individual sales, invoices, and/or transactions. Nursery Stock shipped in packages must have the Nursery Certificate Tag placed on the exterior of each package. The usage of Nursery Certificate Tags for the shipment of Nursery Stock not meeting the requirements of this section is in violation of this section and punishable by law.

#### C. Nursery Certificate Tags Acquisition and Cost

The Department provides two options for obtaining Nursery Certificate Tags.

1. Department-printing on a cost reimbursement basis. A price list may be obtained from the Department upon request.

2. Self-printing of Nursery Certificate Tags may be approved upon written request and all costs associated with will be at the expense of the Nursery or Nursery Dealer.

#### D. Out of State Nurseries and Nursery Dealers

1. Out-of-state Nurseries shall not be required to attach a Department-issued Nursery Certificate Tag to shipments coming into this State, nor to file duplicate invoices of the nursery shipped (except **Prunus** spp. – see below) nor to pay a Registration fee, provided like privileges are accorded South Carolina nurserymen when making shipments into other states.

2. Each vehicle, package, box, bundle or container of nursery stock originating outside of South Carolina and being moved into South Carolina for customer delivery or for resale must have attached to it a valid Nursery

Certificate Tag from the state or country of origin stating in effect that the nursery stock being moved has been inspected and certified by an authorized official as apparently free of Plant Pests. Any shipment of nursery stock entering South Carolina not accompanied by such a Nursery Certificate Tag shall be declared a public nuisance and may be returned to the shipper, treated, destroyed or otherwise disposed of by the Department. Any plants moving from outside of South Carolina, whether or not accompanied by a Nursery Certificate Tab, found infested with Plant Pests shall be declared a public nuisance and may be returned to the shipper, treated, destroyed or otherwise disposed of to the satisfaction of the Department.

3. Nurseries growing peach, nectarine, or other **Prunus** spp. Nursery Stock for shipment to commercial growers in South Carolina must, in addition to being certified apparently free of insects and diseases in their state or country of origin, also file or mail an invoice to the Department at the time of shipment showing the following information: (1) name and address of shipper, (2) producer of stock, if different from shipper, (3) date of shipment, (4) name and address of purchaser, and (5) name and address of receiver, if different from purchaser.

27-164. Penalties.

Any person who violates the provisions of these regulations shall become subject to a stop sale, use, or distribution order pursuant to 46-33-100 and shall be deemed guilty of a misdemeanor and upon conviction shall be punished pursuant to 46-9-90.

**Fiscal Impact Statement:**

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

**Statement of Rationale:**

The reduction in some Nursery Regulation fees and shipping costs and addition of fees to the Nursery Dealer Registration category will continue to allow the Commission to enforce regulatory plant laws and protect the state's agricultural industry, which includes working to decrease the introduction and spread of new and invasive pests and diseases in South Carolina through consistent inspections and surveys. Without implementation of the proposed regulations, the mandates of the commission cannot be sustained due to increasing numbers of inspections, surveys, and shipments provided to this industry sector and invasive pests may move in from other states putting the state's agricultural resources at risk.

Document No. 4707

**DEPARTMENT OF CONSUMER AFFAIRS**

**CHAPTER 28**

Statutory Authority: 1976 Code Sections 37-17-10 et seq.,

Particularly Section 37-17-120

**Synopsis:**

The department proposes to amend Regulation 28-90 to clarify registration requirements and processes regarding discount medical plan organizations.

Notice of Drafting for the proposed regulation was published in the *State Register* on August 26, 2016. Comments were solicited for consideration in drafting the proposed regulation. Proposed regulation was published in the *State Register* on October 28, 2016.

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### **Instructions:**

Add Regulation 28-90. (Discount Medical Plan Certificate of Registration) as printed below.

### **Text:**

28-90. Discount Medical Plan Certificate of Registration.

#### A. DEFINITIONS

Definitions shall be those contained in S.C. Code Ann. S. 37-1-101 et seq., including 37-17-10 et seq. (1976 as amended) and the following:

(1) "Card" means the instrument issued by a discount medical plan organization for a customer or user to access benefits of the discount medical plan.

#### B. REGISTRATION OF A DISCOUNT MEDICAL PLAN ORGANIZATION

All Discount Medical Plan Organizations initial and renewal applications shall contain all trade names, brand names, and any other names used to advertise the product, or otherwise conduct business with South Carolina consumers.

#### C. REPRESENTATIVE OR MARKETER STATUS

Discount Medical Plan Organizations may notify the Department on a continual basis of any changes in representatives or marketers, including any additions or inactivations, to ensure consumers and the Department have accurate information regarding the status of representatives and marketers. The Discount Medical Plan Organization's list of marketers and representatives must be updated at each renewal or subsequent registration to reflect any changes.

#### D. MEMBERSHIP CANCELLATION AND REIMBURSEMENT

Discount Medical Plan Organizations shall provide cancellation and reimbursement terms in writing to the applicant at the time of application and to the customer together with the discount medical plan card. Such terms shall include that all reimbursements or refunds shall be issued to the applicant or customer no later than thirty days from the date of cancellation.

### **Fiscal Impact Statement:**

The Department of Consumer Affairs estimates the costs incurred by the State in complying with the proposed regulation will be approximately \$0.

### **Statement of Rationale:**

The department is revising this regulation in order to clarify registration requirements and processes regarding discount medical plan organizations.



Document No. 4625  
**DEPARTMENT OF CONSUMER AFFAIRS**  
 CHAPTER 28  
 Statutory Authority: 1976 Code Section 37-11-80

28-600. Licensing Standards for Continuing Care Retirement Communities

**Synopsis:**

The department proposes to amend and modify Regulation 28-600. The purposes of these proposed amendments are to revise and edit regulatory language to conform to current statutory requirements and to delete obsolete and inconsistent provisions. South Carolina Code Section 37-11-80 authorizes the department to promulgate regulations necessary to effectuate the purposes of the chapter.

Notice of Drafting for the proposed regulations was published in the *State Register* on August 28, 2015. Comments were solicited for consideration in drafting the proposed regulation.

**Instructions:**

Replace Regulation 28-600. (Revisions) as printed below.

**Text:**

28-600. Licensing Standards for Continuing Care Retirement Communities.

A. License Applications.

(1) In addition to the requirements in Section 37-11-30(B), an application for a CCRC license must contain at least the following information:

- (a) a feasibility study prepared in accordance with generally accepted accounting principles;
- (b) a statement of all fees required of residents, including, but not limited to, a statement of the entrance fee charged, the monthly service charges, the proposed application of the proceeds of the entrance fee by the operator, and the plan by which the amount of the entrance fee is determined if the entrance fee is not the same in all cases;
- (c) a resident's guide, policy manual, or other material of similar application, whether current or proposed;
- (d) a copy of an agreement with the providers for the provision of medical care, health care, or other health-related services;
- (e) a list of all necessary permits, licenses and certificates received or applied for, and their status at the time the application is submitted to the department;
- (f) a copy of the procedure for reviewing and handling residents' complaints; and
- (g) such other reasonable data as the department may require with respect to the operator or the facility.

(2) The application for a license shall be accompanied by a license fee of Two Thousand Dollars.

B. All licenses; form and content; renewal licenses.

(1) Each license issued to a licensee must state the name and address of the facility and must state fully the name of the licensee, date of issuance, and date of expiration. The license must be posted prominently in the facility.

(2) All licenses expire on August thirty-first of each year.

(3) All licenses must be renewed by filing a renewal application with the department at least thirty days before the expiration of the license. A complete renewal application shall contain the information the department requires in order to determine the existence and effect of any material change from the information contained in the applicant's original application, annual reports, or previous renewal application. Each renewal application must be accompanied by a nonrefundable license fee of Two Thousand Dollars.

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### C. Occurrences triggering updates.

Regardless of the information filed with the annual license renewal application, each operator shall notify the department and file pertinent documents within ten business days after the occurrence of any of the following events:

- (1) Any investigation, litigation, orders, judgments, or decrees which affect the facility, operator and/or owner, including, but not limited to, a bankruptcy, foreclosure, or receivership proceeding;
- (2) Any proceeding for denial, suspension or revocation of any license or permit needed to operate the facility;
- (3) Any proposed changes in the continuing care contract;
- (4) Any proposed changes to the disclosure statement;
- (5) Any proposed expansion or closure of the facility, including, but not limited to, the closing of a wing or building of the facility;
- (6) Any proposed transfer of ownership of the facility;
- (7) Any proposed change in the control of the operator;
- (8) Any change of the administrator of the facility;
- (9) Any change in the facility's contract(s) with the provider of medical or other health-related services.

### D. Multiple Facilities.

(1) If the operator provides or intends to provide continuing care at more than one facility, the operator must obtain an appropriate separate license for each such facility. Funds collected by one facility should not be expended for the benefit of any other facility. Where there are multi-facility operations, entrance fees collected for service at a particular facility shall be managed appropriately to safeguard the financial interest of the resident who paid the fee for facilities and services at that particular community.

(2) An entity which operates several facilities on different locations under one corporate structure where all monies from and disbursements to such locations are channeled through the corporate headquarters and where only one central system of accounting is maintained for all the locations may in its license application submit only one financial statement on behalf of all locations it operates. Disbursements to individual locations will not be deemed cross-collateralization, provided, however, that continuance of such practice will not adversely affect financial soundness of any location operated by the corporation.

### E. Advertising; general standards.

All advertising which is used by or on behalf of the operator to promote a continuing care retirement community shall be accurate, truthful and not misleading so as to fully inform the public and foster their understanding and trust. In preparing any advertising material, the operator is subject to state unfair and deceptive trade practices laws.

### F. Continuing care contracts.

(1) Continuing care contracts must be printed in one hundred percent black ink with the exception of the operator's name and business logo. The contracts must be printed on stock that is at least 11 inches high and 7 1/4 inches wide. All print in continuing care contracts shall be in print no smaller than ten point type.

(2) Continuing care contracts shall be written in language customarily used and understood by people in the conduct of their personal affairs.

(3) The continuing care contract must contain:

(a) a right to cancel provision in the following language which must be bold face type:

**RESIDENT'S RIGHT TO CANCEL**

You may cancel this contract by sending notice of your wish to cancel to the continuing care community (community) before midnight of the thirtieth (30th) day after you sign a contract. This notice must be sent in writing to the following: (Insert business name and address). If you cancel within thirty days, all money or property paid or transferred by you must be refunded fully, less those reasonable costs incurred by the community. If the living unit was available for occupancy, the community may charge a daily rate based on the usual monthly charge for that unit beginning on the eighth (8th) day after signing and ending on the day notice of cancellation is given to the community. Within thirty days of receipt of the cancellation notice, the community must return any payments made and return any note or evidence of indebtedness.

(b) a statement in bold face type of what portion, if any, of the entrance fee is refundable or non-refundable.

(c) in capital letters, in bold face type no smaller than the largest type used in the contract the following statement:

A license issued by the South Carolina Department of Consumer Affairs is not an endorsement or guarantee of this facility by the State of South Carolina. The South Carolina Department of Consumer Affairs urges you to consult with an attorney and a suitable financial advisor before signing any documents.

(4) No act, agreement or statement of a resident or an individual purchasing care for a resident under any agreement to furnish care to the resident shall constitute a valid waiver of any provision of the Act and this regulation intended for the benefit or protection of the resident or the individual purchasing care for the resident.

G. Disclosure Statement.

(1) The disclosure statement must contain at least the following information:

- (a) Items specified in Section 37-11-30(B)(1), (4), (5), (6), (7), (8), (10), (11), (12), and (13);
- (b) The name and position title of the individual to whom inquiries should be directed regarding facilities, services, or other information;
- (c) A statement that the facility will make available upon request the names and business addresses of the officers, directors, trustees, managing or general partners, any person having a five percent or greater equity or beneficial interest in the continuing care retirement community, and any person who will be managing the community on a day-to-day basis;
- (d) The services provided or proposed to be provided pursuant to contracts for continuing care at the facility, including the extent to which medical care is furnished; a clear statement of which services are included for monthly basic fees for continuing care and which services are made available at or by the facility at extra charge;
- (e) If the facility is already in operation, a statement as to which services may be available subject to a waiting list or priority rights of other residents, as well as the best estimate of the average waiting period for such services.
- (f) The current and estimated number of the residents of the facility to be provided services by the operator pursuant to the contract for continuing care;
- (g) A copy of the complaint system and procedures;
- (h) A statement as to whether or not the facility, or any component thereof, accepts Medicare and/or Medicaid. In case the facility does not accept Medicare and/or Medicaid, the following statement will be inserted in bold face type in the disclosure statement:

This facility does not accept Medicare and/or Medicaid. In case a resident exhausts his available financial resources prior to or following admission into our nursing home or assisted living accommodations, the resident might have no choice but to apply for admission to a facility that accepts these payments.

A facility which has a discretionary fund to assist residents who deplete their financial resources, the following language will also be inserted in bold face type in the disclosure statement:

The discretionary funds available to the management may be used to supplement the entire cost of care or a part of it. However, the application of these funds is entirely within the discretion of the management and the presence of these funds is no guarantee for a continuing stay in this facility following the depletion of your own financial resources.

(i) A conspicuous statement that in addition to the information contained in the disclosure statement, a prospective or current resident or prospective or current resident's legal representative with a general power of attorney has a right to ask for and receive the information regarding reserve funding of the facility, if any, experience of persons who will make investment decisions, certified financial statements of the operator including balance sheets and income statements, a current actuarial study, if available, a feasibility study for a facility that has not begun operations, and the names and business addresses of persons having a five percent or greater interest in the facility .

H. Expansions of existing facilities.

(1) An existing operator which intends to expand a continuing care retirement community by more than twelve units or twenty-five percent of individual living units, whichever is more, shall file with the department a letter of intent disclosing the plan of the expansion. The letter shall disclose the following:

- (a) The purpose and scope of the expansion;
- (b) Estimated capital cost;
- (c) Ability to finance;
- (d) Financial impact on current residents;
- (e) Impact on current community structure to provide resident services;
- (f) Present occupancy rate and marketability of the expansion;

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(g) If the facility has had a feasibility study made, then its operator shall submit, in addition to the letter of intent, a supplement to that feasibility study. If the facility did not have a feasibility study made in the past, then the operator shall submit, in addition to the letter of intent, a substitute study.

(2) In order to prevent avoidance of subsection (1) above, the exemption may not exceed a twenty-five percent increase in individual living units cumulative over a two year period.

### I. Transfer of ownership of a facility.

(1) An operator intending to undertake a transfer of ownership of a facility shall notify the department at least thirty days in advance of the proposed settlement date.

(2) A notice of intention of transfer of ownership of a facility may be in the form of a letter, addressed to the department, and shall contain the following information:

- (a) Name and address of the licensed operator from whom ownership will be transferred;
- (b) Name and address of the person intending to acquire the ownership interest;
- (c) Name and address of the facility whose ownership is being transferred;
- (d) Proposed settlement date.

(3) No transfer of ownership of a facility shall be consummated until the person to whom ownership is being transferred obtains a license from the department.

(4) When a person to whom ownership is being transferred files an application for a license, in addition to the selected information as will be specified on a form available from the department, the person shall file a statement containing the following information:

- (a) The terms and conditions of the transfer of ownership;
- (b) The source of funds to be used to finance transfer of ownership and, if the funds are to be borrowed, the name of a lender and a summary of the terms and conditions of the loan transactions;
- (c) The plans, arrangements, understandings and intentions of the transferee for the future business and management of the facility, including plans as to the sale of assets or material change in business, corporate structure or management.

(5) A license will not be issued under this Section unless the transferee has agreed in writing to assume the contractual obligations imposed on the current operator by its existing continuing care agreements. Any person aggrieved by the determination of the department shall be entitled to a contested case hearing before the Administrative Law Court in accordance with the provisions of the Administrative Procedures Act.

### J. Entrance fees; escrow provisions.

(1) An escrow agreement entered into between a trust institution and an operator shall state that its purpose is to protect the resident or the prospective resident; and, upon presentation of evidence of compliance with applicable portions of the Act and this regulation, or upon order of a court of competent jurisdiction, the escrow agent shall release and pay over the funds, or portions thereof, together with any interest accrued thereon or earned from investment of the funds, to the operator or resident as directed. At the time of entering into an escrow agreement, an operator shall inform an escrow agent of the Act and this regulation and the respective requirements of each.

(2) All funds deposited in an escrow account shall not be subject to any liens or charges by the escrow agent or judgments, garnishments, or creditor's claims against the operator or facility.

(3) When funds are received from a resident or prospective resident, the operator shall deliver to the resident a written receipt. The receipt shall show the payor's name and address, the date, the price of the continuing care contract, and the amount of money paid.

(4) In applying the provision of Section 37-11-90(C) relating to the reasonable time in which the operator must meet the requirements for release of funds held in the escrow account, escrow agents shall not consider such reasonable time to exceed thirty months from the date the entrance fee or any portion thereof was first deposited in the escrow account, unless the extension is requested from and granted by the department for good cause shown.

### K. Dismissal or discharge of resident; refund.

(1) No continuing care contract which requires payment of an entrance fee or other fee in return for a promise of future care or which provides for services for the life of the person or for more than one year (including mutually terminable contracts) shall permit dismissal or discharge of the resident from the facility providing care before the expiration of the agreement without just cause for such removal. The term "just cause" includes, but is not limited to, a good faith determination in writing, signed by the medical director and/or the administrator

of the facility, that a resident is a danger to himself or others while remaining in the facility. The written determination shall state:

- (a) That the determination is made in good faith;
- (b) The reasons supporting the determination that the resident is a danger to himself/herself or others;
- (c) The basis for the conclusion that there is no less restrictive alternative to dismissal, discharge or cancellation, as the case may be, for abating the dangerousness of the resident.

(2) If a facility dismisses a resident for just cause, the resident shall be entitled to a refund of his unearned entrance fee, to the extent the continuing care contract between the parties so provides.

L. Inspections; Investigations.

(1) The department may conduct inspections or investigations as necessary to enforce the State Continuing Care Retirement Community Act, the accompanying regulations, or an order of the Administrator or the Administrative Law Court related to these provisions. Any operator being examined shall, upon request, give reasonable and timely access to all of its records. The representative of the department may at any time examine the records and affairs and inspect the physical property of any operator and the health care and health-related services provider with whom the operator has contracts, agreements, or other arrangements, whether in connection with a formal examination or not.

(2) Any duly authorized officer, employee, or agent of the department may, upon presentation of proper identification, have access to, and inspect and copy any records, with or without advance notice, to secure compliance with, or to prevent a violation of, any provision of the Act and this regulation.

(3) Reports of the results of such examinations shall be kept on file by the department. Any records, reports, or documents obtained by the department which by state or federal law or regulation are deemed confidential may not be distributed to the public by the department unless required under appropriate court order or until such confidential status has expired.

(4) The department shall notify the operator in writing of all deficiencies in its compliance with the provisions of the Act and this regulation and shall set a reasonable length of time for compliance by the facility. In addition, the department may require corrective action or request a corrective action plan.

M. Complaint system to be established.

(1) Each facility's complaint system shall, at a minimum, provide residents with the following:

- (a) The name of the staff person or persons authorized to receive written complaints from residents;
- (b) An opportunity to discuss the substance of the complaint with the designated staff person;
- (c) The time period in which the operator shall make a written response to the complaint;
- (d) A statement that the operator shall not engage in any retaliatory action against the complainant;
- (e) A statement that if the resident is not satisfied with the operator's response, the resident may file a complaint with the South Carolina Department of Consumer Affairs. The agency's current toll-free telephone number and website must be included.

(2) Copies of the complaint system shall be distributed to residents and conspicuously posted at a common area of the facility.

N. Department's response to written complaints.

(1) Upon receipt of a written complaint, the department shall make a preliminary review; and unless the department determines that the complaint is without any reasonable basis, the department shall take appropriate action.

(2) No licensed operator may discriminate or retaliate in any manner against a resident of a facility providing care because such resident has initiated a written complaint pursuant to this Section.

O. Financial review committee.

At such time as the Administrator determines that a facility cannot fully perform its obligations under continuing care contracts, the Administrator may appoint a financial review committee. Such committee may include persons knowledgeable in the field of continuing care, certified public accountants, members of the financial community, and others as may be deemed appropriate by the Administrator. The members of the committee shall advise the Administrator regarding the merits of the facility's corrective plan proposal.

P. Severability.

If any provision of this regulation or the application thereof to any person, facility or circumstances is held to be invalid, the invalidity shall not affect other provisions or application of this regulation, and to this end the provisions of this regulation are severable.

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### **Fiscal Impact Statement:**

The Department of Consumer Affairs estimates the costs incurred by the State in complying with the proposed regulation will be approximately \$0.

### **Statement of Rationale:**

The State Continuing Care Retirement Community Act specifically provides for the Department to promulgate regulations necessary to effectuate the purposes of the Code and these changes are being made to conform regulations to current statutory law.

Document No. 4708  
**DEPARTMENT OF CONSUMER AFFAIRS**  
CHAPTER 28  
Statutory Authority: 1976 Code Sections 39-61-10 et seq.,  
Particularly Section 39-61-160

28-80. Motor Club Certificate of Authority

### **Synopsis:**

The department proposes to amend Regulation 28-80 to clarify registration requirements and processes regarding motor club services companies and representatives.

Notice of Drafting for the proposed regulation was published in the *State Register* on August 26, 2016. Comments were solicited for consideration in drafting the proposed regulation. Proposed regulation was published in the *State Register* on October 28, 2016.

### **Instructions:**

Amend Regulation 28-80. (Motor Club Certificate of Authority) as printed below.

### **Text:**

28-80. Motor Club Certificate of Authority.

#### A. DEFINITIONS

Definitions shall be those contained in the South Carolina Motor Club Services Act, S.C. Code Ann. S. 39-61-10 et seq. (1976 as amended).

#### B. CERTIFICATES OF AUTHORITY

(1) All organizations wishing to provide motor club services in this State must first obtain a Certificate of Authority from the Administrator. Initial applications for the Certificates shall be made on a form prescribed by the Administrator.

(2) Certificates of Authority expire on October 31. The renewal period will be between September 1 and October 31 of each year. Renewal applications shall be made on a form prescribed by the Administrator and must be accompanied by a copy of the club's most recent financial statement certified by two principal officers of the club, or in the case of partnerships or sole proprietorships, by a partner or the proprietor.

(3) Issuance of a Certificate of Authority does not indicate approval or acceptance of the terms of any contract, agreement or other document submitted in support of the application. No organization providing motor club services shall in any way represent that its services, payment schedules or terms of membership are approved by the State or any state agency.

#### C. CLUB REPRESENTATIVES

(1) Club representatives must be registered with the Administrator within 30 days of the date on which they are designated as a club representative. Each representative must submit an application for registration on a form prescribed by the Administrator.

(2) Clubs shall appoint representatives and pay a non-refundable application fee for each representative appointed.

(3) A club representative's Certificate of Registration expires on April 30. The renewal period will be between March 1 and April 30 of each year. Renewal applications shall be made on forms prescribed by the Administrator.

(4) When a club representative's appointment is terminated, the club must notify the Administrator within 30 days of termination on a form prescribed by the Administrator.

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

The Department of Consumer Affairs estimates the costs incurred by the State in complying with the proposed regulation will be approximately \$0.

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

The department is revising this regulation in order to clarify registration requirements and processes regarding motor club services companies and representatives.

Document No. 4709

### **DEPARTMENT OF CONSUMER AFFAIRS**

#### **CHAPTER 28**

Statutory Authority: 1976 Code Sections 37-16-10 et seq.,  
Particularly Section 37-16-90

28-1100. Prepaid Legal Services Certificate of Registration

#### **Synopsis:**

The department proposes to amend Regulation 28-1100 to clarify regulatory language to provide for licensing applications to be filed using the Department's new online filing system.

Notice of Drafting for the proposed regulation was published in the *State Register* on August 26, 2016. Comments were solicited for consideration in drafting the proposed regulation. Proposed regulation was published in the *State Register* on October 28, 2016.

#### **Instructions:**

Amend Regulation 28-1100. (Prepaid Legal Services Certificate of Registration) as printed below.

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### Text:

28-1100. Prepaid Legal Services Certificate of Registration.

### A. DEFINITIONS

(1) Definitions shall be those contained in S.C. Code Ann. S. 37-16-10 et seq. (1976 as amended) and the following:

(a) "Administrator" means the officer appointed by the Commission on Consumer Affairs pursuant to Title 37, Chapter 6.

(b) "Representative" means an individual who performs direct selling or direct in-person or electronic solicitation of South Carolina citizens on behalf of a prepaid legal services company.

### B. REGISTRATION OF PREPAID LEGAL COMPANY

(1) All persons or entities wishing to offer prepaid legal services to the general public or a segment of the general public in this State must first obtain a Certificate of Registration from the Administrator. Initial applications for the Certificate shall be made on a form prescribed by the Administrator.

(2) Certificates of Registration expire on March 1. The renewal period will be between February 1 and March 1 of each year. Renewal applications shall be made on a form prescribed by the Administrator and must be accompanied by a copy of the company's most recent financial statement certified by two principal officers of the company, or in the case of partnerships or sole proprietorships, by a partner or the proprietor.

### C. PREPAID LEGAL REPRESENTATIVES

(1) Prepaid legal representatives must be registered with the Administrator before commencing any sales or solicitation activity in this State. Each representative must submit an application for registration on a form prescribed by the Administrator.

(2) Companies shall appoint representatives and pay a non-refundable fee for each representative appointed.

(3) A prepaid legal representative's Certificate of Registration expires on October 1. The renewal period will be between August 1 and October 1 of each year. Renewal applications shall be made on forms prescribed by the Administrator.

(4) When a prepaid legal representative's appointment is terminated, the company must notify the Administrator within thirty days of termination on a form prescribed by the Administrator.

### Fiscal Impact Statement:

The Department of Consumer Affairs estimates the costs incurred by the State in complying with the proposed regulation will be approximately \$0.

### Statement of Rationale:

The department is revising this regulation in order to clarify registration requirements and processes regarding prepaid legal services companies and representatives.



Document No. 4624  
**DEPARTMENT OF CONSUMER AFFAIRS**  
 CHAPTER 28  
 Statutory Authority: 1976 Code Section 40-68-20

28-1000. Professional Employer Organizations

**Synopsis:**

The department proposes to amend and modify Regulation 28-1000. The purposes of these proposed amendments are to revise and edit regulatory language to conform to current statutory requirements and to delete obsolete provisions. South Carolina Code Section 40-68-20 authorizes the department to promulgate regulations necessary to effectuate the purposes of the chapter.

Notice of Drafting for the proposed regulations was published in the *State Register* on August 28, 2015. Comments were solicited for consideration in drafting the proposed regulation.

**Instructions:**

Replace Regulation 28-1000. (Revisions) as printed below.

**Text:**

28-1000. Professional Employer Organizations.

A. Definitions.

(1) "Biennium" means the two-year licensing cycle which ends on September 30 of every odd-numbered year.

(2) "Co-employer" means either a professional employer organization or a client company, as defined in Section 40-68-10 (2) and (10).

B. Application Procedure; Application Form; Fees; Denial of Application; Request for Hearing.

(1) Applicants for licensure as a professional employer organization or as a controlling person shall file a completed application on forms provided by the Department. An application is complete when all items on the application have been fully answered, all required documentation has been submitted and the applicable fees as specified in Section 40-68-30 have been paid.

(2) An applicant must cure all deficiencies in its application as noted by the Department within 30 days from the date of the letter notifying the applicant of the deficiency or the application will be denied as incomplete. Applicants who have not cured all deficiencies within 30 days of the notification will be required to re-file with the Department a new application accompanied by a non-refundable application fee.

(3) Any entity applying for licensure as a professional employer organization or professional employer organization group, must be validly organized in the State of South Carolina, or otherwise appropriately registered as a foreign entity with the South Carolina Secretary of State.

(4) The burden of showing qualification for licensure shall be on the applicant.

(5) If the department determines that an applicant is not qualified for licensure, it shall notify the applicant in writing, citing the specific reason for that determination. Any person aggrieved by the decision shall be entitled to a contested case hearing before the Administrative Law Court in accordance with the court's rules of procedure.

C. License Renewal Procedures; Inactive License Renewal.

In the event any licensee fails to renew the license, the license shall automatically become delinquent. A license delinquent 30 days or less may be returned to active status by the payment of the biennial license renewal fee and a delinquent fee of five hundred dollars.

D. Assessment on Gross South Carolina Payroll.

Licensees who do not submit assessment fees to the department by the assessment due date must pay the assessment fee and a late penalty fee of one hundred fifty dollars for every thirty days or portion thereof it is

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late. If it is late more than sixty days, the licensee may be subject to disciplinary action as set forth in Section 40-68-160 (C).

### E. The Documentation Submitted to Demonstrate Net Worth.

(1) The documentation submitted to establish net worth must be prepared by an independent Certified Public Accountant licensed to practice public accounting as of the date of the accountant's report and must be in the format of independently audited accrual basis financial statements, as determined by generally accepted accounting principles, for the two (2) most recent annual accounting periods preceding the date of application, except that if the most recent accounting period ends within 180 days of the date of application, the current year's financial statement shall be submitted within 180 days of the end of the accounting period.

(2) The following additional documents must be submitted for a determination and verification of the amount of net worth of a professional employer organization or a professional employer organization group:

(a) Verification that federal, state, and local payroll taxes (including unemployment compensation taxes/insurance) have been paid on a timely basis as required by regulations of each taxing authority;

(b) Verification that all health insurance, life insurance, worker's compensation insurance premiums and any other employee benefits accruing either to employees or their dependents have been and are being paid on a timely basis to the proper payees as required by contract, law, or other obligatory documents.

(3) Any documentation submitted to the department to verify the amount of net worth or the payment of payroll taxes and other obligations shall be prepared as of a date not earlier than six months or 180 days before the date of application. Information supplied regarding net worth is proprietary and confidential and is exempt from disclosure to third parties.

(4) At the time of an application for an initial license by a professional employer organization that has not had sufficient operating history to have audited financial statements based upon at least twelve months of operating history, the applicant must meet the net worth requirements of S.C. Code Ann. Section 40-68-40(E) and present a business plan and pro forma financial statements reviewed by a certified public accountant. Thereafter, such applicant shall present, within 180 days after the end of its fiscal year, audited financial statements.

### F. Quarterly Financial Reporting and the Maintenance of Sufficient Working Capital.

In order to be in compliance with the net worth requirements of Section 40-68-40(E), licensed professional employer organizations and professional employer organization groups are required to file a quarterly financial attestation with the department. This quarterly attestation report shall be executed by the chief financial officer, the chief executive officer, and a controlling person of the professional employer organization. Copies of the current quarter's balance sheet and income statement shall be submitted with the quarterly financial attestation report. Quarterly financial statements are due to be submitted to the department within 75 days after the end of each quarter. Quarterly financial reports that are submitted late without prior approval from the department will be assessed a late reporting fee of one hundred fifty dollars for every thirty days or portion thereof they are late. If they are late more than sixty days, the licensee may be subject to a disciplinary action as set forth in Section 40-68-160 (C). The following attestations will be made in the quarterly report:

(1) Health insurance, life insurance, worker's compensation insurance and their respective premiums and any other employee benefits have been paid to the proper payees;

(2) Working capital is sufficient to meet the licensee's ongoing obligations;

(3) Federal, state, and local payroll taxes have been paid as required by regulations of each taxing authority.

### G. Restricted License.

(1) The holder of a restricted license shall provide to the department quarterly reports on a form developed by the department with information and documentation necessary to show that the holder continues to qualify for a restricted license.

(2) When any condition for an issuance of a restricted license ceases to exist, the licensee shall apply within thirty days for a license pursuant to Sections 40-68-30, 40-68-40, 40-68-50 and any other applicable provision of the professional Employer Organization Act and accompanying regulations or cease operations in the State.

### H. Certification of Workers' Compensation Coverage.

Professional employer organizations must maintain workers' compensation coverage issued by an insurance carrier licensed in South Carolina. The certificate must name the Department of Consumer Affairs as Certificate Holder and provide for thirty (30) days' notice of cancellation to the Department.

I. Notices Required to be Posted.

The licensee shall cause each client company to display, in a place that is in clear and unobstructed public view, a notice stating that the business operated at the location is in a co-employer relationship with the professional employer organization licensed and regulated by the department and that any questions or complaints regarding the professional employer organization should be directed to the department. The notice shall contain the Department's mailing address, web address and phone number. A copy of such notice shall be provided to the Department. A substantially similar notice shall be included in the contract between a licensee and a client company.

J. Inspections; Investigations; Complaints.

The department may conduct inspections or investigations as necessary to ascertain compliance with and to enforce the provisions of the Professional Employer Organization Act, accompanying regulations or an order of the administrator or the Administrative Law Court related to these provisions. The department may investigate or examine the business of the licensee and examine the books, accounts, records, and files of the licensee or other person relating to the examination or matter under investigation. The records must be available for examination to the administrator or his designee upon request. In conducting such an inspection or investigation of a person, the department may enter the business premises of the person during reasonable business hours.

K. Reporting of Change of Status Required; Effect on Licensees.

Licensed companies and controlling persons shall report to the Department upon the occurrence of any event delineated in the Act. The Department shall specify the information required to be filed for all changes in the status, and the deadlines for filing such changes with the department.

**Fiscal Impact Statement:**

The Department of Consumer Affairs estimates the costs incurred by the State in complying with the proposed regulation will be approximately \$0.

**Statement of Rationale:**

The South Carolina Professional Employer Organizations Act specifically provides for the Department to promulgate regulations necessary to effectuate the purposes of the Code and these changes are being made to conform regulations to current statutory law.

Document No. 4696  
**STATE BOARD OF EDUCATION**  
 CHAPTER 43  
 Statutory Authority: 1976 Code Section 59-29-190

43-258.1. Advanced Placement.

**Synopsis:**

State Board of Education Regulation 43-258.1 governs the requirements for advanced placement (AP) courses, students, and educators in South Carolina. Amendments to Regulation 43-258.1 will update the teacher special endorsement requirement to allow more flexibility.

Notice of Drafting for the proposed amendments to the regulation was published in the *State Register* on August 26, 2016.

**Instructions:**

Section IV below replaces the Section IV that is currently in law.

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### **Text:**

43-258.1. Advanced Placement.

### **I. DEFINITION OF ADVANCED PLACEMENT COURSES**

Advanced Placement (AP) Courses: Courses developed by the College Board with prescribed curricula and tests for which students receive high school credit and for which students scoring at an acceptable level on the AP examination will be eligible to receive college credit from participating institutions.

### **II. SCHOOL REQUIREMENTS FOR ADVANCED PLACEMENT OFFERINGS**

All secondary schools whose organizational structure includes grades 11 or 12 shall offer an AP course(s).

### **III. POPULATION TO BE SERVED**

All students enrolled in AP programs for which funding is provided under these regulations shall be required to take the College Board administered examination.

### **IV. REQUIREMENTS FOR ADVANCED PLACEMENT TEACHERS**

The South Carolina Department of Education (SCDE) will fund and coordinate AP teacher training courses. Each teacher of an AP course shall have added the specialized AP course endorsement. The specialized AP course endorsement may be earned by: (1) successful completion of the three-semester hours graduate training program or other training program approved by the SCDE, or (2) successful completion of at least thirty hours of training by a College Board endorsed provider, or (3) documentation of a Ph.D. or other terminal degree in the course subject area.

Newly assigned teachers of AP courses will have one calendar year to meet the AP course training requirements.

Teachers of AP courses shall meet annually with their Professional Growth and Development Plan evaluators to discuss appropriate goal setting and/or revision. The plan may include, but is not limited to, College Board workshops, College Board trainings, and approved professional development opportunities.

### **Fiscal Impact Statement:**

None.

### **Statement of Rationale:**

The amendments to this regulation will provide clear definitions of allowable training options for teachers to add the specialized AP course endorsements, thus providing school districts more flexibility to in providing training for teachers.

Document No. 4656  
**STATE BOARD OF EDUCATION**  
 CHAPTER 43

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

43-274.1. At-Risk Students.

**Synopsis:**

The State Board of Education proposes to amend R.43-274.1, At-Risk Students, to remove references to the Palmetto Assessment of State Standards (PASS) and the High School Assessment Program (HSAP).

Notice of Drafting for the proposed amendments to the regulation was published in the *State Register* on June 24, 2016.

**Instructions:**

Replace Regulation 43-274.1 as printed below. Section II(A)(1–6) below replaces former Section II(A)(1–7).

**Text:**

43-274.1. At-Risk Students.

I. At-Risk Student Definition

A. A student at risk of dropping out of school is any student who, because of his or her individual needs, requires temporary or ongoing intervention in order to achieve in school and to graduate with meaningful options for his or her future.

B. Students--depending on their degree of resiliency and connectedness to caring adults in the home, in the community, and/or at school--may respond differently to those things frequently cited as barriers, predictors, or indicators of being "at risk." Therefore, educators and other responsible adults working with students should consider the whole child, who might have both short-term and long-term needs requiring intervention.

II. At-Risk Student Indicators, Predictors, and Barriers

The South Carolina Education and Economic Development Act mandates the promulgation of State Board of Education regulations outlining specific objective criteria for districts to use in identifying students who may be poorly prepared for the next level of study or who are at risk of dropping out of school. The Act calls for these criteria to include diagnostic assessments for districts to use in order to identify the strengths and weaknesses of individual students in the core academic areas.

A. Poor academic performance--generally, a grade point average of 2.0 or lower on a 4.0 scale--in the core content areas is a significant predictor that districts must consider in identifying at-risk students. Careful consideration should be given to students demonstrating declining academic performance. School districts are encouraged to carefully review a variety of assessments, including the following, in diagnosing students' academic difficulties and selecting appropriate short-term and long-term interventions:

1. results of statewide assessments used for accountability purposes and other state-funded (e.g., formative) assessments,

2. Preliminary Scholastic Assessment Test (PSAT) or PLAN test results,

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3. district- or school-adopted CAI (computer-aided instruction) assessments,
4. end-of-course examination results,
5. classroom-level assessments related to the state's academic standards, and
6. other district-approved diagnostic assessments.

B. The following are among the specific behaviors and characteristics that school districts must consider as indicators, predictors, and barriers in identifying at-risk students:

1. being overage for their grade level due to retention attributable to risk factors such as a high rate of absences and truancy;
2. showing a lack of effort or interest in their academic work;
3. working an excessive number of hours per day or week;
4. having a history of discipline problems leading to suspension, expulsion, and/or probation;
5. showing or expressing feelings of being disconnected from the school environment;
6. showing evidence of physical and/or emotional abuse;
7. coming from and/or living in a disadvantaged socioeconomic environment;
8. living in a home situation that does not include at least one parent;
9. being a single parent; and
10. having limited proficiency in the English language.

### III. At-Risk Student Model, Initiative, and Program Selection

By the 2007-08 school year each high school of the state must implement one or more model programs approved by the South Carolina Department of Education (SCDE).

Schools must select at-risk student models, initiatives, and programs that meet the needs of the at-risk populations to be served and must ensure that models, initiatives, and programs selected provide students with the opportunity to graduate with a high school diploma. The SCDE will provide an implementation document that will include a tiered matrix of approved evidence-based models, initiatives, and programs to facilitate the selection process in accordance with the Education and Economic Development Act requirements for implementing evidence-based models, initiatives, and programs. The document will also contain a more extensive list of indicators, predictors, and barriers as well as one-page descriptions for each evidence-based model, initiative, and program included in the matrix.

### IV. Population and Model, Initiative, and Program Identification Parameters

Each high school either must implement a model, initiative, or program that is chosen from a list provided by the SCDE or must submit to the SCDE for approval a specific dropout prevention model, comprehensive initiative, or multifaceted program that it wants to use. High schools may explore and implement newly developed models with approval from the SCDE. One criterion for SCDE approval of any newly developed

model will be evidence presented by the district and/or school that the model is centered in research-based dropout-prevention strategies.

A. Implementation efforts related to any model, initiative, or program (or combination of models, initiatives, and programs) must ensure that students are properly identified and provided timely, appropriate guidance and assistance and must ensure that no group is disproportionately represented.

B. When subpopulations are identified, high schools must ensure that these groups reflect the demographics of populations identified as at risk of dropping out of school.

C. When no subpopulations are identified, high schools implementing comprehensive initiatives will not have to address the disproportionate representation of any one group of students. In such cases, methods of determining the effectiveness of the at-risk initiative must be given careful consideration with regard to collecting data and preparing necessary reports.

D. Parental involvement must be part of final placement decisions in any model, initiative, or program where small groups of students are identified for services in a particular school or district.

E. The target population must reflect the demographics of the population identified in Section II, above, as being at risk of dropping out of school.

F. High schools must provide relevant data related to identifying the at-risk student population and to addressing the needs of these at-risk students as required for SCDE reports.

## V. Building-Level Program Evaluation

### A. Evaluation Criteria

All high schools must annually evaluate their dropout-prevention models, initiatives, and/or programs using, at a minimum, the following criteria:

1. an identification process, including (where appropriate and based on the particular model, initiative, or program) the number of at-risk students identified and the specific risk factors identified;
2. the extent of parental involvement in the school's dropout-prevention efforts;
3. the number of students served;
4. a formative assessment of strengths and weaknesses of the model, initiative, and/or program; and
5. a qualitative assessment of desired outcomes (see item B, immediately below).

### B. Desired Outcomes

Schools should establish desired outcomes or performance criteria based on the specific needs of the at-risk population identified and on the nature and structure of the particular model, initiative, and/or program they are implementing. Examples of desired outcomes among the target population include, but are not limited to, the following:

1. decreased percentages of truancy, absenteeism, discipline problems, and retentions;
2. increases in students' grade point averages; and

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3. increased percentages of students who are on grade level and students who graduate on time.

Model-, initiative-, and/or program-specific data and PowerSchool™ data elements should be used to assess desired outcomes on the basis of specific evaluation criteria. The state's PowerSchool™ data management system can be used to collect, sort, and report data related to each student's attendance record; age and grade level; gender; ethnicity; grade point average; and retention, truancy, and dropout status.

C. Teacher and/or counselor assessments may be used to provide supplemental anecdotal documentation and insights related to the effectiveness of the model, initiative, and/or program implemented. A district or school checklist may be beneficial in the evaluation process.

### VI. Model, Initiative, and/or Program Evaluation and Assessment Reporting

All high schools must annually provide reports requested by the SCDE that relate to the implementation and effectiveness of models, initiatives, and/or programs addressing the needs of students at risk of dropping out of school. District and school report card contents must contain information on the disciplinary climate, promotion and retention ratios, dropout ratios, dropout reduction data, and attendance data. Districts and schools must be prepared to provide accurate and relevant data to the SCDE.

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

No additional state funding is requested. The SCDE estimates that no additional costs will be incurred in complying with the proposed revisions to R.43-274.1.

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

School districts are encouraged to carefully review a variety of assessments in diagnosing students' academic difficulties; therefore, it is important that the statewide assessments used for accountability purposes be identified in the regulation, but a specific assessment not be named.

Document No. 4697  
**STATE BOARD OF EDUCATION**  
CHAPTER 43

Statutory Authority: 1976 Code Sections 59-5-60, 59-5-65, 59-53-1810, and 20 U.S.C. 2301 et seq.

43-236. Career or Technology Centers/Comprehensive High Schools.

#### **Synopsis:**

Regulation 43-236 governs school districts' offerings in high schools and/or career or technology centers. The regulation stipulates that at least two career clusters will be offered at each high school, Career or Technology Centers/Comprehensive High Schools. The regulation further states that four units are needed to complete a career major.

The proposed amendment from four units to three units in an approved sequence of Career and Technical Education (CATE) coursework is being made in an effort to provide students more flexibility in personalizing their program of study. The amendment will create more opportunities for extended learning opportunities such as Internships and Apprenticeships to better prepare for an industry recognized credential. Furthermore, this amendment from four to a minimum of three units will align South Carolina with the rest of the states in terms of completing a Career and Technical Program of Study.

Notice of Drafting for the proposed amended regulation was published in the *State Register* on June 24, 2016.



**Instructions:**

Paragraph two below replaces the Paragraph two that is currently in law.

**Text:**

43-236. Career or Technology Centers/Comprehensive High Schools.

Career or technology centers and/or comprehensive high schools shall, based on local needs, offer a variety of courses that will constitute a career major. These career majors are contained in the clusters defined and communicated to school districts by the Office of Career and Technology Education in conjunction with federal and state funding for career and technology courses and programs.

School districts will offer in high schools and/or career or technology centers a full complement of courses within a minimum of two career clusters to enable students to complete an approved sequence of Career and Technology Education coursework leading to a career goal. A student will have “completer” status upon meeting the requirements of the approved sequence, which must require at least three Carnegie Units.

**Fiscal Impact Statement:**

None.

**Statement of Rationale:**

Regulation 43-236 governs school districts’ offerings in high schools and/or career or technology centers. The regulation stipulates that at least two career clusters will be offered at each high school, Career or Technology Centers/Comprehensive High Schools. The regulation further states that four units are needed to complete a career major.

The amendment will address the number of CATE courses required to be a completer of a CATE program from four units to a minimum of three units.

Document No. 4700  
**STATE BOARD OF EDUCATION**  
 CHAPTER 43

Statutory Authority: 1976 Code Sections 59-5-60, 59-18-110, 59-18-310(B), 59-29-10 et seq., 59-33-30, 59-53-1810, 20 U.S.C. 1232(g), and Pub. L. No. 114-95

43-234. Defined Program, Grades 9–12 and Graduation Requirements.

**Synopsis:**

Regulation 43-234 establishes that each school board of trustees must ensure quality schooling by providing a rigorous, relevant curriculum for all students. The regulation also stipulates that each school district must offer a standards-based academic curriculum organized around a career cluster system that provides students with individualized education choices. The regulation also defines the graduation requirements for the state.

The amendment will address Career and Technology Education (CATE) completer requirements, language referencing CATE, and language referencing the Every Student Succeeds Act (ESSA). Language referencing the No Child Left Behind Act (NCLB) will be removed. The amendment will also address any new statutes regarding high school students. The language addressing Emergency Closings will be amended to address the new state statute.

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Notice of Drafting for the proposed *amended* regulation was published in the *State Register* on June 24, 2016 and July 22, 2016.

### Instructions:

Entire regulation is to be replaced with the following text.

### Text:

43-234. Defined Program, Grades 9–12 and Graduation Requirements.

Each school district board of trustees must ensure quality schooling by providing a rigorous, relevant curriculum for all students.

Each school district must offer a standards-based academic curriculum organized around a career cluster system that provides students with individualized education choices.

#### I. Requirements for Earning a South Carolina High School Diploma

A. The student must earn a total of twenty-four units of credit as follows:

##### Unit Requirements

English language arts	4.0
mathematics	4.0
science	3.0
U.S. History and Constitution	1.0
economics	0.5
U.S. Government	0.5
other social studies	1.0
physical education or Junior ROTC	1.0
computer science (including keyboarding)	1.0
foreign language or career and technology education	1.0
electives	7.0
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	24.0 total

B. The student must pass a classroom examination on the provisions and principles of the United States Constitution, the Declaration of Independence, the Federalist papers, and American institutions and ideals. This instruction must be given for a period of at least one year or its equivalent, either within the required course U.S. History and Constitution or within another course. (For specific regulations regarding the end-of-course test for U.S. History and Constitution, see Reg. 43-262, Assessment Program.) As part of the high school curriculum regarding the United States government required credit, students are required to take the civics test as defined as the one hundred questions that officers of the United States Citizenship and Immigration Services use to demonstrate a knowledge and understanding of the fundamentals of United States history and the principles and form of the United States government.

C. The student must pass a high school credit course in science in which an end-of-course examination is administered.

D. The student must be enrolled for a minimum of one semester immediately preceding his or her graduation, except in case of a bona fide change of residence. Units earned in a summer school program do not satisfy this requirement.

## II. Provisions for Schools in the Awarding of High School Credit

A. A school may award and accept credit in units of one-fourth, one-half, and a whole.

B. A school may award one unit of credit for an academic standards-based course that requires a minimum of 120 hours of instruction. A school may award one-half unit of credit for an academic standards-based course requiring a minimum of 60 hours of instruction and one-fourth unit of credit for an academic standards-based course requiring a minimum of 30 hours of instruction.

C. A school may award credit for courses that have been approved by the South Carolina Department of Education (SCDE) in a proficiency-based system. A proficiency-based course may also be offered for one-fourth and one-half unit if the system specifies these units. Each school district that seeks to implement a proficiency-based system must submit a plan to the SCDE that provides procedures for establishing and developing a proficiency-based system including the method for determining proficiency. The SCDE must approve the district-submitted plan prior to the district's use of the proficiency-based system. Districts are accountable for making sure that the academic standards and the individual learning needs of the students are addressed.

D. A school may award credit for those gateway courses that are a part of the End-of-Course Examination Program only if a student takes the course approved by the school in which he or she is enrolled and meets all the stipulated requirements of the End-of-Course Examination Program. (For specific regulations regarding end-of-course tests, see Reg. 43-262, Assessment Program.)

E. A school may award credit only for courses in summer programs-either district-wide or school-site programs-that meet all the regulatory requirements for courses offered for students in grades nine through twelve. A district-wide summer school program may meet the administrative certification requirement by employing a district supervisor as well as a lead teacher for each school site.

F. A school may award credit for a course that is approved by the district-whether that school offers the particular course or not-if the student receives prior approval.

G. A school may award credit toward the high school diploma for a course that the student takes in an approved adult education program if the course is granted approval by the local superintendent or his or her designee.

H. A school may award credit for locally designed courses under the following conditions:

1. Locally designed subject-area courses must be aligned with the state academic standards for the particular subject area and must be approved by the local board of trustees and the State Superintendent of Education.

2. Locally designed elective courses must be approved by the local board of trustees. No more than two units may be awarded to a student for released-time classes in religious instruction.

3. Locally designed CATE courses funded with state or federal CATE monies must be approved by the SCDE's Office of Career and Technology Education.

I. A school may award the PE credit for a diploma if the PE course meets all statutory requirements including the personal fitness and wellness component and the lifetime fitness component.

J. A school may award the one-half unit of credit carried by the course Keyboarding for half of the required computer science unit.

K. A school may award credit for the American Sign Language course as the required unit in a foreign language.

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L. A school may award credit for a college course that students in grades nine through twelve take under the district's dual credit arrangement.

### III. Dual Credit Arrangement

A. District boards of trustees may establish a policy allowing students to take college courses for units of credit toward the high school diploma. The district policy may allow for courses to be offered by an institution of higher education through a cooperative agreement.

B. A three-semester-hour college course transfers as one unit of credit.

C. Tuition costs and any other fees are the responsibility of the individual student or his or her parent(s) or legal guardian unless otherwise specified in local school district policy.

D. Students enrolled in a South Carolina public school may take only courses that are applicable to baccalaureate degrees or to associate degrees offered by institutions accredited by the New England Association of Colleges and Schools, the Middle States Association of Colleges and Schools, the Southern Association of Colleges and Schools, the North Central Association of Colleges and Schools, the Western Association of Colleges and Schools, or the Northwest Association of Colleges and Schools.

### IV. Transfer Students

A transfer student is one who enrolls in a South Carolina public school after having been enrolled in another school in this state or in a school in another state. Credits that he or she earned at the former school may be accepted and applied toward the South Carolina high school diploma. (For specific regulations see Reg. 43-273, Transfers and Withdrawals.)

### V. Instructional Program

School districts must organize high school curricula around a minimum of three clusters of study and cluster majors. Such curricula must be designed to provide a well-rounded education that fosters artistic creativity, critical thinking, and self-discipline through the teaching of academic content and skills that students will use in postsecondary study and in the workplace. Students must declare an area of academic focus, also known as a career major, within a cluster of study before the end of the second semester of their tenth-grade year.

Each year, schools must offer a range of required college- and career-ready courses in the core subject areas as listed in the SCDE's *Activity Coding System* to meet the needs of all students in a four-year graduation cohort.

For students whose academic needs are greater than those courses offered by their school, Virtual SC courses, if available, must be offered by the district to the students in order to graduate with the four-year graduation cohort.

#### A. Career Clusters

School districts must use the sixteen clusters for reporting purposes but may modify these clusters (for example, Arts and Humanities in place of Arts, Audio-Video Technology, and Communications). The sixteen state clusters are the same as the sixteen federal clusters:

Agriculture, Food, and Natural Resources  
Architecture and Construction  
Arts, Audio-Video Technology, and Communications  
Business, Management, and Administration  
Education and Training

Finance  
 Government and Public Administration  
 Health Science  
 Hospitality and Tourism  
 Human Services/Family and Consumer Sciences  
 Information Technology  
 Law, Public Safety, and Security  
 Manufacturing  
 Marketing, Sales, and Service  
 Science, Technology, Engineering, and Mathematics  
 Transportation, Distribution, and Logistics

B. Schools must also offer instruction in each of the following areas:

1. Advanced Placement: Schools whose organizational structure includes grades eleven and twelve must offer Advanced Placement courses. (For specific regulations regarding the Advanced Placement program, see Reg. 43-258.1, Advanced Placement.)

2. Alcohol, tobacco, and other drugs: Schools must provide age-appropriate instruction regarding the dangers in the use and abuse of alcohol, tobacco, and other drugs. Instruction must emphasize the negative effects that the use of such substances can have on the total community.

3. Career and technology education: Schools must offer CATE courses. Students who plan to complete a CATE program must earn at least three units in an approved sequence of CATE courses leading to a career goal.

4. Driver education: Schools must provide a complete program of driver education, including classroom and behind-the-wheel phases, each semester on an elective basis for eligible students. (For specific regulations regarding driver education, see Reg. 43-242, Driver Training.)

5. Environmental studies: Schools must include environmental studies as a part of their instructional program.

6. Financial literacy: Schools must include financial literacy as a part of the instructional program.

7. Foreign language (modern and classical languages): Schools must offer levels 1 and 2 of at least one modern or classical language. Most state four-year colleges/universities require at least two units of the same modern or classical language for admission.

8. Health education: Schools must have a program of instruction in comprehensive health education. (For specific requirements regarding health education, see Reg. 43-238, Health Education Requirement.)

At least one time during the entire four years of grades nine through twelve, each student shall receive instruction in cardiopulmonary resuscitation (CPR) which must include, but not be limited to, hands-only CPR and must include awareness in the use of an automated external defibrillator (AED) except that virtual schools may administer the instruction virtually and are exempt from any in-person instructional requirements.

9. Physical education: Schools must offer a physical education course that meets statutory requirements.

10. Visual and performing arts: Schools must offer courses in the visual and performing arts.

VI. Other Program Requirements

A. School Counseling Program

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All schools encompassing any combination of grades nine through twelve are required to provide a comprehensive school counseling program that is based on grade-specific standards. The standards must address the academic, personal and social, and the career domains. Specifically, students must be provided school counseling and career awareness programs and activities that assist them in developing and fulfilling their individual graduation plans and prepare them for a seamless transition to relevant employment, further training, or postsecondary study.

### B. Library Media Program

Library media programs and technology resources must be available and accessible to all students and staff and must be appropriate for the accomplishment of the strategies and goals in each school renewal or district strategic plan.

### C. Length of School Day

1. The instructional day for secondary students must be at least 6 hours, excluding lunch, or the equivalent weekly.

2. Homeroom will not count as part of the instructional day. When no homeroom period is utilized, the administrative time that is used to determine attendance, make announcements, or complete other tasks normally accomplished during homeroom period will not be considered as part of the instructional day.

3. Schools may exercise options and vary the number of minutes in the instructional week, provided that such variation meets statutory requirements and is approved by the local board of trustees.

### D. Class Size

1. The teacher load must not exceed the maximum of 150 students daily. Class size must not exceed the maximum of 35 students.

2. The above-stated maximums do not apply in the following circumstances:

a. A maximum of 40 students per period with a total teaching load of 240 students daily is permitted for physical education teachers. If physical education and health are taught on alternate days to the same class, the 40-student maximum and 240-student totals are also permitted for health. When health is taught as a separate subject, the teaching load is a maximum of 35 students per period and a total of 150 students per day.

b. Music teachers may teach a maximum of 240 pupils daily. No class may exceed 40 students in membership. However, when band, chorus, or orchestra require rehearsals of the entire membership, any number of students is acceptable if adequate space is available.

c. When a teacher's daily schedule includes a combination of subjects, the maximum daily teaching load will be calculated on the basis of 30 students per academic class and 40 students for each music or physical education class. (Example, 3 classes of math of 30 each = 90 + 2 classes of physical education of 40 each = 80. In this example, the teacher is not overloaded but teaches maximum allowable.)

d. Maximum teacher load requirements and individual class size limits are the same for mini-courses as for any other classes.

### E. Additional Regulatory Requirements

1. Due to federal requirements, all students must take a science course for which an assessment is given.

2. For state accountability purposes, every student must take an end-of-course examination in biology.

3. State Board regulations that contain instructional program requirements are accessible on the SCDE web site on the “State Board of Education Regulations Table of Contents” page.

VII. Reporting Requirements

A. High School Completers

1. Each school issuing the state high school diploma must submit to the State Superintendent of Education on or before May 1 the following data on its previous year’s completers:

(a) the number of the school’s completers who entered the freshman class of a postsecondary institution—either in South Carolina or out of state—and on whom such an institution has sent the school a first-term transcript or summary grade report,

(b) a breakdown of all postsecondary courses that this group of completers passed during their term,

(c) a breakdown of all postsecondary courses that this group failed during their first term,

(d) a breakdown of all postsecondary courses for which this group received a grade of “no credit” during their first term, and

(e) the number of the school’s completers who did not enter a postsecondary institution but who instead chose a postsecondary alternative such as employment or military service or for whom no information is available.

2. Each school must use the official form to submit the required data on its previous year’s completers.

B. Career and Technology Education Completers

Each district must survey all its high school graduates who are identified as career and technology education completers to determine their placement status with regard to employment, postsecondary education, and military service. A career and technology education completer is a student with an assigned Classification of Instructional Programs (CIP) code who has earned at least three units of credit in CATE courses leading to a career goal.

The district must conduct the survey ten months after graduation each year and must submit the results annually to the SCDE for the purpose of federal and state accountability requirements.

C. Student Records

1. Each school must have an appropriate means of reporting academic achievement to parents.

2. Each school district must maintain accurate student data according to the pupil accounting system prescribed by the SCDE.

3. Each school district must file a record of all dropouts that specifies for every student the name of the school in which he or she was enrolled and gives the following information on the student: his or her name, grade, race, sex, date of birth, free/reduced meals status, English proficiency status, and migrant status.

4. Each district superintendent must verify the accuracy of the student enrollment, attendance, membership by category, and dropout reports submitted to the SCDE’s Office of Finance.

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5. Each school must comply with the Family Educational Rights and Privacy Act regarding student records (20 U.S.C. Section 1232(g)).

### D. Course Records for Students

1. Each district superintendent must verify the accuracy of course records for students.

2. The name and code number of every course that each student takes must be entered into the student data collection system active master scheduler at the time the student takes the course. Courses may not be added to the student's course history (transcript) without first being entered into the scheduler.

3. Courses offered in nontraditional settings such as online courses, courses offered in conjunction with a college or technical college (i.e., dual credit), and courses offered by the school through the district, state, or another type of provider must be included in the active master scheduler.

### VIII. Emergency Closings

All school days missed because of snow, extreme weather conditions, or other disruptions requiring schools to close must be made up. All school districts shall designate annually at least three days within their school calendars to be used as make-up days in the event of these occurrences. If those designated days have been used or are no longer available, the local school board of trustees may lengthen the hours of school operation by no less than one hour per day for the total number of hours missed, operate schools on Saturday, or may waive up to three days. A waiver granted by the local board of trustees may only be authorized by a majority vote of the local school board, and, after the completion of the 2014-2015 school year, may not be granted for a school in the district until the school has made up three full days, or the equivalent number of hours, missed due to snow, extreme weather, or other disruptions requiring the school to close during the same school year in which the waiver is sought. When a district waives a make-up day pursuant to this section, the make-up day also is waived for all charter schools located in the district and for all students participating in a home schooling program approved by the board of trustees of the district in which the student resides. Schools operating on a four-by-four block schedule shall make every effort to make up the time during the semester in which the days are missed. A plan to make up days by lengthening the school day must be approved by the Department of Education, Office of Federal and State Accountability before implementation. Tutorial instruction for grades 7 through 12 may be taught on Saturday at the direction of the local school board. If a local school board authorizes make-up days on Saturdays, tutorial instruction normally offered on Saturday for seventh through twelfth graders must be scheduled at an alternative time.

The State Board of Education may waive the requirements of making up days beyond the three days forgiven by the local school district, not to exceed three additional days missed because of snow, extreme weather conditions, or other disruptions requiring schools to close. Such a waiver only may be considered and granted upon the request of the local board of trustees through a majority vote of that local school board. The SCDE annually before July 1 shall provide the General Assembly with a detailed report of information from each district listing the number of days missed and the reason, regardless of whether any were missed; days made up; and days waived.

### **Fiscal Impact Statement:**

None.

### **Statement of Rationale:**

Regulation 43-234 establishes that each school board of trustees must ensure quality schooling by providing a rigorous, relevant curriculum for all students. The regulation also stipulates that each school district must offer



a standards-based academic curriculum organized around a career cluster system that provides students with individualized education choices. The regulation also defines the graduation requirements for South Carolina.

The amendment will address CATE completer requirements, language referencing CATE, and language referencing the ESSA. Language referencing the NCLB will be removed. The amendment will also address any new statutes regarding high school students. The language addressing Emergency Closings will be amended to address the new state statute.

Document No. 4657

**STATE BOARD OF EDUCATION**

CHAPTER 43

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

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

**Synopsis:**

The State Board of Education (SBE) proposes to amend R.43-279, Minimum Standards of Student Conduct and Disciplinary Enforcement Procedures to be Implemented by Local School Districts to include the changes recommended by the Safe Schools Taskforce, which was established by State Superintendent of Education, Molly M. Spearman, in November 2015. The amendments will include changes in the levels of misconduct, acts of misconduct, disciplinary enforcement procedures, and possible consequences.

Notice of Drafting for the proposed amendments to the regulation was published in the *State Register* on June 24, 2016.

**Instructions:**

Replace Regulation 43-279 as printed below.

**Text:**

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

I. Expectations for Student Conduct in South Carolina Public Schools

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

II. Previously Adopted School District Discipline Policies

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

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### III. Levels of Student Misconduct

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

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

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

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

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

### IV. Minimum Standards

#### A. Behavioral Misconduct-Level I

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

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

- a. Classroom tardiness;
- b. Cheating on examinations or classroom assignments;
- c. Lying;
- d. Abusive language between or among students;
- e. Failure to comply with directives from school/district personnel or agents (to include volunteer aides or chaperones);
- f. Use of forged notes or excuses;
- g. Cutting class;
- h. School tardiness;
- i. Truancy (three consecutive unlawful absences from school or a total of five unlawful absences);
- j. Possession of an electronic communication device (including, but not limited to, cell phones, tablets, computers, and iPods) inconsistent with school board policy. An electronic communication device is a device

that emits an audible signal, vibrates, displays a message, image or otherwise summons or delivers a communication to the possessor;

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

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

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

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

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

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

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

a. Verbal reprimand;

b. Withdrawal of privileges;

c. Demerits;

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

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

**B. Disruptive Conduct-Level II**

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

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

a. Violation of a Level I intervention plan and/or behavioral contract;

b. Use of an intoxicant;

c. Fighting;

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- d. Vandalism (minor);
- e. Stealing;
- f. Threats against others;
- g. Trespass;
- h. Abusive language to staff;
- i. Repeated refusal to comply with directives from school personnel or agents (such as volunteer aides or chaperones);
- j. Possession or use of unauthorized substances, as defined by law and/or local school board policy;
- k. Illegally occupying or blocking in any way school property with the intent to deprive others of its use;
- l. Unlawful assembly;
- m. Disrupting lawful assembly;
- n. Inappropriate use of technology (e.g., bullying, harassing, or intimidating other students or district employees, plagiarizing copyrighted materials, and accessing inappropriate websites);
- o. Other acts as determined and communicated by local school authorities.

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

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

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

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

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

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

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

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

- a. Temporary removal from class;
- b. Alternative education program;
- c. In-school suspension;
- d. Out-of-school suspension;
- e. Transfer;
- f. Referral to outside agency;
- g. Expulsion;
- h. Restitution of property and damages, where appropriate, shall be sought by local school authorities;
- i. Other sanctions as approved and communicated by local school authorities.

C. Criminal Conduct-Level III

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

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

- a. Assault and battery that poses a serious threat of injury or results in physical harm;
- b. Extortion;
- c. Threat of the use of a destructive device (bomb, grenade, pipe bomb or other similar device);
- d. Possession, use, or transfer of dangerous weapons;
- e. Sexual offenses;
- f. Vandalism (major);
- g. Theft, possession, or sale of stolen property;
- h. Arson;
- i. Furnishing or selling unauthorized substances, as defined by law and/or local school board policy;
- j. Furnishing, selling, or possession of controlled substances (drugs, narcotics, or poisons);
- k. Illegal use of technology (e.g., communicating a threat of a destructive device, weapon, or event with the intent of intimidating, threatening, or interfering with school activities and maliciously transmitting sexual

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images of minors other than images of the student or images transmitted with the uncoerced consent of the individual in the images).

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

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

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

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

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

d. Established due process procedures shall be followed when applicable.

e. A complete record of the incident shall be maintained in accordance with district policy.

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

a. Out-of-school suspension;

b. Assignment to alternative schools;

c. Expulsion;

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

e. Other sanctions as approved by local school authorities.

### D. Extenuating, Mitigating or Aggravating Circumstances

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

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

### V. Discipline of Students with Disabilities

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

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

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

1. School attendance;

2. Use of and access to public school property;
3. Student dress and personal appearance;
4. Speech and assembly within the public schools;
5. Publications produced and/or distributed in the public schools;
6. The existence, scope and conditions of availability of student privileges, including extracurricular activities and rules governing participation;
7. Other activities not in conflict with existing state statutes or regulations as approved and communicated by the local school authorities.

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

**Fiscal Impact Statement:**

No additional state funding is requested. The South Carolina Department of Education estimates that no additional costs will be incurred in complying with the proposed revisions to R.43-279.

**Statement of Rationale:**

The proposed changes are designed to promote more consistent discipline practices statewide by reducing the amount of subjectivity involved in discipline decisions.

Document No. 4659  
**STATE BOARD OF EDUCATION**  
 CHAPTER 43

Statutory Authority: 1976 Code Sections 5-7-12, 16-17-420, 59-5-60, and 59-5-65

**Synopsis:**

The State Board of Education proposes to create R.43-210, to establish a definition of "school resource officers," along with expectations, roles, and procedures associated with these individuals.

Notice of Drafting for the proposed new regulation was published in the *State Register* on June 24, 2016.

**Instructions:**

New regulation. Print as shown below.

**Text:**

43-210. School Resource Officers.

I. Expectations for School Resource Officers in South Carolina Public Schools

School campuses are learning environments where public education students are prepared for success in college, careers, and citizenship. School resource officers are necessary to provide law enforcement and police

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services to assist in providing a safe learning environment. School resource officers shall act in accordance with policies and procedures of police departments, sheriff's offices, and other law enforcement agencies to enforce state laws and county and municipal ordinances.

### II. Resource Officers Defined

A school resource officer is a sworn law enforcement officer, pursuant to the requirements of any jurisdiction of South Carolina, who has completed the basic course of instruction, as provided or recognized by the National Association of School Resource Officers or the South Carolina Criminal Justice Academy, and who is assigned to one or more school districts within this state to have as a primary duty the responsibility to act as a law enforcement officer, advisor, and teacher for that school district.

A school resource officer has statewide jurisdiction to arrest any persons committing crimes in connection with a school activity or school-sponsored event.

### III. Role of the School Resource Officer

#### A. Law Enforcement Officer

As sworn law enforcement officials, school resource officers have a major role in campus security. School resource officers shall not only be called to respond to criminal incidents, but also to assist in emergency crisis planning, building security, and training school personnel on handling crisis situations. It is important for school administrators to establish and maintain close partnerships with school resource officers, as they are valuable resources for providing a safe school environment.

#### B. Law-Related Educator

Teachers and staff shall utilize school resource officers within the classroom to help design and present law-related topics regarding the role of law enforcement in our society.

#### C. Community Liaison

School administrators shall encourage school resource officers' visibility within the school community, as well as attendance and participation at school functions, to build working relationships with school personnel, students, and parents.

#### D. Positive Role Model

School resource officers should be positive role models and may be used to promote the profession of law enforcement as a career choice for students. School administrators shall support positive interactions between school resource officers and students on school campuses.

### IV. Procedures

#### A. Student Behavior

School resource officers are law enforcement officers, not school disciplinarians and shall not ordinarily be requested or permitted to intervene in school discipline matters. The school resource officers shall only be called in these situations when a student's behavior has exceeded the level of disruptive conduct as determined by school administration, based on district policy and reached conduct amounting to a Level III violation for which law enforcement involvement is required (see Regulations 43-279 for levels of disruptive and criminal conduct). School resource officers shall only be called to respond to Level II misconduct when



1. the conduct rises to a level of criminality, and
2. the conduct presents an immediate safety risk to one or more people or it is the third or subsequent act which rises to a level of criminality in that school year.

When law enforcement referrals are required, a school resource officer shall be the first line of contact for local law enforcement to ensure that the matter is resolved expeditiously to decrease significant interruption to the learning process.

**B. General provision for visitors, employees, and unauthorized persons.**

Students deserve school environments that are safe and conducive to learning. Visitors and employees will not disrupt the learning environment or school activity inappropriately or unlawfully.

State law mandates that it is unlawful to willfully or unnecessarily interfere with or disturb school, loiter about a school, or act in an obnoxious manner while at a school. The school resource officer should be called immediately to handle a disturbance or emergency regarding a visitor or employee who disrupts the learning environment or school activity.

**V. Memorandum of Understanding**

Prior to placing a school resource officer at a school or in a school district, a memorandum of understanding must be executed between the school district, and the local law enforcement agency, which employs the school resource officers. The role of the school district, individual schools, local law enforcement agency, school administration, and the school resource officer shall be clearly defined in the memorandum of understanding. The role of the school resource officer as a law enforcement official must clearly be defined pursuant to state law in the memorandum. That definition must include the provisions of this regulation and Regulation 43-279 which distinguish school discipline from law enforcement and prohibit the involvement of school resource officers in school discipline.

The school district shall provide the school administration with a copy of the memorandum of understanding, and review it with the school administration and with the school resource officer prior to the start of every school year.

**Fiscal Impact Statement:**

No additional state funding is requested. The South Carolina Department of Education estimates that no additional costs will be incurred in complying with the proposed revisions to R.43-210.

**Statement of Rationale:**

This regulation is designed to improve the uniformity of the roles and expectations of school resource officers among schools statewide.

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Document No. 4691

### DEPARTMENT OF EMPLOYMENT AND WORKFORCE CHAPTER 47

Statutory Authority: 1976 Code Sections 41-29-110 and 41-35-720

47-51. Appeals to Appeal Tribunal.

#### **Synopsis:**

The South Carolina Department of Employment and Workforce proposes to amend Regulation 47-51 in order to clarify the procedure for employers and claimants in presenting unemployment insurance (UI) cases before the Department.

The Notice of Drafting regarding this regulation was published in the *State Register* on August 26, 2016.

#### Section-by-Section Discussion:

47-51. This section will clarify the procedure for employers and claimants in presenting unemployment insurance (UI) cases before the Department.

#### **Instructions:**

Print regulation as shown below.

#### **Text:**

47-51. Appeals to the Appeal Tribunal.

##### A. The Presentation of Appeals.

1. The party appealing from any determination of a claims adjudicator or special examiner shall file electronically, by fax, by mail, or otherwise deliver to the Department a Notice of Appeal, setting forth the grounds for the appeal. Copies of the Notice of Appeal shall be mailed or electronically delivered to the other interested parties.

2. Upon the scheduling of a hearing for an appeal, a Notice of Hearing shall be mailed to all interested parties to the appealed claim at least seven (7) calendar days prior to the date of hearing, specifying the place and time of hearing, and the hearing official.

##### B. Disqualification of Members of Appeal Tribunals.

No person shall serve on an Appeal Tribunal in the hearing of any appeal in which he is interested. Challenges to the interest of any person serving on an Appeal Tribunal may be heard and decided by the Appeal Tribunal or its designee.

##### C. Hearing of Appeals.

1. All Appeal Tribunal hearings shall be de novo in nature and conducted in such manner as to ascertain the substantial rights of the parties. The Appeal Tribunal shall include in the record and consider as evidence all Department records material to the appeal. Any party to the appeal may present relevant testimony. The Appeal Tribunal shall examine a party and his witnesses, and may examine the witnesses of any opposing party. The Appeal Tribunal, with or without notice to any of the parties, may take additional evidence at the hearing as it deems necessary. After a hearing and prior to rendering a decision, the Appeal Tribunal, with notice to the interested parties as provided for in Appeal Regulation 47-51, A.2, may call parties and witnesses to appear before it for the taking of additional evidence as it deems necessary.

2. The parties to an appeal, with the consent of the Appeal Tribunal, may stipulate the facts involved in writing. Agreed upon stipulations shall be included in the record. The Appeal Tribunal may decide the appeal on the basis of such stipulations, or, in its discretion, may set the appeal for a hearing and take further evidence or arguments, as it deems necessary to determine the appealed claim.

3. Evidence will not be excluded solely because it may be hearsay. Hearsay, including information provided to the Department through telephone conversations and written statements, may be considered. However, findings of fact cannot be based exclusively on hearsay evidence unless that evidence is admissible under the South Carolina Rules of Evidence.

**D. Adjournments of Hearings.**

1. The Appeal Tribunal shall use its best judgment as to when adjournments of a hearing shall be granted, in order to secure all necessary evidence and to ensure fairness to all parties.

2. If the appealing party fails to appear at the hearing, the Appeal Tribunal may dismiss the appeal or issue a decision on the basis of the Department records.

**E. The Determination of Appeals.**

1. Following the conclusion of an appeal hearing, the Appeal Tribunal shall, within thirty (30) days, issue a written decision detailing the findings of fact and conclusions of law. The Appeal Tribunal shall set forth its findings of fact, its decision, and the reasons therefor.

a. In addition to the issues raised by the appealed determination the Appeal Tribunal may consider all issues affecting claimant's rights to benefits from the beginning of the period covered by the determination to the date of the hearing.

b. The Appeal Tribunal may pass upon any offer of work complying with Regulation 41-23, separation, or question of availability arising between the filing of an appeal and the Appeal Tribunal hearing in those cases in which the Department has issued no determinations with respect to such subsequent issues.

c. The Appeal Tribunal may pass upon any issue framed prior to the filing of the appeal or the determination from which the appeal is taken, and with respect to which no determination has been issued by the Department.

d. The Appeal Tribunal at a hearing may receive and consider appeals from determinations issued subsequent to the determination and appeal giving rise to the hearing, provided such appeals are timely.

e. Sub-Items (a)(b)(c)(d) supra apply only when the parties are identical or present at the Appeal Tribunal hearing or are properly notified of the issue or issues.

2. Copies of all decisions and the reasons therefore shall be mailed to all parties to the appeal.

**F. Notice of Rights to Appeal from Appeal Tribunal Decisions.**

Each Appeal Tribunal decision sent to the parties to an appeal shall include or be accompanied by a notice specifying the appeal rights of the parties. The notice of appeal rights shall state clearly the manner and time period for filing an appeal from the decision.

**Fiscal Impact Statement:**

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

**Statement of Rationale:**

The purpose of amending Regulation 47-51 is to clarify the procedure for employers and claimants in presenting their cases. S.C. Code Ann. §41-35-720 states the Department must promulgate regulations establishing the rules of procedure for hearings and appeals before the Department, and specifically provides that the "rules of procedure are not required to conform to common law or statutory rules of evidence and other technical rules of procedure."

Currently, the language states, "[a]ll Appeal Tribunal hearings shall be de novo in nature and conducted informally in conformity with the [APA] and in such manner as to ascertain the substantial rights of the parties." This language creates confusion because (1) the APA does not expressly allow for an informal process; and (2) the regulation does not conform with Section 41-35-720.

Regulation 47-51 also contains references to mailings that are no longer applicable under the operations of the Department and current statute.

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Document No. 4692

**DEPARTMENT OF EMPLOYMENT AND WORKFORCE**  
**CHAPTER 47**

Statutory Authority: 1976 Code Sections 4-29-110 and 41-35-720

47-52. Appeals to the Appellate Panel.

### **Synopsis:**

The South Carolina Department of Employment and Workforce proposes to amend Regulation 47-52 to clarify language in the regulation and to identify a procedure within the Appellate Panel in the event a quorum is present but a majority decision is not reached and to clarify what information is included in a decision.

The Notice of Drafting regarding this regulation was published in the *State Register* on August 26, 2016.

### Section-by-Section Discussion:

47-52. This section will identify the procedure within the Appellate Panel in the event a quorum is present but a majority decision is not reached and to include language describing what is included in an Appellate Panel decision.

### **Instructions:**

Print regulation as shown below.

### **Text:**

47-52. Appeals to the Appellate Panel.

#### A. The Presentation of Application for Leave to Appeal to the Appellate Panel.

1. The Party appealing from the decision of an Appeal Tribunal shall file online, by fax, by mail, or otherwise deliver to the Department, a Notice of Appeal, setting forth the grounds for the appeal as set forth in Chapter 35 of Title 41 of the South Carolina Code of Laws, 1976, as amended. Copies of the Notice of Appeal shall be mailed or electronically delivered to the other interested parties of the appeal.

2. The Appellate Panel may decide an Appeal, filed under Regulation 47-52, A.1, without hearing, or may notify the interested parties to appear before it at a specified time and place for oral argument. Notices of such oral argument shall be mailed to the interested parties to the decision of the Appeal Tribunal at least seven (7) calendar days before the date of the hearing.

3. If leave to appeal to the Appellate Panel is granted, the Appellate Panel may schedule a hearing. Notice of hearing on the form provided shall be mailed at least seven (7) calendar days before the date fixed for hearing, specifying the matters to be heard and the place and time of hearing to all interested parties.

#### B. Hearing of Appeals.

1. Except as provided in Appeal Regulation 47-52, D for the hearing of appeals removed to the Appellate Panel from an Appeal Tribunal, all appeals to the Appellate Panel shall be heard solely upon the evidence in the record before the Appeal Tribunal.

2. In the hearing of an appeal upon the record, the Appellate Panel may limit the parties to oral argument, or may permit the filing of written argument, or both.

#### C. The Review of Decisions of Appeal Tribunals by the Appellate Panel on Its Own Motion.

1. Within ten (10) calendar days following a decision by an Appeal Tribunal, the Appellate Panel on its own motion may remove any decision to its own jurisdiction for review and may affirm, modify, or set aside such decision on the basis of the evidence previously submitted in such case, or may direct the taking of additional evidence.

2. The Appellate Panel shall in such cases allow the parties an opportunity to present their views before it with seven (7) calendar days notice thereof to all parties interested.

3. Where the Appellate Panel directs the taking of additional evidence, it shall be taken in the manner prescribed for the conduct of hearings on appeals before the Appeal Tribunal, including seven (7) calendar days notice to the parties interested. Upon the completion of the taking of evidence and testimony pursuant to the direction of the Appellate Panel, a new decision shall be issued or the case shall be returned to the Appellate Panel for its consideration and decision.

D. The Hearing by the Appellate Panel on Appeals Ordered Removed to It from an Appeal Tribunal.

1. Any appeal before an Appeal Tribunal, ordered by the Appellate Panel to be removed to itself prior to hearing by the Appeal Tribunal, shall be presented, heard, and decided by the Appellate Panel in the manner prescribed in Regulation 47-51, C.1, 2, and 3, for the hearing of appeals before the Appeal Tribunal.

2. Any appeals heard by an Appeal Tribunal may, prior to a decision by the Tribunal, be ordered by the Appellate Panel to be removed to itself and shall then be presented, heard and decided by the Appellate Panel in the manner prescribed in Appeal Regulation 47-52, C.2 and 3.

E. The Decisions of the Appellate Panel.

1. The quorum of the Appellate Panel shall be two (2) members. No meeting of the Panel shall be scheduled when it is anticipated that fewer than two (2) members will be present, and no hearing shall be held nor decision released by the Panel in which fewer than two (2) members participate.

2. If a decision of the Appellate Panel is not unanimous, the decision of the majority shall control. In the event only two (2) members are able to vote on a case, but are unable to agree on a final decision, the decision of the Tribunal shall stand affirmed.

3. The Appellate Panel shall, as soon as possible, announce its findings and decision with respect to the appeal. The decision shall be in writing and shall be signed by the members of the Appellate Panel who heard the appeal. It shall set forth with respect to the matters appealed, the findings of fact of the Appellate Panel, its decision, and the reasons for such decision. Copies of all decisions and the reasons therefore shall be mailed by the Appellate Panel to the interested parties.

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

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

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

S.C. Code Ann. §41-35-720 states the Department must promulgate regulations establishing the rules of procedure for proceedings, hearings, and appeals to the appellate panel and the appeal tribunals. The amendment to Regulation 47-52 identifies the rule of procedure in the event a quorum is present but a majority decision is not reached in an appeal to the Appellate Panel.

Document No. 4693

### **DEPARTMENT OF EMPLOYMENT AND WORKFORCE**

#### **CHAPTER 47**

Statutory Authority: 1976 Code Section 4-29-110

#### **Synopsis:**

The South Carolina Department of Employment and Workforce proposes to add Regulation 47-104 to require claimants to make two work searches per week through the South Carolina Works Online System (SCWOS).

The Notice of Drafting regarding this regulation was published in the *State Register* on August 26, 2016.

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### Section-by-Section Discussion:

47-104. Added to require claimants to make two work searches per week through the South Carolina Works Online System (SCWOS).

#### **Instructions:**

Print regulation as shown below.

#### **Text:**

47-104. Work Search.

A. Section 41-35-110(3) provides that a claimant is eligible to receive benefits with respect to a week only if the Department finds the claimant engaged in an active search for work. Absent good cause, an active search for work during a week must include at least two (2) job searches conducted through the South Carolina Works Online System (SCWOS), so that the search can be electronically verified.

B. The Department may waive the requirement to perform at least two (2) weekly job searches through SCWOS for good cause. Good cause includes, but is not limited to, verifiable electronic access and/or language barriers, and is determined by the Department on a case by case basis.

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

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

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

The purpose of drafting Regulation 47-104 is to provide an efficient and objective method for verifying claimants have actively searched for work during each week they have filed for benefits, which will prevent improper payments to claimants who have failed to search for work.

Document No. 4689

**STATE BOARD OF FINANCIAL INSTITUTIONS  
CONSUMER FINANCE DIVISION  
CHAPTER 15**

Statutory Authority: 1976 Code Sections 34-41-10 et seq.,  
particularly Section 34-41-130

#### **Synopsis:**

The South Carolina State Board of Financial Institutions - Consumer Finance Division seeks to add Regulation 15-65 in order to clarify licensing requirements established by 1998 Act 433 pertaining to Check Cashing Services in South Carolina.

The Notice of Drafting was published in the *State Register* on September 23, 2016.

#### **Instructions:**

Print the amended regulation exactly as shown below.

**Text:**

## ARTICLE 5

## 1988 ACT 433, SECTION 2, REGULATIONS

## 15-65. Check Cashing.

A. Definitions shall be those contained in the Act, S.C. Code Ann. Section 34-41-10 et seq. and the following:

(1) Branch Location Certificate – means the certificate issued to each branch location of a licensee pursuant to 34-41-10(5).

B. Application for licensure.

(1) Licenses and Branch Location Certificates shall expire at the close of business on August 31<sup>st</sup> of each year.

(2) License and Branch Location Certificate renewal fees must be paid to the Board of Financial Institutions – Consumer Finance Division no later than September 1<sup>st</sup> of each year.

**Fiscal Impact Statement:**

The Consumer Finance Division estimates that the additional costs incurred by the State in complying with the proposed regulation will be approximately \$0.

**Statement of Rationale:**

1998 Act 433 specifically provides for the South Carolina State Board of Financial Institutions to promulgate regulations necessary to carry out the purposes of this chapter, to provide for the protection of the public, and to assist licensees in interpreting and complying with this chapter. Regulation 15-65 is being added to further clarify licensing requirements imposed by the Act.

Document No. 4690

**STATE BOARD OF FINANCIAL INSTITUTIONS  
CONSUMER FINANCE DIVISION**

CHAPTER 15

Statutory Authority: 1976 Code Sections 37-22-110 et seq.,  
particularly Section 37-22-260

## 15-64. Mortgage Lending

**Synopsis:**

The South Carolina State Board of Financial Institutions - Consumer Finance Division seeks to amend Regulation 15-64 in order to comply with the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E. Act) and with rules issued by the Consumer Financial Protection Bureau (CFPB). Further, state-specific items in the South Carolina Mortgage Lending Act will be clarified or modified to meet the statutory requirements of both the S.A.F.E. Act and CFPB rules.

The Notice of Drafting was published in the *State Register* on September 23, 2016.

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### Instructions:

Print the amended regulation exactly as shown below.

### Text:

#### ARTICLE 4

#### MORTGAGE LENDING ACT REGULATIONS

##### 15-64. Mortgage Lending.

A. Definitions shall be those contained in the Mortgage Lending Act, S.C. Code Ann. Section 37-22-110 et seq.; Secure and Fair Enforcement for Mortgage Licensing Act of 2008, 12 USC 5101, et seq.; S.A.F.E. Act, 12 CFR Parts 1007 & 1008 et seq.; and the following:

(1) Act – means the South Carolina Mortgage Lending Act, S.C. Code Ann. Section 37-22-110 et seq.

(2) Day – means all calendar days including Saturdays, Sundays and legal public holidays.

(3) Employee for purposes of compliance with the federal income tax laws – means a natural person whose manner and means of performance of work are subject to the right of control of, or are controlled by, a person, and whose compensation for federal income tax purposes is reported, or required to be reported, on a W-2 form issued by the controlling person. (See IRS Publication 1779 and Form SS-8)

(4) Notice – means written notification received by the Commissioner within seven (7) days of any change except as defined in Section 37-22-180(A)

(5) Prior Written Consent – means written consent given by the Commissioner authorizing a change of control prior to that change of control taking place. To request authorization from the Commissioner, all information regarding acquisition via stock purchase or other device must be sent to the Commissioner at least 30 days prior to the change of control.

##### B. Use of NMLS&R unique identifier

(1) The Nationwide Mortgage Licensing System & Registry (NMLS&R) unique identifier for the licensed Mortgage Lender/Servicer, the licensed Branch Office and the licensed Mortgage Loan Originator must be displayed on all mortgage loan applications. The NMLS&R unique identifier of the Mortgage Lender/Servicer and the unique identifier of the Mortgage Loan Originator must also be placed on the Promissory Note or Loan Contract and the Security Agreement as well as any other documents required by 12 CFR 1026.36(g). Only the unique identifier of the licensed Mortgage Lender/Servicer is required to be displayed on all other mortgage loan forms.

(2) For advertising purposes, the NMLS&R unique identifier of the licensed Mortgage Lender/Servicer and, if included in the advertisement, the licensed Mortgage Loan Originator must be used in all advertising as it is defined in the Act.

C. All South Carolina residential mortgage loans secured by real property are subject to the provisions of all South Carolina and federal law related to mortgage loans including, but not limited to, the Real Estate Settlement Procedures Act of 1974 (RESPA), 12 USC Section 2601 et seq.

##### D. Reports



(1) The Mortgage Log required pursuant to Section 37-22-210 shall:

(a) be completed electronically as required by the Consumer Finance Division. The licensee is responsible for all costs associated with the electronic filing, and

(b) include all mortgage loans or applications where a credit report is requested, regardless of whether a mortgage loan is originated or modified.

(2) The Annual Report required by Section 37-22-220 shall include, in addition to other statutory requirements, a Mortgage Call Report disclosing all residential mortgage origination and/or servicing activity conducted in the state of South Carolina (See Secure and Fair Enforcement for Mortgage Licensing Act of 2008, 12 USC 5101 et seq.; SAFE Mortgage Licensing Act, 12 CFR parts 1007 & 1008 et seq.) consisting of:

(a) a loan activity report submitted electronically on a quarterly basis as required by the Nationwide Mortgage Licensing System & Registry (NMLS&R) by the Mortgage Lender/Servicer for all locations and loan originators, and

(b) a corresponding financial condition report submitted electronically as required by the Nationwide Mortgage Licensing System & Registry (NMLS&R).

(3) The Commissioner at his or her discretion may require or accept an Expanded Mortgage Call Report filed through the Nationwide Mortgage Licensing System & Registry (NMLS&R) or similar filing in lieu of the annual report required in 37-22-220(B).

E. An applicant must supply required information to the Consumer Finance Division pursuant to Section 37-22-140(M) within 120 days of initial submission or the application will be abandoned as incomplete.

F. The Nationwide Mortgage Licensing System & Registry (NMLS&R) may be used to store the List required by Section 37-22-210(A) and the Roster required by Section 37-22-210(B) in lieu of the Commissioners' office so long as the information may be provided in a reasonable time upon request.

**Fiscal Impact Statement:**

The Consumer Finance Division estimates that the additional costs incurred by the State in complying with the proposed regulation will be approximately \$0.

**Statement of Rationale:**

The South Carolina Mortgage Lending Act (Act) specifically provides for the Commissioner of the Consumer Finance Division of the South Carolina State Board of Financial Institutions to promulgate regulations necessary to effectuate the purposes of the Act and to waive or modify, in whole or in part, by rule, regulation, or order, any or all of the requirements of this chapter and establish new requirements as reasonably necessary to participate in the Nationwide Mortgage Licensing System and Registry (NMLS&R). Regulation 15-64 is being amended to further clarify mortgage licensing requirements imposed by the Act, to modify those requirements where reasonable to facilitate the use of the NMLS&R as directed in Section 37-22-270 and to ensure conformity between the Act and federal law.

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Document No. 4705

### DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL CHAPTER 61

Statutory Authority: 1976 Code Sections 44-56-410 et seq.

61-33. Drycleaning Facility Restoration.

#### **Synopsis:**

Regulation 61-33 has not been updated since 1997. Revisions of Article 4 of the South Carolina Hazardous Waste Management Act, 1976 Code Section 44-56-410 et seq., on May 21, 2013 removed certain requirements of drycleaning facility and site owners to participate in the Drycleaning Restoration Trust Fund. As such, many of the procedures, practices, and terms of Regulation 61-33 are outdated and/or no longer applicable. These amendments to R.61-33 revise and clarify criteria, procedures and standards for eligibility, moratorium, financial responsibility, facility prioritization, and restoration investigation and clean-up goals of drycleaning facilities and sites participating in the Drycleaning Facility Restoration Trust Fund. These amendments provide updates to the definitions, remove requirements and procedures for documenting existing contamination, and remove requirements and procedures for certifying contractors. Additional changes include revising the regulation title, stylistic changes for internal consistency, clarification in wording, corrections of references, grammatical errors, outlining/codification, and other changes necessary to improve the overall quality of the regulation.

A Notice of Drafting was published in the *State Register* on July 22, 2016.

#### Section-by-Section Discussion of Amendments

The title of the Regulation was revised to reflect the title of the Act.

Citation of statutory authority for this regulation was modified under the title of the regulation and before the table of contents.

Throughout the regulation document, all defined terms were capitalized.

Throughout the regulation document, the term “applicant” was replaced with “Responsible Applicant” to specify as the defined term for clarification.

#### **TABLE OF CONTENTS**

The table of contents was updated to reflect amended sections.

#### **61-33.1 Purpose and Applicability**

Section 33.1(A) - Revised to correctly name the Act. The criteria for determining eligibility is included in the Act. The Regulation was revised to remove the criteria as redundant.

Section 33.1(B)(1)(i) – The term “facility or site” was replaced with “Site” as defined.

Section 33.1(B)(2) – Revised to cite the Act in determining a “dry cleaner that has chosen not to participate” rather than a later section of the regulation.

Section 33.1(B)(3) – Revised to cite the Act definition regarding application of the regulation to a “dry cleaner owned by a government entity” rather than a later section of the regulation.

#### **61-33.2 Definitions**

The definitions of 33.2(A) Acquired Subsidiary Business, 33.2(C) Analytical Data, 33.2(E) Certified Contractor, 33.2(F) Certified Laboratory, 33.2(G) Chain of Custody, 33.2(H) Commercial Property, 33.2(I) Contractor, 33.2(L) Discharge, 33.2(M) Dry Cleaner, 33.2(P) Drycleaning Waste, 33.2(Q) Due Diligence, 33.2(S) Environmental Sample, 33.2(T) Evidence of Contamination, 33.2(V) Exposed Individual, 33.2(Z) Non-Chlorinated Solvent, 33.2(AA) Operation, 33.2(CC) Probable Release Point, 33.2(FF) Reportable Quantity, and

33.2(GG) Wet Site were deleted because they are either no longer used in the regulation or are defined in the Act.

The definitions of 33.2(L) Ineligible, 33.2(M) New Drycleaning Facility, 33.2(N) Nonhalogenated Drycleaning Fluid, 33.2(Q) Release, and 33.2(S) Site were added.

The definitions of 33.2(B) Act, 33.2(J) Deductible, 33.2(E) Drycleaning Facility, 33.2(O) Drycleaning Solvents, 33.2(U) Existing Drycleaning Facility, 33.2(W) Former Wet Site, 33.2(Y) Gross Negligence, 33.2(O) Person, 33.2(P) Registrant, and 33.2(EE) Responsible Applicant were revised for clarification.

The remaining definitions were renumbered to adjust the codification.

**61-33.4 [Reserved]** Deleted as unnecessary.

#### **Subpart A**

The title of Subpart A was centered and italicized for stylistic change for internal consistency, and revised from “Assessments” to “Applications” to align with the removal of the requirement to document contamination before expenditure of Fund money from the Act.

**61-33.5 [Reserved]** Deleted as unnecessary.

#### **61-33.6 General Provisions**

Section 33.6 was revised in entirety to remove all activities for complying with the requirement to document contamination before expenditure of Fund money and to retain and clarify the process of applying for eligibility.

#### **61-33.7 Due Diligence**

Section 33.7 was revised to clarify the process, and specify the person responsible, for ensuring due diligence in the identification of all eligible Drycleaning Facilities.

Section 33.7(A)(1) was revised to remove the limit to commercial property only and to move the requirements for previously owned property to stand alone in Section 33.7(A)(2) which was revised as such.

Section 33.7(A)(2) was renumbered as Section 33.7(A)(3).

Section 33.7(C) was revised to include the requirement to submit an application for Former Drycleaning Facilities.

**61-33.8 [Reserved]** Deleted as unnecessary.

#### **61-33.9 Documenting Evidence of Contamination**

Section 33.9 was deleted in its entirety because this requirement was removed from the Act.

#### **61-33.10 Initial Assessment Procedure**

Section 33.10 was deleted in its entirety because this requirement was in partial fulfillment of Section 61-33.9.

**61-33.11 [Reserved]** Deleted as unnecessary.

#### **66-33.12 Secondary Assessment Procedure**

Section 33.12 was deleted in its entirety because this requirement was in partial fulfillment of Section 61-33.9.

#### **66-33.13 Procedure for Obtaining Access to former Sites that the Applicant Does Not Own**

Section 33.13 was deleted in its entirety because this requirement was in partial fulfillment of Section 61-33.9.

**66-31.14 [Reserved]** Deleted as unnecessary.

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### **Subpart B Moratorium for Eligible Sites**

The title of Subpart B was centered and italicized for stylistic change for internal consistency.

**61-33.15 [Reserved]** Deleted as unnecessary.

**61-33.16 [Reserved]** Deleted as unnecessary.

**61-33.17 [Reserved]** Deleted as unnecessary.

### **61-33.18 Moratorium for Eligible Sites**

Section 33.18(A)(1) was revised to include all Sites rather than only Facilities.

Section 33.18(A)(2) was revised to include all solvent-containing waste rather than Drycleaning Solvents only.

Section 33.18(A)(3) was revised to match definitions.

Section 33.18(B) was deleted because the action is included in the Act and, therefore, is redundant.

Section 33.18(C) was deleted because the action is included in the Act and, therefore, is redundant.

### **Subpart C Financial Responsibility**

The title of Subpart C was centered and italicize for stylistic change for internal consistency.

**66-33.19[Reserved]** Deleted as unnecessary.

### **61-33.20 General Provisions**

Section 33.20(A) was revised to clarify eligibility is through application rather than assessment and that surcharge and fee payments shall be current in addition to payment of deductible.

Section 33(D) was revised to clarify that judicial or administrative actions may be taken against responsible parties rather than all parties.

### **61-33.21 Transfer of Ownership**

Section 33.21(A) was revised to specify who is responsible for notifying the Department of a change of ownership.

Section 33.21(A)(1) was revised for grammatical correctness.

Section 33.21(A)(2) was revised to specify information to be submitted with a change of ownership.

Section 33.21(B) was revised to include all Sites rather than only Drycleaning Facilities.

Section 33.21(C) was deleted because this requirement was in partial fulfillment of Section 61-33.9.

Section 33.12(D) was revised to correct references.

Section 33.21(E) was revised to restate more clearly the requirement of financial responsibility of a new owner.

**61-33.22 [Reserved]** Deleted as unnecessary.

### **61-33.23 Excluded Costs.**

Section 33.21(B)(2) was revised to remove actions regarding certified contractors because that was a requirement in partial fulfillment of Section 61-33.9.

Section 33.23(B)(4) was deleted because this requirement was in partial fulfillment of Section 61-33.9.

Section 33.23(B)(5) was deleted because this requirement was in partial fulfillment of Section 61-33.9.

### **61-33.24 Reimbursements from the Fund**

Section 33.24 was deleted in its entirety because reimbursements from the fund were for activity taken under Section 61-33.9.

**61-33.26 [Reserved]** Deleted as unnecessary.

**61.33.27 Costs Incurred for Emergency Actions**

Section 33.27 was revised to indicate eligibility is through application rather than assessment and that cost recovery can be sought from any Person, as defined, rather than a dry cleaner.

**61-33.28 [Reserved]** Deleted as unnecessary.

**Subpart D Facility Prioritization**

The title of Subpart D was centered and italicized for stylistic change for internal consistency.

**61.33.29 [Reserved]** Deleted as unnecessary.

**61-33.30 General Provisions**

Section 33.30(A) was revised for clarity.

Section 33.30(B)(1) was revised to update activity.

Section 33.30(C) was revised to include all Sites rather than Drycleaning Facilities.

Section 33.30(E) was revised for clarity.

Section 33.30(F) was revised to include all Sites rather than Drycleaning Facilities.

**61-33.31 Immediate Removal Actions**

Section 33.31(A) was revised to include all Sites rather than Drycleaning Facilities.

Section 33.31(A)(1) was revised for grammatical correctness.

Section 33.31(A)(3) was revised to conform with definitions.

Section 33.31(B) was revised to conform with definitions.

Section 33.31(B)(2) was revised to conform with definitions.

**61.33.32 [Reserved]** Deleted as unnecessary.

**61.33.33 Emergency Sites**

Section 33.33(B) was revised to include all Sites and to indicate that funds will be spent to reduce risk of exposure rather than requiring actual exposure.

**61.33.34 Restoration Priority List**

Section 33.34(A) was revised for clarification.

Section 33.34(A)(3) was revised for clarification.

Section 33.34(B) was deleted to allow the Department to budget fund expenditures throughout the year as needed.

Section 33-34(C)(1) was revised to agree with the deletion of Section 61.33.9.

Section 33.34(C)(3) was revised for grammatical correctness.

**61-33.35 [Reserved]** Deleted as unnecessary.

**Subpart E Restoration**

The title of Subpart E was centered and italicize for stylistic change for internal consistency.

**61-33.36 [Reserved]** Deleted as unnecessary.

**61-33.37 General Provisions**

Section 33.37(A) was revised to include all Sites and for grammatical correctness.

Section 33.37(B) was deleted because it is a superfluous statement repeating Statutory authority.

Section 33.37(C) was deleted because this use and certification of contractors was an activity in partial fulfillment of Section 61-33.9.

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### **61-33.38 Detailed Facility Investigation**

Section 33.38(A) was revised to include all Sites.

Section 33.38(C) was revised for clarification and correcting references.

### **61-33.39 Restoration Goals and Evaluation**

Section 33.39(A)(2) was revised for grammatical correctness.

Section 33.39(C) was revised to include all Sites.

Section 33.39(D) was revised to include all Sites.

### **61-33.40 Restoration Implementation**

Section 33.40(A) was revised for clarification and correcting references.

Section 33.40(B) was revised for correcting references.

**61-33.41 [Reserved]** Deleted as unnecessary.

### **Subpart F Contractor Certification**

Subpart F (Sections 61-33.42 through 61-33.49) was deleted in its entirety because certification of contractors was an activity in partial fulfillment of Section 61-33.9.

### **Subpart G Violations, Penalties, and Appeals**

Subpart G (Sections 61-33.50 through 61-33.53) was deleted in its entirety because appeal authority appears in statute.

### **Instructions:**

Replace 61-33 in its entirety with this amendment.

### **Text:**

### **61-33. Drycleaning Facility Restoration Trust Fund.**

(Statutory Authority: 1976 Code Section 44-56-410, et seq. )

#### Table of Contents

- 33.1. Purpose and Applicability.
- 33.2. Definitions.
- 33.3. Severability.

#### SUBPART A. Eligibility Applications.

- 33.4. General Provisions.
- 33.5. Due Diligence.

#### SUBPART B. Moratorium for Eligible Sites.

- 33.6. Moratorium for Eligible Sites.

#### SUBPART C. Financial Responsibility.

- 33.7. General Provisions.
- 33.8. Transfer of Ownership.
- 33.9. Excluded Costs.

- 33.10. Remitting Payments To The Fund.
- 33.11. Costs Incurred for Emergency Actions.

SUBPART D. Facility Prioritization.

- 33.12. General Provisions.
- 33.13. Immediate Removal Actions.
- 33.14. Emergency Sites.
- 33.15. Restoration Priority List.

SUBPART E. Restoration.

- 33.16. General Provisions.
- 33.17. Detailed Facility Investigation.
- 33.18. Restoration Goals and Evaluation.
- 33.19. Restoration Implementation.

**33.1. Purpose and Applicability.**

(A) This regulation contains procedures to implement the Drycleaning Facility Restoration Trust Fund Act and establishes the criteria for determining priority for rehabilitation of Drycleaning Facilities contaminated with Drycleaning Solvents using funds provided under this Act.

(B) Applicability:

(1) This regulation applies to dry cleaners, Persons and wholesalers that have registered with the Department of Revenue where:

(i) The owner or operator of a Site uses or has used Drycleaning Solvents for the purpose of cleaning clothing and other fabrics; or,

(ii) The Person owns, has dominion, has legal or rightful title, or has a ground lease interest in the real property where a Drycleaning Facility or Wholesale Supply Facility is or has been located; or,

(iii) The wholesaler stores or has stored Drycleaning Solvent for wholesale distribution to Drycleaning establishments.

(2) This regulation does not apply to any dry cleaner that has chosen not to participate in the Drycleaning Facility Restoration Trust Fund as specified in the Drycleaning Facility Restoration Trust Fund Act.

(3) This regulation does not apply to any dry cleaner owned by a government entity as specified in the definition of Drycleaning Facility.

(4) This regulation does not apply to textile mills, linen supply, or uniform rental facilities unless operated as a commercial Drycleaning Facility prior to July 1, 1995 as specified in Section 44-56-410(3).

(5) This regulation does not apply to Releases that occur after November 18, 1980 that are the result of gross negligence.

**33.2. Definitions.**

For the purpose of these regulations, the following definitions will apply.

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(A) “Act” means Article 4 of the S.C. Hazardous Waste Management Act, Section 44-56-400 et seq. of the Code of Laws of 1976 as amended, known as the Drycleaning Facility Restoration Trust Fund.

(B) “Board” means the Board of the South Carolina Department of Health and Environmental Control.

(C) “Deductible” means the monies specified in the Act that the Responsible Applicant is responsible for paying.

(D) “Department” means the Department of Health and Environmental Control, including personnel thereof authorized by the Board to act on behalf of the Department or Board.

(E) “Drycleaning Facility” means a professional commercial establishment located in this State for the purpose of cleaning clothing and other fabrics utilizing a process that involves the use of drycleaning solvent. In the case of a retail establishment, the establishment is one that operates or has at some time in the past operated in whole or in part for the purpose of cleaning clothing and other fabrics for members of the public, other drycleaning facilities, and dry drop-off facilities. In the case of a wholesale establishment, the establishment is one that operates or has at some time in the past operated in whole or in part for the purpose of cleaning clothing and other fabrics for other drycleaning facilities or dry drop-off facilities. "Drycleaning facility" includes laundry facilities that are using or have used drycleaning solvent as part of their cleaning process but does not include textile mills, uniform rental and linen supply facilities, or drycleaning facilities owned or operated by a local, state, or federal government.

(F) “Drycleaning Solvents” means nonaqueous solvents used in the cleaning of clothing and other fabrics and includes halogenated drycleaning fluids and nonhalogenated drycleaning fluids, and their breakdown products. "Drycleaning Solvent" includes solvent that has been recycled for use at a drycleaning facility and applies only to those solvents used at a drycleaning facility or handled by a wholesale supply facility.

(G) “Emergency Site” means a site that is contaminated with Drycleaning Solvents at concentrations above an action level or the appropriate risk-based standard set by the Department:

- (1) In a public or private drinking water well; or,
- (2) At off-site areas with high potential for human exposure.

(H) “Existing Drycleaning Facility” means a Drycleaning Facility that started operation before November 24, 2004.

(I) “Former Drycleaning Facility” means a Drycleaning Facility that ceased to be operated as a Drycleaning Facility before July 1, 1995.

(J) “Fund” means the Drycleaning Facility Restoration Trust Fund.

(K) “Gross Negligence” means any action where normal reasonable precautions, including but not limited to the requirements of Section 44-56-480 of the Act, and including those in general widespread industrial practice, have been avoided, neglected, or deliberately omitted.

(L) “Ineligible” means a Drycleaning Facility or contaminated Site that has been permanently barred from receiving monies from the Fund and to which the moratorium does not apply pursuant to the Act.

(M) "New Drycleaning Facility" means a Drycleaning Facility that started operation on or after November 24, 2004.



(N) "Nonhalogenated Drycleaning Fluid" means any nonaqueous solvent used in a drycleaning facility that contains less than ten percent by volume of any halogenated drycleaning fluid. Nonhalogenated Drycleaning Fluid includes petroleum-based Drycleaning Solvents and their breakdown components.

(O) "Person" means an individual, partnership, corporation, association, trust, estate, receiver, company, limited liability company, or another entity or group.

(P) "Registrant" means a dry cleaner or Person who has registered with the Department of Revenue pursuant to the Act.

(Q) "Release" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment of a Drycleaning Solvent.

(R) "Responsible Applicant" is defined as follows:

(1) For an existing Drycleaning Facility, the current registrant identified to the Department of Revenue on the yearly registrations forms.

(2) For an existing Drycleaning Facility that ceases to operate as such, the most recent registrant identified to the Department of Revenue at the time the operation was discontinued.

(3) For a former Drycleaning Facility, the registrant which most recently owned or operated the Drycleaning Facility.

(4) For a Drycleaning Facility that was owned by one registrant and concurrently operated by a different registrant and both are eligible for the Fund, the registrant who operated the facility.

(S) "Site" means the area where a Drycleaning Facility or Wholesale Supply Facility is or has been located and where drycleaning fluids have been deposited, stored, disposed of, or placed, or otherwise come to be located.

(T) "Wholesale Supply Facility" means a commercial establishment that supplies Drycleaning Solvents to Drycleaning Facilities.

### **33.3. Severability.**

Should any section, paragraph, sentence, clause or phrase of this regulation be declared unconstitutional or invalid for any reason, the remainder of this regulation shall not be affected thereby.

## *SUBPART A* *Eligibility Applications*

### **33.4. General Provisions.**

(A) In order for a Drycleaning Facility or Wholesale Supply Facility to be considered for Fund eligibility, the Responsible Applicant shall submit an application package on forms provided by the Department and consisting of:

(1) A signed application form;

(2) The findings of due diligence as defined in subsection 33.5 if this is the first application package completed by a registrant; and,

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- (3) A signed containment certification form.

Forms can be obtained from the DHEC website or by mail from: DHEC – Bureau of Land and Waste Management, Attn.: Drycleaning Facility Restoration Trust Fund Program, 2600 Bull Street, Columbia, SC, 29201.

- (B) The Responsible Applicant is responsible for compliance with these regulations.

(C) The Responsible Applicant shall submit a separate application package for each Drycleaning Facility where an eligibility determination is desired. Deadlines for submittal of an application package are as specified in Section 44-56-470(D). If the Department declares a Drycleaning Facility or Wholesale Supply Facility an emergency or an immediate removal site as detailed in subsections 33.14 and 33.13, the Responsible Applicant shall submit the application package for a determination of eligibility not later than forty-five days after the Department's declaration, if the package had not been submitted previously.

(D) The Department will notify the Responsible Applicant within ninety days after receipt and review of an application package. This notification will include a statement that the application package is either complete or incomplete.

- (1) The submittal date of the application package shall be the date of its receipt by the Department.

(2) If the application package is incomplete, the Responsible Applicant shall be allowed up to forty-five days from the Department's request for further information. Failure to provide the information as requested shall render the application package null and void. A new application package may be submitted.

(E) Within one hundred and eighty days after initial receipt of a complete application package, the Department will notify the Responsible Applicant as to whether the Site is eligible or ineligible for the Fund. Eligibility for the Fund is contingent on:

- (1) The Responsible Applicant submitting an application by the deadlines specified in Section 44-56-470 (D); and,

- (2) The Responsible Applicant meeting all criteria set forth in all sections of the Act.

(F) The Department will prioritize all Sites based upon Subpart D of this regulation for which an application package has been submitted.

### **33.5. Due Diligence.**

(A) The Responsible Applicant shall exercise due diligence to identify any and all former Drycleaning Facilities for which the Responsible Applicant was the owner, operator, Person or otherwise potentially financially liable. This identification shall extend backwards in time until either the existence of a Former Drycleaning Facility is discovered or the history of the property reasonably indicates that it could not have been used as a Former Drycleaning Facility. This due diligence shall include the following:

- (1) A review of all property currently or previously owned by the applicant to determine if a Former Drycleaning Facility operated on the property prior to, or concurrent with, the Responsible Applicant ownership of the property.

- (2) A review of any property previously owned by any Responsible Applicant's acquired subsidiary business to determine if a Drycleaning Facility operated on the property at any time prior to, or concurrent with, the Responsible Applicant's ownership interest of the property; and,

(3) A review of any business location currently or formerly operated by the Responsible Applicant or the Responsible Applicant's acquired subsidiary business on leased property to determine if a Former Drycleaning Facility was at any time operated by the Responsible Applicant or his acquired subsidiary business.

(B) A narrative summary including supporting documentation of all property location reviews shall be submitted with the first eligibility application.

(C) The Responsible Applicant shall have a continuing obligation to disclose the location of Former Drycleaning Facilities for which the applicant is liable. The Responsible Applicant shall submit application packages in compliance with the Act and include an addendum to the narrative summary described in subsection 33.5(B):

(1) Within ninety days of the Responsible Applicant discovering a Former Drycleaning Facility not previously identified in the narrative summary. This addendum shall include information on the newly-identified Former Drycleaning Facility and a detailed explanation of why the site was not discovered using due diligence. If the Department subsequently determines that the Former Drycleaning Facility should have been discovered using a reasonable application of due diligence, the Former Drycleaning Facility shall not be eligible for the Fund or the moratorium.

(2) Within one hundred and eighty days after the Responsible Applicant acquires new commercial property either through direct acquisition or through a new ownership interest in an acquired subsidiary business that included a Former Drycleaning Facility. Any properties not identified within one hundred and eighty days will not be eligible for the Fund.

(D) Any costs incurred by the Responsible Applicant to identify Former Drycleaning Facilities shall not be credited toward the Responsible Applicant deductible nor be eligible for reimbursement from the Fund.

*SUBPART B*  
*Moratorium for Eligible Sites*

**33.6. Moratorium for Eligible Sites.**

In order to qualify for the moratorium on judicial or administrative actions by the Department:

(A) The Site must be determined by the Department to be eligible for the Fund under Subpart A.

(B) The dry cleaner or Person shall comply with the Act and all regulations promulgated by the Department for the proper control, management, or disposal of Drycleaning Solvents and wastes containing Drycleaning Solvents, including any regulations to restrict Releases to the atmosphere.

(C) The Releases of Drycleaning Solvent must not be the result of gross negligence after November 18, 1980.

*SUBPART C*  
*Financial Responsibility*

**33.7. General Provisions.**

(A) The Responsible Applicant shall submit the application for eligibility and pay any deductibles as set forth in subsection 33.10 and shall be current with payment of all surcharges and fees.

(B) The Department will only negotiate with the Responsible Applicant or his/her designee.

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(C) Nothing in this subsection shall preclude the Responsible Applicant from entering into contractual arrangements with any other owners/operators or Persons to obtain a share, if any, of the cost of the assessments or the deductibles from the Fund.

(D) Designation of the Responsible Applicant shall not preclude the Department from seeking judicial or administrative actions against any and all responsible parties in the event that the Site is no longer eligible for the Fund or the moratorium.

### **33.8. Transfer of Ownership.**

(A) The seller shall notify the Department within fifteen days after ownership of any Drycleaning Facility is conveyed to a different Person or after the responsibilities under this regulation for any Former Drycleaning Facility are conveyed to a different Person.

(1) The seller shall submit this notification in writing.

(2) This notification shall include the identity of the purchaser along with a mailing address and telephone number.

(B) Once a Site is determined to be eligible for the Fund, subsequent conveyance of the ownership of the Drycleaning Facility shall not restrict the eligibility of the Site for the Fund or the moratorium.

(C) The new owner of the Drycleaning Facility shall be financially responsible for any remaining portion of the previous owner's deductible as specified in subsection 33.10.

(D) The new owner of the Drycleaning Facility shall be financially responsible for all surcharges and fees.

(E) Once a Drycleaning Facility or Wholesale Supply Facility has been determined by the Department to be ineligible for the Fund, that facility shall not become eligible for the Fund even if ownership is transferred to a different Person.

### **33.9. Excluded Costs.**

(A) Excluded costs incurred by the Responsible Applicant shall not be accredited towards the Responsible Applicant deductible or be considered for reimbursement from the Fund.

(B) Excluded costs include but are not limited to:

(1) Compensation for any time expended by the Responsible Applicant or his employees to conduct due diligence, locate potential Release points of Drycleaning Solvents, or complete any required information or application forms.

(2) Fees paid to attorneys, accountants, or other auxiliary personnel which may be incurred as a result of negotiating with the Department.

(3) Any real or perceived loss of revenue resulting from any activities performed under these regulations.

### **33.10. Remitting Payments to the Fund.**

(A) After the Department spends Fund money on a site, the Responsible Applicant shall pay into the Fund any unspent balance of his/her deductible up to the amount spent by the Department.

(B) The Responsible Applicant shall remit the full balance of the expended funds or shall enter into a payment plan with the Department within thirty days after notification by the Department that the funds have been used.

(C) If the Responsible Applicant chooses to enter into a payment plan, the Responsible Applicant shall make payments to the Fund on a quarterly basis.

(1) No interest shall be assessed for any outstanding balance paid in full within one year after notification by the Department.

(2) For payments extending beyond one year, interest shall be collected as a fixed-rate, simple interest on the remaining balance spent by the Department.

(3) The Department will set the annual interest rate at one and one-half times greater than the Federal Prime Interest rate in effect on the first day of July of that year. All payment plans entered into during the fiscal year July 1 through June 30 shall be set at that that rate.

### **33.11. Costs Incurred for Emergency Actions.**

If the Department uses Fund money on an emergency site pursuant to subsection 33.14.(B) and an eligibility application is not submitted as specified in subsection 33.4, the Department shall recover to the fund the total amount expended, plus interest, from any Person responsible to the Fund for the contamination.

#### *SUBPART D Facility Prioritization*

### **33.12. General Provisions.**

(A) All sites will be prioritized after an application package has been received using the prioritization system described in subsection 33.15 to determine the appropriate order by which Fund monies will be expended for the most efficient reduction of risk.

(B) Publication of the prioritization list.

(1) The prioritization list will be published on an annual basis thereafter on the Department's web site.

(2) This list will be revised as sites are re-scored or added to the list.

(C) The Department will determine whether a Site is an Emergency Site or a candidate for an immediate removal action based on information obtained from any source.

(D) The Department may expend Fund monies to reduce the threat to human health for an Emergency Site before an eligibility assessment has been submitted.

(E) Once the concerns of the Emergency Site or the immediate removal site have been addressed, additional restoration will proceed at the Site based on its priority determined through use of the prioritization system.

(F) The Department may reprioritize a Site at any time to reflect new information gained on the Site.

### **33.13. Immediate Removal Actions.**

(A) The Department may require an immediate removal action at a Site if the Department determines that:

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(1) Waste containing a substantial concentration of Drycleaning Solvent that has not entered into the environment is present at the Site; and,

(2) Early removal of the waste will effectively reduce the long-term cost of restoring the Site; and,

(3) The waste can easily be removed from the Site through conventional methods of segregation, excavation, and/or pumping from containers.

(B) The Responsible Applicant shall remove the waste from the Site within 45 days after notification by the Department.

(1) The removed waste must be managed in accordance with the South Carolina Hazardous Waste Management Regulations, R.61-79 as amended.

(2) Any costs incurred by the Responsible Applicant for removal of the waste shall not be accredited towards his/her deductible or reimbursed from the Fund.

(3) Failure to remove the waste properly after due notice shall constitute gross negligence under this regulation.

(C) Immediate removal actions will not include any extraction techniques to reduce the contaminant concentrations in soil or water.

### 33.14. Emergency Sites.

(A) The Department will declare a Site to be an Emergency Site if:

(1) Any currently used drinking water is contaminated with Drycleaning Solvents or their breakdown products at concentrations greater than the appropriate risk based criteria and/or established standards; or,

(2) Drycleaning Solvents, or their breakdown products, are found in surface soils at concentrations greater than the appropriate risk based criteria and/or established standards for short term exposure and the Department has determined that the potential for human contact is likely.

(B) If the Department declares a Site to be an Emergency Site, money from the Fund will be allocated for the Department to reduce the risk of human exposure. Preference will be given to an action that provides long-term permanent protection without continual maintenance; however, nothing in this section shall preclude the Department from employing temporary measures or technologies to reduce the risk of exposure as deemed appropriate. The Department will notify all exposed individuals and may select the appropriate remedy after consultation with the exposed individuals.

### 33.15. Restoration Priority List.

(A) The prioritization system to be used when ranking sites for remedial action under this regulation will consider the following:

(1) Age and number of years of operation;

(2) Types of Drycleaning Solvent used;

(3) Location in relation to affected or potentially affected receptors; and,

(4) The likelihood of contamination migrating to the population or resources.

(B) Sites can be removed from the prioritization list for the following reasons:

- (1) An assessment by the Department shows no evidence of contamination;
- (2) Restoration of the site is completed; or,
- (3) The Site is deemed ineligible.

*SUBPART E*  
*Restoration*

**33.16. General Provisions.**

The goal of the restoration phase will be to alleviate any known existing exposure pathway where the clean-up goals are exceeded. The clean-up goals for each Site will be determined on a site specific basis and will be based on the appropriate risk based criteria and/or standards established by the Department.

**33.17. Detailed Facility Investigation.**

(A) The purpose of the detailed facility investigation is to collect data to determine the nature and extent of contamination at a Site and to support evaluation and selection of restoration alternatives. The detailed facility investigation can include, but may not be limited to, the following:

- (1) Physical characteristics of the site, including important surface and subsurface features, soil types, and hydrogeology.
- (2) The general characteristics of the Drycleaning Solvent waste in the source areas, including quantity, physical state, concentration, and potential mobility.
- (3) Actual and potential exposure pathways including inhalation, ingestion, and dermal adsorption.

(B) A detailed facility investigation work plan will be developed. The work plan will describe the number, type, and location of samples to be collected and the type of analysis to be performed.

(C) A detailed facility investigation report shall be developed after the completion of the field work. The report will summarize the information and data collected during the investigation. In addition, the report will evaluate potential treatment alternatives that will meet the restoration objectives of subsection 33.18.

**33.18. Restoration Goals and Evaluation.**

(A) The Department will evaluate the restoration alternatives presented in the approved detailed facility investigation report. The selection criteria shall consider:

- (1) The effectiveness of the technology to eliminate or reduce the existing and potential risks, hazards, and concerns of Drycleaning Solvents both during implementation and following completion of the selected restoration;
- (2) The ability to implement a remedy as it relates to the degree of difficulty associated with construction and management of the remedy, including the technical, administrative, and logistic problems that affect the resources necessary to complete the restoration;
- (3) Compliance with Federal and State environmental laws; and,

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(4) The capital cost, both direct and indirect, and the annual management and maintenance costs.

(B) The Department will publish a notice of availability and a brief explanation of the proposed restoration alternatives in a major local newspaper of general circulation. The Department will present the findings of the detailed facility investigation and the proposed plan in a public meeting and will accept written comments for a period of not less than thirty calendar days after the meeting.

(C) The Department will review the public comments to determine if the proposed restoration alternative remains the most appropriate alternative for the Site.

(D) The Department will document the evaluation process, including response to public comments, and the selected restoration alternative, in the administrative record for the Site.

### **33.19. Restoration Implementation.**

(A) The Department will review and approve a restoration design report developed by the selected contractor, which will include the actual design and provisions for the implementation of the selected restoration as documented in subsection 33.18(D).

(B) The Department will review the restoration on a periodic basis to ensure that the goals are met to eliminate or reduce the existing and potential risks, hazards, and concerns of Drycleaning Solvents in the environment. In the event that the technology does not achieve the stated goals, the Department will select another remedy after public participation as detailed in subsection 33.18.

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

Implementation of these amendments will not require additional resources. There is no anticipated additional cost by the Department or state government due to any inherent requirements of these amendments. There are no external costs anticipated.

#### **Statement of Need and Reasonableness:**

This Statement of Need and Reasonableness is based on an analysis of the factors listed in S.C. Code Section 1-23-115(C)(1)-(3) and (9)-(11).

**DESCRIPTION OF REGULATION:** R.61-33, *Drycleaning Facility Restoration*.

**Purpose:** These amendments to R.61-33 revise and clarify criteria, procedures and standards for eligibility, moratorium, financial responsibility, facility prioritization, and restoration investigation and clean-up goals of drycleaning facilities and sites participating in the Drycleaning Facility Restoration Trust Fund. These amendments provide updates to the definitions, remove requirements and procedures for documenting existing contamination, and remove requirements and procedures for certifying contractors. Additional changes include revising the regulation title, stylistic changes for internal consistency, clarification in wording, corrections of references, grammatical errors, outlining/codification, and such other changes necessary to improve the overall quality of the regulation.

**Legal Authority:** 1976 Code Section 44-56-410 et seq.

**Plan for Implementation:** Upon approval by the General Assembly and publication in the *State Register* as a final regulation, a copy of R.61-33, which includes these latest amendments, will be available electronically on the Department's Laws and Regulations website under the Land and Waste category at: <http://www.scdhec.gov/Agency/RegulationsAndUpdates/LawsAndRegulations/>. Subsequently, this regulation will be published in the South Carolina Code of Regulations. Printed copies will be available for a fee from the



Department's Freedom of Information Office. The Department will also send an email to stakeholders, affected services and facilities, and other interested parties.

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

Regulation 61-33 has not been updated since 1997. Revisions of Article 4 of the South Carolina Hazardous Waste Management Act, 1976 Code Section 44-56-410 et seq., on May 21, 2013 removed certain requirements of drycleaning facility and site owners to participate in the Drycleaning Facility Restoration Trust Fund. Therefore, many of the procedures, practices, and terms of R.61-33 are outdated and/or no longer applicable. The amendments further clarify and improve the overall quality of the regulation.

**DETERMINATION OF COSTS AND BENEFITS:**

Implementation of these amendments will not require additional resources. There is no anticipated additional cost to the Department or state government due to any inherent requirements of these amendments. There are no anticipated additional costs to the regulated community. Amendments to R.61-33 remove descriptions and instructions for actions that were required of the regulated community prior to the Act revisions but are now no longer required by Law.

**UNCERTAINTIES OF ESTIMATES:**

None.

**EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH:**

The amendments to R.61-33 support the Department's goals relating to the protection of public health and the environment through increased oversight of environmental cleanup and improved stewardship of the Trust Fund. There is no anticipated effect on the environment.

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

There is no anticipated detrimental effect on the environment. If the revision is not implemented, the Regulation will be maintained in its current form without realizing the benefits of the amendments herein.

**Statement of Rationale:**

These amendments conform the Regulation to the revised South Carolina Hazardous Waste Management Act, at 1976 Code Section 44-56-410 et seq. The amendments update R.61-33 to remove descriptions and instructions of activities that are no longer required of the regulated community as a result of revisions to the Act. Additional changes include revising the regulation title, stylistic changes for internal consistency, clarification in wording, corrections of references, grammatical errors, outlining/codification, and such other changes necessary to improve the overall quality of the Regulation.

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Document No. 4704

### DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL CHAPTER 61

Statutory Authority: 1976 Code Sections 44-29-150 through 44-29-170

61-22. The Evaluation of School Employees for Tuberculosis.

#### Synopsis:

The Department has conducted a review of Regulation 61-22 pertaining to the evaluation and screening for tuberculosis for those working in schools and child care centers. As a result of the review, the Department has substantially amended R.61-22 in order to simplify and clarify the tuberculosis screening and evaluation requirements for schools and child care centers and to significantly reduce the financial and human resources burden on schools and child care centers created in prior revisions to R. 61-22, all while affording children greater protection against exposure to tuberculosis in these settings. The amendments herein include the Department's effort to incorporate current tuberculosis evaluation and preventive treatment guidelines, update the screening and evaluation requirements for those working and volunteering in schools and child care centers, clarify language relating to the issuance of evaluation certificates, and provide for consistency with applicable state and federal laws. The title of the Regulation will also be revised.

A Notice of Drafting was published in the *State Register* on August 26, 2016.

See Statements of Need and Reasonableness and Rationale herein for these amendments.

#### Section-by-Section Discussion of Amendments

The title of R.61-22 has been changed to reflect the scope of the guidelines, which are not limited to employees or to schools, but include certain non-employees and those who work in child care centers.

Section I. Purpose and Scope: Changes were made in this section to more accurately reflect the scope of the guidelines, which are not limited to employees of schools, but cover others who work in school environments and in child care centers. Changes were also made to clarify the purpose of the guidelines and to improve the section's readability.

Section II. Definitions: Wholesale changes were made to the Definitions section in order to bring clarity to the guidelines, remove unnecessary language, and improve accuracy and readability. Definitions were added to include the terms "Approved TB Screening Tests," "Department," "DHEC 1420," "disposition," "employee," "latent TB infection," "preventive treatment," and "tuberculosis" or "TB." Definitions of the following terms were deleted as being unnecessary, including "adequate treatment," "blood assay for mycobacterium tuberculosis (BAMT)," "legally authorized healthcare provider," "new employee," "non-reactor," "non-routine testing," "regular employee," "school employees," "treatment for tuberculosis infection (TTBI)," "tuberculin/BAMT positive reactor," "tuberculin skin test (TST)," "tuberculosis infection," and "two-step tuberculin skin test." The definition of "tuberculosis disease" or "TB disease" was revised.

Section III. Guidelines for Screening and Evaluation, Subsection A: This section was renamed and significantly revised to simplify tuberculosis screening and evaluation requirements and to improve clarity. The revisions eliminated the ninety (90) day window for pre-employment testing and the two-step tuberculin skin tests as those requirements proved burdensome and confusing to school districts and others and are not necessary under best practices for tuberculosis screening. Instead, TB testing is specified as a prerequisite to employment and a condition for continued employment, with schools and child care centers given greater discretion to determine how far in advance of working with students the testing and documentation must be accomplished. These revisions reduce the burden on schools and child care centers, give them greater flexibility, while still ensuring that all persons are evaluated for tuberculosis before working in a school or child care center.

Section III. Guidelines for Screening and Evaluation, Subsection B. Disposition Following Evaluation: This section was significantly revised to simplify the actions to be taken by schools and child care centers following tuberculosis evaluation. The revisions eliminate the requirement for annual screening of all employees, provide for re-evaluation only upon a gap in employment, and make clear that the guidelines establish minimum requirements, with schools and child care centers free to implement stricter requirements to meet their individual needs.

Section III. Guidelines for Screening and Evaluation, Subsection C. Documentation of results of screening and evaluation. This section was significantly revised to simplify the documentation needed to verify tuberculosis evaluation. Language was added to clarify documentation requirements for those who transfer from one location to another and for those who work in more than one location. Additional language was added to give schools and child care centers the discretion to maintain documentation at individual locations or at centralized locations, such as district offices, and to clarify that outside vendors that provide staff to schools are responsible for maintaining proper documentation of their employees.

Section III. Guidelines for Screening and Evaluation, Subsection D. Non-routine screening. Minor revisions to this section were made to reflect the scope of the guidelines. A subsection pertaining to education was added to recommend, but not require, annual public health instruction so that educators and those working in school and child care environments may gain additional knowledge regarding public health issues including, but not limited to, recognizing the signs and symptoms of tuberculosis.

Section IV. Additional Information and Forms. Only minor changes were made to improve clarity.

Appendix. Interpretation of the Tuberculin Skin Test (TST). The appendix was deleted in its entirety.

**Instructions:**

Due to numerous revisions throughout, replace 61-22 in its entirety with this amendment.

**Text:**

**61-22. The Evaluation of Staff of Schools and Child Care Centers for Tuberculosis.**

(Statutory Authority: 1976 Code Sections 44-29-150, 44-29-160, 44-29-170)

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I. PURPOSE AND SCOPE.

The General Assembly, in sections 44-29-150 through 44-29-170 of the 1976 South Carolina Code of Laws, charged the South Carolina Board of Health and Environmental Control with approving guidelines for the evaluation for tuberculosis of persons working in a public or private school, kindergarten, nursery or day care center for infants and children (Registered family child care homes are exempt from the requirements of these guidelines). As more fully set forth below, as a prerequisite to employment and as a condition of continued employment, all persons to whom these guidelines apply shall be evaluated for tuberculosis and shall provide certification on a form designated by the Department that the person does not have tuberculosis in an active stage. Re-evaluation will not be required for employment in subsequent consecutive years unless otherwise indicated.

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These guidelines modernize the approach to screening for tuberculosis and take into account contemporary scientific and epidemiologic principles. Under these guidelines, most school employees will need to be evaluated for tuberculosis only one time and will not be required to be screened annually absent certain factors. Non-routine screening is based on epidemiologic and clinical information and is combined with an underlying policy concerning preventive treatment of tuberculosis disease and infection. These guidelines will afford children greater protection against exposure to tuberculosis in the school, kindergarten, nursery and day care center environments.

### II. DEFINITIONS.

For the purpose of these guidelines, the following definitions and clarifications shall apply:

A. "Approved TB Screening Tests" means tests for the detection of TB disease and/or latent TB infection approved by the United States Food and Drug Administration and recommended by the Centers for Disease Control and Prevention.

B. "Department" means the South Carolina Department of Health and Environmental Control.

C. "DHEC 1420" means the form designated by the Department for documenting and certifying tuberculosis evaluation, including results of Approved TB Screening Tests, disposition and preventive measures.

D. "Disposition" means the plan for continuing healthcare of a person following evaluation for tuberculosis.

E. "Employee" means any person working in a public or private school, kindergarten, nursery or day care center for infants and children, whether a new hire or currently employed, whether a direct employee or an independent contractor, and whether full-time, part-time, temporary or in any other capacity. Examples of employees to whom these guidelines apply include, but are not limited to, teachers, substitute teachers, teacher aides, student teachers, administrators, school psychologists, custodians, bus drivers, coaches, trainers, guidance counselors, school nurses and cafeteria workers, among others.

F. "Latent TB infection" means a person has become infected with the bacterium that causes TB, but does not have TB in an active stage. A person with latent TB infection does not feel sick, does not have symptoms and cannot spread TB bacteria to others.

G. "Preventive treatment" means treatment to prevent latent TB infection in an individual from developing into TB disease.

H. "Tuberculosis" or "TB" means generally a bacterial infection caused by a bacterium called *Mycobacterium tuberculosis*. The bacteria usually attack the lungs, but TB bacteria can attack any part of the body such as the kidneys, spine, and brain. TB bacteria can live in the body without making you sick. This is called "latent TB infection." For most people who breathe in TB bacteria and become infected, the body is able to fight the bacteria to stop them from growing. For others, TB bacteria become active in the body and multiply. In those instances, people will go from having latent TB infection to being sick with "TB disease" or "TB in an active stage."

I. "TB disease" or "TB in an active stage" means a person has become infected with the bacterium that causes TB and the bacterium has become active and has multiplied. People with TB disease usually have symptoms and may spread TB bacteria to others.

### III. GUIDELINES FOR SCREENING AND EVALUATION.

A. Evaluation for Tuberculosis:

1. As a prerequisite to employment, and as a condition for continued employment, all employees shall be evaluated for tuberculosis by a licensed healthcare provider and shall provide written certification from a licensed physician that the person does not have TB disease.

2. Tuberculosis evaluations must be completed no more than one year prior to employment.

3. Tuberculosis evaluations shall be conducted utilizing Approved TB Screening Tests.

4. Certification of tuberculosis evaluation, including disposition and preventive treatment, shall be documented on DHEC 1420 and retained in the files of the school, kindergarten, nursery or day care center for infants and children where the person works.

**B. Disposition Following Evaluation:**

1. Any employee with a negative Approved TB Screening Test shall require no further routine screening except as otherwise provided in section III(B)(3) below.

2. Any employee with a positive Approved TB Screening Test or with a history of latent TB infection or TB disease shall be further evaluated by a licensed healthcare provider.

a. If the evaluation reveals no TB disease, then no exclusion and no further routine screening shall be required except as otherwise provided in section III(B)(3) below.

b. If the evaluation reveals TB disease, then the individual shall be excluded from working in any school, kindergarten, nursery or day care center for infants and children until a licensed physician certifies that the individual no longer has TB in an active stage

3. An employee in a public or private school, kindergarten, nursery or day care center for infants and children that has been evaluated for tuberculosis as required above will require no further routine screening so long as the person's employment in one or more of these work settings is continuous during consecutive years. Continuous employment in consecutive years includes, but may not be limited to, a change in employment directly from one of these work settings to another such as moving from a public school directly to a private school, moving from one school district directly to another, or moving from a day care center directly to a school. Short-term breaks in employment, such as maternity or paternity leave or traditional school year breaks, e.g., summer or winter break, shall not necessitate a new TB evaluation.

4. Nothing in these guidelines shall prevent a public or private school, kindergarten, nursery or day care center for infants and children from requiring additional tuberculosis evaluations or screenings of its employees and volunteers.

**C. Documentation:**

1. Every school, kindergarten, nursery or day care center for infants and children shall maintain a completed DHEC 1420 for each employee and shall make such records available for review by representatives of the Department upon request. Records may be maintained in an individual facility or in a centralized office, such as in a school district office..

2. For persons who are not employed directly by a school, kindergarten, nursery or day care center, but who work in these settings, the person's employer shall maintain a completed DHEC 1420 and shall make such records available for review upon request by representatives of the Department as well as representatives of any school, kindergarten, nursery or day care center in which the person works.

3. If an employee moves or transfers directly to another public or private school, kindergarten, nursery or day care center for infants and children such that employment in any of these work settings remains

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uninterrupted, no additional routine screening or evaluation for tuberculosis shall be required beyond that which is described above, provided the employee has a completed DHEC 1420, which should be transferred to the new place of employment.

4. If an employee works in more than one school, kindergarten, nursery or day care center for infants and children, each facility shall maintain a separate copy of the individual's completed DHEC 1420 unless kept in a centralized office governing all places of employment.

5. Any employee who does not have proper documentation on file that he or she is free of TB disease shall be excluded from working in any school, kindergarten, nursery or day care center for infants and children until written certification by a licensed physician is received and documented on DHEC 1420 declaring that the individual does not have tuberculosis in an active stage.

### D. Non-routine Screening and Recommended Education:

1. An employee who would otherwise be exempt from routine annual screening for tuberculosis may be required to undergo non-routine screening if there is epidemiologic or clinical evidence that such employee may have been exposed to TB bacteria or become infected with TB or may have moved from having latent TB infection to TB disease. Epidemiologic and clinical evidence includes, but may not be limited to:

- a. Identification of an employee as a close contact of a person with TB disease;
- b. Occurrence of tuberculosis in any public or private school, kindergarten, nursery or day care center for infants and children; or
- c. Observation of signs or symptoms in an employee suggestive of tuberculosis.

2. The Department recommends that regular employees and volunteers of public or private schools, kindergartens, nurseries or day care centers for infants and children participate in a Public Health Education element annually. Recommended Public Health Education materials will be made available by the Department and will include disease prevention, symptoms and screening information for communicable diseases common to public or private school, kindergarten, nursery or day care center environments.

## IV. ADDITIONAL INFORMATION AND FORMS.

A. Questions regarding these guidelines may be addressed to personnel of the county health departments or the regional offices of the Department of Health and Environmental Control. Questions which cannot be resolved at the local level may be referred to the Tuberculosis Control Program, Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201.

B. Employees may obtain tuberculosis evaluations and certifications from private physicians. Certification forms (DHEC 1420) are available, upon request, from the Department.

### **Fiscal Impact Statement:**

There are no anticipated additional costs to the state or its political subdivisions. Staff of schools and child care settings are currently required by S.C. Code Section 44-29-160 to be evaluated for tuberculosis as a condition of employment. In addition, prior R.61-22 requires two tuberculin skin tests for all school and child care center staff as well as annual screening. The amendments to R.61-22, which lessen those requirements while continuing to afford protection against tuberculosis in these settings consistent with best practices, should lower the financial and human resources burdens on schools and child care centers.

**Statement of Need and Reasonableness:**

This Statement of Need and Reasonableness is based on an analysis of the factors listed in S.C. Code Sections 1-23-115(C)(1)-(3) and (9)-(11).

DESCRIPTION OF THE REGULATION: R.61-22, The Evaluation of School Employees for Tuberculosis.

PURPOSE OF THE REGULATION: The purpose of these revisions is to update R.61-22 and incorporate recommended changes identified by staff during internal review, including integrating current tuberculosis evaluation and preventive treatment guidelines, updating the screening/evaluation requirements for schools and child care centers, clarifying language relating to issuing, completion and retention of certificates of tuberculosis evaluation and language relating to requirements for new hires, and providing for consistency with applicable state and federal laws. These amendments also incorporate stylistic changes, which include corrections for clarity, readability, grammar, punctuation and overall improvement of the text. The changes also align the Department with advancements and best practices in tuberculosis evaluation.

LEGAL AUTHORITY FOR THE REGULATION: 1976 Code Sections 44-29-150, as amended.

PLAN FOR IMPLEMENTATION: Upon approval by the S.C. General Assembly and publication in the *State Register* as final, these revisions will take effect as law. In addition to publication in the *State Register*, the amended regulation will be available electronically on the Department's website in the *DHEC Regulation Development Update*. Also, a copy of this regulation, to include these latest amendments, will be published in the Department's *Laws and Regulations* section of its website under the Disease Control category and subsequently in the Code of Regulations in the S.C. Code of Laws. Printed copies will be available for a fee from the Department's Freedom of Information Office.

DETERMINATION OF NEED AND REASONABLENESS OF THE REGULATION AND EXPECTED BENEFITS: The amendments to R.61-22 are needed to update and clarify the guidelines for tuberculosis screening and evaluation of employees in school and child care settings. The amendments are reasonable as they accomplish their intended purpose of identifying high-risk school employees and will afford children greater protection against exposure to tuberculosis in these settings.

DETERMINATION OF COSTS AND BENEFITS: There are no anticipated additional costs to the state or its political subdivisions. Staff of schools and child care settings are currently required by S.C. Code Section 44-29-160 to be evaluated for tuberculosis as a condition of employment. In addition, prior R.61-22 requires two tuberculin skin tests for all school and child care center staff as well as annual screening. The amendments to R.61-22, which lessen those requirements while continuing to afford protection against tuberculosis in these settings consistent with best practices, should lower the financial and human resources burdens on schools and child care centers.

UNCERTAINTIES OF ESTIMATES: None.

EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH: Implementation of the amendments herein will not compromise the protection of the environment or public health. The effect should be beneficial because the amendments ensure proper tuberculosis evaluation prior to initial hire, facilitate targeted testing of identified higher risk school employees and improve knowledge of tuberculosis disease, signs and symptoms, by staff of schools and child care centers.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED: There is no anticipated detrimental effect on the environment if the amendments are not implemented. Failure to amend the regulation could result in the lack of proper evaluation of employees for tuberculosis as well as an undue financial and human resources burden on schools and child care centers.

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### Statement of Rationale:

The Department has amended R.61-22, *The Evaluation of School Employees for Tuberculosis*, to incorporate current tuberculosis evaluation and preventive treatment guidelines, update the screening and evaluation requirements for school employees, clarify language relating to the issuance, completion and retention of evaluation certificates and language relating to requirements for new hires, and provide for consistency with applicable state and federal laws. The amendments herein are needed to update and clarify the guidelines for tuberculosis screening and evaluation of employees in school and child care settings in South Carolina.

Document No. 4706

### DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL CHAPTER 61

Statutory Authority: 1976 Code Sections 44-2-10 et seq.

61-92. Underground Storage Tank Control Regulations.

### Synopsis:

The Department amends R.61-92, Underground Storage Tank Control Regulations, Part 280. These amendments focus on adopting the federal underground storage tank requirements of 40 CFR Section 280 effective October 13, 2015, and revising portions of R.61-92, Part 280 pertaining to compliance requirements of the UST Control Regulations. The amendments reorganize the regulations for clarity and consistency with the format of the revised federal regulation effective October 13, 2015, along with other stylistic changes to improve the overall quality of the Regulation.

A Notice of Drafting for these amendments was published in the *State Register* on April 22, 2016.

### Section-by-Section Discussion of Amendments:

The statutory authority under the title of the regulation in the text was corrected.

Stylistic changes were made to improve the overall quality of the Regulation.

Throughout the document, the word “ground-water” and “ground water” were changed to “groundwater”.

Throughout the document, the word “storm-water” and “stormwater” were changed to “storm water”.

Throughout the document, where needed, all punctuation and capitalization errors were corrected.

Throughout the document, where needed, all sections were renumbered to standardize the codification.

### TABLE OF CONTENTS

The table was revised to reflect the amendments.

### SUBPART A

In Subpart A, the following wording was removed from heading “Interim Prohibition” and replaced with “Installation Requirements for Partially Excluded UST Systems”.

#### 61-92.280.10 Applicability

Section was revised to adopt federal requirements requiring all owners of airport hydrant fuel distribution systems and UST systems with field-constructed tanks to meet requirements of Subpart K. Section 61-92.280.10 was also revised to adopt federal requirements requiring all owners of UST systems that store fuel solely for use by emergency power generators to meet the release detection requirements previously deferred from Subpart D. In 280.10(a), “and” was added and the following was removed, “(d), and (e)” and “Any UST system listed in paragraph (c) of this section must meet the requirements of Section 280.11.”

The remainder of the paragraph revisions adopted only federal wording.

In 280.10(b), the word, “Exclusions” were added from federal wording.



In 280.10(c), “Deferrals”, “and”, “any of the following types of UST systems” were removed and “Partial Exclusions” and, “J, and K of this part” were added from federal wording.

In 280.10(c)(1), “not covered under paragraph (b)(2) of this section” and “Aboveground storage tanks associated with; (i) Airport hydrant fuel distribution systems regulated under subpart K of this part; and (ii) UST systems with field-constructed tanks regulated under subpart K of this part;” were added from federal wording. Formatting change to match federal wording added a “(3)” and the word “and”.

The existing (3) was moved to (4) and revised to match federal wording by removing “3” and adding “4”, removing “regulated” and inserting “licensed”, removing “under” and inserting “and subject to Nuclear Regulatory Commission requirements regarding design and quality criteria, including but not limited to”, “part” and removing “Appendix A”.

The following was removed, “(4) Airport Hydrant fuel distribution systems; and (5) UST systems with field-constructed tanks. (d) Deferrals. Subpart D does not apply to any UST system that stores fuel solely for use by emergency power generators.”

Existing paragraph 280.10(e) was changed by removing “e” and inserting “d”.

#### **61-92.280.11 Installation Requirements for Partially Excluded UST Systems**

In heading Section 280.11, “INTERIM PROHIBITION” and “DEFERRED” were removed and “INSTALLATION REQUIREMENTS” and “PARTIALLY EXCLUDED” was inserted.

Section was revised to remove outdated industry standards and include the current industry standards and recommended practices by nationally recognized organizations.

#### **61-92.280.12 Definitions**

All definitions were indexed using letters for clarity.

The definition for "class A operator" was added to match the federal regulations.

The definition for "class B operator" was added to match the federal regulations.

The definition for "class C operator" was added to match the federal regulations.

The definition for "containment sump" was added to match the federal regulations.

The definition for "critical area" was revised to clarify beaches and beach/dune systems. Also, the reference to the office of Ocean and Coastal Resource Management Regulations was deleted and "which is the area from the mean high-water mark to the setback line as determined by Section 48-39-280" was added for clarification.

The definition for "dispenser" was added to match the federal regulations.

The definition for "dispenser system" was added to match the federal regulations.

The definition for "flow-through process tank" was revised to change the last word from “products” to "process" to match the federal regulations.

The definition for "motor fuel" was revised to match the federal regulation.

The definition for “navigable waters” was revised to include Department determination of the definition by adding, “or”, “.2.C” for clarity and “Navigability shall be determined by the Department”.

The definition for “person” was revised to match the statutory definition at S.C. Code Ann. 44-2-20(13). A typographical error printed in the Notice of Proposed Regulation has been corrected, with Board approval on December 8, 2016, to address the definition of “person” being revised to match the statutory definition by deleting “d” from the end of the word “purpose”.

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The definition for “regulated substance” was revised in paragraph 1 to remove the wording “the Comprehensive Environmental Response Comprehension and Liability Act” because “CERCLA” was previously defined and “RCRA” was added to clarify “subtitle C” verbiage. In paragraph 2 “and petroleum products” was added and the remainder was removed for clarity.

The definition for "release detection" was revised to include "a leak has occurred" to match the federal regulations.

The definition for "repair" was revised to match the federal regulations to explain what a repair means.

The definition for "replace" was revised to include federal regulations with existing state regulations. Pursuant to public comment, the Department revised the wording to be consistent with other provisions of the State UST Control Regulations. The definition was originally worded with the phrase “25 percent or more” and was revised to state “more than 25 percent” to match existing requirements in the regulation.

The definition for "secondary containment" was revised to match the federal regulations and include minor changes for clarity from SC to explain design must contain any leak from components within the containment area.

The definition for “solid waste disposal act” was added for clarity with respect to RCRA.

The definition for "training program" was added to match the federal regulation.

The definition for "under dispenser containment" was revised to match the federal regulation to clarify it is considered as containment.

The definition for "underground storage tank" was revised to include necessary portions of the federal regulations and to match existing contents of the SUPERB statute.

### **61-92.280.20 Performance Standards for New UST Systems**

Per Board approval on December 8, 2016, the following text was revised to further clarify the amendments made to the referenced section. The Section was revised to include wording to match the federal regulations and existing implementation dates from South Carolina for secondary containment requirements on new or replaced tanks and/or piping installations. Throughout the section, all “note to paragraph” language was amended to remove outdated industry standards and to include the current industry standards and recommended practices by nationally recognized organizations. Where needed, all sections were renumbered to standardize the codification.

In paragraph (c), the word “transfer” was added for consistency from the federal regulation to clarify the “operator” referenced is the delivery driver. Wording was added to match the federal regulations to no longer allow owners and operators to install or replace overfill prevention using a vent line flow restrictor (ball-float vent valve) on new or existing UST systems. Wording was added to match federal regulations, requiring periodic testing for spill and overfill equipment.

In paragraph (d), The word “new” was deleted to denote drop tube requirements apply to all UST systems, not just new ones.

In paragraph (e), the phrase “all tanks and piping” was replaced with “The UST system” to match federal regulation.

In paragraph (f), wording was added to match a federal regulation reference to another paragraph for clarity.

In paragraph (g), new wording was added to match federal regulation in reference to under dispenser containment requirements. All existing language in this paragraph was moved to paragraph (h).

In paragraph (h), wording was adopted from paragraph (g) of the existing regulation. The reference to require UST tanks and piping to be secondarily contained if installed within 1,000 feet of a public water supply system was removed to be consistent with Federal regulatory requirements. Additional wording was added to match federal regulation to provide deferral of Subpart D for European suction piping. The existing language in

paragraph (h), requiring tanks and piping within 100 feet of a public water supply well, coastal zone critical area, or state navigable waters was also removed for consistency. The revised regulation will require all new UST tanks and piping to be secondarily contained, consistent with federal regulatory requirements.

#### **61-92.280.21 Upgrading of Existing UST Systems**

Includes the federal regulation requirements for owners and operators to permanently close any UST system that has not met the new performance standards or has not been upgraded. This section does not apply to airport hydrant systems and field-constructed tanks. Federal wording included to require owners and operators with internal lining to permanently close tanks if liner cannot be repaired. Section adds industry codes of practice per federal requirements.

#### **61-92.280.22 Notification Requirements**

Per Board approval on December 8, 2016, the following text was revised to further clarify the amendments made to the referenced section. All paragraphs of this section were amended, where needed, to match federal regulation requirements for addition of current codes of practice; to add a requirement for owners to notify the Department when they have assumed ownership; and to require reporting on proper forms approved by the Department.

#### **61-92.280.23 New Tanks-permits required**

In paragraph (a), replaced “construction” with “installation” for standardization with current permit applications. In paragraph (b), revised current regulation to properly describe “permit to operate” for standardization and to utilize current terminology used on Department forms. Changed paragraph reference to encompass all required sections for properly completing application for permit to operate.

In paragraphs (e)-(l), all references to delivery prohibition were deleted and moved to Section 280.26.

#### **61-92.280.24 Testing**

Per Board approval on December 8, 2016, the following text was revised to further clarify the amendments made to the referenced section. In paragraph (a), current regulation wording was revised to incorporate proper industry standards and manufacturer protocols for testing of secondary containment equipment to be consistent with federal regulatory requirements.

In paragraphs (b) and (c), the word “hydrostatically” was removed to allow other methods of testing to be used. The word “functionality” was added to address testing of release detection equipment, which is required elsewhere in the regulation.

In paragraph (d), state revisions were added to require reporting on forms approved by the Department.

#### **61-92.280.25 Secondary containment required**

Revised section heading to match all other section headings to incorporate the word “Section”.

In paragraph (a) changed "shall" to "must".

In paragraphs (a) and (b), changed section reference from “g” to “h” to reflect proper section where secondary containment reference is located.

#### **61-92.280.26 Delivery Prohibition (formerly 61-92.280.23)**

Section was created to allow relocation of the requirements for delivery prohibition from former Section 280.23. In paragraph (a), added “required secondary containment is not installed; or” to ensure where secondary containment is required the Department has authority to prevent deliveries for ensuring compliance.

In paragraph (c), added “alleged” to properly reflect wording on Department issued forms. Inserted “components” for clarity that as all metal components that routinely contain product must be protected from corrosion.

In paragraph (d), added similar wording from (a)(6) to clarify Department's authority to impose delivery prohibition for other conditions that may threaten the public or the environment.

In paragraph (e), paragraph references were changed because of delivery prohibition section relocation. In paragraph (e)(2), to clarify why DP sites are listed on the website, for notification of owner/operator and supplier.

In paragraph (f), added wording on how the Department will notify owner/operator about delivery prohibition implementation.

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In paragraph (g), added wording on how the Department will notify owner/operator and the supplier about delivery prohibition implementation.

In note to Section 280.26, added reference to new section location for standardization.

### **61-92.280.30 Spill and overflow control**

Section revised to remove outdated industry standards and include current codes of practice to match federal regulation.

### **61-92.280.31 Operation and maintenance of corrosion protection**

Section revised to adopt federal wording requiring tank owners to permanently close tanks if corrosion protection is not maintained in accordance with this section or if the UST system undergoes a change-in-service.

In note to paragraph (b), revised to remove outdated industry standards and include current codes of practice to match federal regulation.

### **61-92.280.32 Compatibility**

Section revised to adopt federal wording requiring tank owners to notify of changes in service to alternative fuels (greater than 10% ethanol or greater than 20% biodiesel).

In note to Section 280.32, revised to remove outdated industry standards, update name of current code of practice and include current codes of practice to match federal regulation.

### **61-92.280.33 Repairs allowed**

In note to paragraph (a) revised to standardize the codification and, where needed, revised wording and include current codes of practice to match federal regulation requirements with minor state change for reporting on Department approved forms.

In paragraph (c), changed "fiberglass" to "non-corrodible" to match federal wording and inserted state clarification wording for additional reference.

In paragraph (d), revised per federal requirements by adding testing requirements following repairs.

In note to paragraph (d) revised to standardize the codification and, where needed, revised wording and include current codes of practice to match federal regulation requirements.

In paragraph (e), minor state change for reporting on Department approved forms.

In paragraph (f), revised paragraph by adding federal wording to meet federal and state specific to require testing on Department approved forms.

In paragraph (g), added federal wording to match federal regulation.

### **61-92.280.34 Reporting and recordkeeping**

Section revised to include state wording requiring owners/operators to provide access to all UST equipment at inspection, document testing results done in conjunction with proper repairs allowed, and in paragraphs where needed, renumbered to standardize the codification.

Where needed throughout section, federal wording inserted to match federal regulation for notification purposes.

In paragraph (b)(4), inserted state wording "and testing results" to document that the testing was completed properly.

### **61-92.280.35 Periodic testing of spill prevention equipment and containment sumps used for interstitial monitoring of piping and periodic inspection of overflow prevention equipment**

Per Board approval on December 8, 2016, the following text was revised to further clarify the amendments made to the referenced section. The section was amended to delete and move all references of Operator Training to Subpart J to match codification of federal regulation. The entire section of 280.35 of the code of federal regulation was inserted, requiring periodic testing of spill prevention; containment sumps used for interstitial monitoring; as well as overflow prevention equipment. State language regarding requirements for documentation of testing on a "Department form, a Department approved form, or in a format as approved by the Department" was added.

**61-92.280.36 Periodic operation and maintenance walkthrough inspections**

Per Board approval on December 8, 2016, the following text was revised to further clarify the amendments made to the referenced section. The Section was revised to adopt federal wording requiring owners to complete walkthrough inspections.

State language regarding requirements for documentation of testing on a "Department form, a Department approved form, or in a format as approved by the Department" was added.

**61-92.280.40 General requirements for all UST systems**

In paragraph (a), per federal requirements, removed existing wording to include all UST systems.

In paragraph (a)(3), revised to include current codes of practice and match federal regulation and added state revisions for reporting on forms approved by the Department.

In paragraph (a)(4), moved existing wording from (a)(3) and revised to match federal regulation.

In paragraph (b), revised wording to match federal regulation references.

In paragraph (c), all existing wording and table removed to match federal regulation.

Moved and revised existing wording from paragraph (d) to (c) and revised to match the federal regulation.

**61-92.280.41 Requirements for petroleum UST systems**

Where needed, paragraphs were renumbered to standardize the codification and revised to match federal regulation.

Adopted federal requirements for interstitial monitoring.

Removed state wording allowing monthly inventory control as a release detection method.

An existing word in Section 280.41(a)(1), "tanks", was inadvertently shown to be new text in the proposed revisions. Per Board approval on December 8, 2016, a correction has been made to show this word as existing text in the regulation, by removing the underscore.

**61-92.280.42 Requirements for hazardous substance UST systems**

Where needed, paragraphs were renumbered to standardize the codification and revised to match federal regulation.

Adopted federal language to clarify the existing requirement for interstitial monitoring on hazardous substance systems.

Revised wording for "release" to "leak" to match federal regulations.

**61-92.280.43 Methods of release detection for tanks**

Throughout section, where needed, the word "release" was replaced with "leak" to match federal wording and follow changes in definition to match federal regulation.

Throughout the section, changes for punctuation, grammar, and revisions made to remove state wording and insert federal wording to match federal regulation requirements.

In paragraph (a) revised state wording for clarity that inventory control is no longer a valid release detection method since being phased out in 2008.

In note to paragraph (a), revised to reflect name change when code of practice updated to match federal regulation.

In paragraph (b), outdated state wording and table removed to reflect phase out of larger tanks no longer allowed to do manual tank gauging as stand-alone monthly monitoring for tanks larger than 550 gallons.

In paragraph (d), revised to remove state wording and added federal wording to explain standard and continuous modes of leak detection utilizing tank gauges to match federal regulation.

In paragraphs (e)(6) and (f)(7) revised regulation to clarify requirement for all owners using groundwater and vapor monitoring as release detection to conduct a onetime site assessment at the time of permitting or within one year of the regulation effective date.

Added federal wording to clarify statistical inventory reconciliation method.

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### **61-92.280.44 Methods of release detection for piping**

In paragraph (a), inserted reference from previous section where federal regulation imposed new testing requirements for leak detection equipment.

In paragraph (c), inserted reference from previous section where federal regulation refers to tank monthly monitoring may be used for monthly monitoring (0.2 gallon per hour) on piping if the method is capable of piping monitoring.

Added federal wording to clarify statistical inventory reconciliation method.

### **61-92.280.45 Release detection recordkeeping**

Per Board approval on December 8, 2016, the following text was revised to clarify the amendments made to the referenced section. Throughout the section, outdated state wording was removed and federal wording inserted to match the federal regulation.

In paragraph (a), federal wording was inserted requiring site assessment reports to be retained as long as groundwater monitoring or vapor monitoring methods are used for monthly leak detection.

In paragraph (b), federal wording was inserted requiring results of sampling, testing, or monitoring to be maintained for a year or another reasonable time determined by the Department. The federal language adopted also addresses maintaining results for testing conducted pursuant to Sections 280.40(a)(3) and 280.43(c).

### **61-92.280.50 Reporting of suspected releases**

The reporting requirement of 72 hours for owners and operators to report suspected releases was revised to 24 hours to match the federal regulations.

Throughout the section, outdated state wording concerning inventory control was removed.

Federal wording concerning reporting of suspected releases was added to clarify existing state regulations.

### **61-92.280.51 Investigations due to off-site impacts**

No changes.

### **61-92.280.52 Release investigation and confirmation steps**

Throughout the section, changes for punctuation, grammar, and revisions made to remove state wording and insert federal wording to match federal regulation requirements.

In paragraph (b), inserted state wording requiring test results be submitted in a format as directed by the Department.

### **61-92.280.53 Reporting and cleanup of spills and overfills**

The reporting requirement of 72 hours for owners and operators to report suspected releases was revised to 24 hours to match the federal regulations.

Note to paragraph (a) was added to meet the federal regulation and existing note to section was deleted to match federal regulation.

### **61-92.280.60 General**

No changes.

### **61-92.280.61 Initial response**

Section was revised from a requirement of 72 hours for owners and operators to respond to a suspected release to 24 hours to match the federal regulations.

### **61-92.280.62 Initial abatement measures and site check**

Throughout the section, changes to grammar were made to remove state wording and insert wording to match federal regulation requirements.

### **61-92.280.63 Initial site characterization**

Per Board approval on December 8, 2016, the following text was revised to correct the description of the amendments made to the referenced section. No revisions were made to the regulation language.

**61-92.280.64 Free product removal**

Per Board approval on December 8, 2016, the following text was revised to correct the description of the amendments made to the referenced section. No revisions were made to the regulation language.

**61-92.280.65 Investigations for soil and groundwater cleanup**

Throughout the section, changes to grammar were made to remove state wording and insert wording to match federal regulation requirements.

**61-92.280.66 Corrective action plan**

Throughout the section, changes to grammar were made to remove state wording and insert wording to match federal regulation requirements.

**61-92.280.67 Public participation**

No changes.

**61-92.280.70 Temporary closure**

In paragraph (a), added federal wording to include airport hydrant systems and field-constructed tanks

Federal wording is added to remove release detection operation and maintenance testing and inspections when UST systems are empty.

Federal wording is added to remove spill and overfill operation and maintenance testing and inspections when UST systems are empty.

**61-92.280.71 Permanent closure and changes-in-service**

Removed state wording and inserted federal wording to match federal regulation.

Added state wording to require owners and operators to notify the Department in writing of their intent to permanently close, make a change-in-service, replace piping or dispenser. This was added to ensure that the Department can provide adequate compliance assistance.

Per Board approval on December 8, 2016, the following text was revised to correct a misspelled word. – “switching” was misspelled “swiching” and was corrected.

In paragraph (c), state wording added to clarify that a change in service also includes switching from non-regulated substance to regulated substance.

In note to section, updated current code of practice titles, removed outdated codes of practice, and inserted new ones to match the federal regulation.

**61-92.280.72 Assessing the site at closure and change-in-service**

Throughout the section, changes to grammar and revisions made to remove state wording and insert federal wording to match federal regulation requirements.

**61-92.280.73 Applicability to previously closed UST systems**

Throughout the section, changes to grammar to match federal regulation requirements.

**61-92.280.74 Closure records**

Throughout the section, changes to grammar, and revisions made to remove state wording and insert federal wording to match federal regulation requirements.

State wording revised “mailing” to “submitting” to allow for other forms of document transfer to the Department.

**61-92.280.90 Applicability**

Throughout the section, changes for punctuation, grammar, and revisions made to remove state wording and insert federal wording to match federal regulation requirements.

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### **61-92.280.91 Compliance dates**

Throughout the section, changes for punctuation, grammar, and revisions made to remove state wording and insert federal wording to match federal regulation requirements.

### **61-92.280.92 Definition of terms**

Throughout the section, changes for punctuation, grammar, and revisions made to remove state wording and insert federal wording to match federal regulation requirements.

Paragraph (c) was revised to expand the definition of Chief Financial Operator with excerpt derived directly from EPA guidance, “Financial Responsibility For Underground Storage Tanks: A Reference Manual”.

Paragraph (t) added to match federal regulation for clarity on the word, “termination” as it pertains to financial responsibility and substitute coverage.

### **61-92.280.93 Amount and scope of required financial responsibility**

Throughout the section, changes for punctuation, grammar, and revisions made to remove state wording and insert federal wording to match federal regulation requirements.

### **61-92.280.94 Allowable mechanisms and combinations of mechanisms**

Throughout the section, changes for punctuation, renumbering, grammar, and revisions made to remove state wording and insert federal wording to match federal regulation requirements.

### **61-92.280.95 Financial test of self-insurance**

Throughout the section, changes for punctuation, grammar, and revisions made to remove state wording and insert federal wording to match federal regulation requirements.

### **61-92.280.96 Guarantee**

Throughout the section, changes for punctuation, grammar, and revisions made to remove state wording and insert federal wording to match federal regulation requirements.

### **61-92.280.97 Insurance and risk retention group coverage**

Throughout the section, changes for punctuation, grammar and revisions made to remove state wording and insert federal wording to match federal regulation requirements.

### **61-92.280.98 Surety bond**

Throughout the section, changes for punctuation, grammar, and revisions made to remove state wording and insert federal wording to match federal regulation requirements.

### **61-92.280.99 Letter of credit**

Throughout the section, changes for punctuation, grammar, and revisions made to remove state wording and insert federal wording to match federal regulation requirements.

State wording added to paragraph (b) to require banks to notify the Department (in addition to owners and operators) prior to cancelation of a letter of credit. This addition will assist the Department to ensure that owners and operators maintain financial responsibility.

### **61-92.280.100 Use of state-required mechanism (Reserved)**

No changes.

### **61-92.280.101 State fund or other state assurance**

Throughout the section, changes to grammar and revisions made to remove state wording to match federal regulation requirements.

### **61-92.280.102 Trust fund**

Throughout the section, changes for grammar were made.



**61-92.280.103 Standby trust fund**

Throughout the section, changes for punctuation, grammar, and revisions made to remove state wording and insert federal regulation requirements.

Insert state wording to clarify the statement is only applicable to standby trust agreements.

**61-92.280.104 Local government bond rating test**

Throughout the section, changes for punctuation, grammar, and revisions made to remove state wording and insert federal wording to match federal regulation requirements.

**61-92.280.105 Local government financial test**

Throughout the section, changes for punctuation, grammar, and revisions made to remove state wording and insert federal wording to match federal regulation requirements.

**61-92.280.106 Local government guarantee**

Throughout the section, changes for punctuation, grammar, and revisions made to remove state wording and insert federal wording to match federal regulation requirements.

**61-92.280.107 Local government fund**

Throughout the section, changes for punctuation, grammar, and revisions made to remove state wording and insert federal wording to match federal regulation requirements.

**61-92.280.108 Substitution of financial assurance mechanisms by owner or operator**

Throughout the section, changes for grammar made.

**61-92.280.109 Cancellation or nonrenewal by a provider of financial assurance**

Throughout the section, changes for punctuation, grammar, and revisions made to remove state wording and insert federal wording to match federal regulation requirements.

State wording added to require a provider of financial assurance to notify the Department prior to cancellation or failure to renew an assurance mechanism. This addition will help the Department to ensure that owners and operators maintain financial responsibility.

**61-92.280.110 Reporting by owner or operator**

Throughout the section, changes for punctuation, grammar, and revisions made to remove state wording and insert federal wording to match federal regulation requirements.

**61-92.280.111 Recordkeeping**

Throughout the section, changes for punctuation, grammar, and revisions made to remove state wording and insert federal wording to match federal regulation requirements.

In paragraph (b)(8), state wording removed to no longer require owners and operators to maintain proof of financial responsibility on site. Owners and operators will be allowed to maintain proof of financial responsibility on file whether it be on site or at a remote location. Change was made to revert back to the federal requirement to alleviate the paperwork burden on the owner/operator.

Added state revisions for reporting on forms approved by the Department.

Revised state wording on certificate of financial responsibility form for clarity.

**61-92.280.112 Drawing on financial assurance mechanisms**

Throughout the section, changes for punctuation, grammar, and revisions made to remove state wording and insert federal wording to match federal regulation requirements.

**61-92.280.113 Release from the requirements**

Throughout the section, changes for punctuation, grammar, and revisions made to remove state wording and insert federal wording to match federal regulation requirements.

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Section was revised to remove requirement for owners and operators to maintain financial responsibility after a tank has undergone a change-in-service.

### **61-92.280.114 Bankruptcy or other incapacity of owner or operator or provider of financial assurance**

Throughout the section, changes for grammar made.

### **61-92.280.115 Replenishment of guarantees, letters of credit, or surety bonds**

Throughout the section, changes for grammar, and revisions made to remove state wording to match federal regulation requirements.

### **61-92.280.116 Suspension of enforcement (Reserved)**

No changes.

### **61-92.280.200 Definitions**

Throughout the section, changes for punctuation, grammar, and revisions made to remove state wording and insert federal wording to match federal regulation requirements including reference to new subparts.

### **61-92.280.210 Participation in management**

Throughout the section, changes for grammar, and revisions made to insert federal wording to match federal regulation requirements.

### **61-92.280.220 Ownership of an underground storage tank or underground storage tank system or facility or property on which an underground storage tank or underground storage tank system is located**

Throughout the section, changes for grammar made.

### **61-92.280.230 Operating an underground storage tank or underground storage tank system**

Throughout the section, changes to grammar and revisions made to remove state wording and insert federal wording to match federal regulation requirements.

## **SUBPART J Operator Training**

Subpart renamed to match federal regulation location for operator training requirements.

### **61-92.280.240 General requirement for all UST systems**

Throughout the section, changes for punctuation, grammar, renumbering, and revisions made to insert state wording for development of supplemental training for new regulation requirements to reduce the burden on operators for ease of compliance, and insert federal wording to meet new federal regulation requirements.

### **61-92.280.241 Designation of Class A, B, and C operators**

Throughout the section, insert federal wording to meet new federal regulation requirements.

### **61-92.280.242 Requirements for operator training**

Throughout the section, revisions made to insert federal wording to meet new federal regulation requirements. State wording inserted “as approved by the Department” in reference to Class A, B, & C operator training requirements.

In paragraph (a), inserted state wording to include “as approved by the Department” in reference to Class B operator training requirements.

In paragraph (b), inserted state wording to include “as approved by the Department” in reference to Class B operator training requirements.

In paragraph (b)(2), inserted “state” and “and” for clarification of what B operator is required to know and what skills are needed to comply.

### **61-92.280.243 Timing of operator training**

Throughout the section, revisions made to insert federal wording to meet new federal regulation requirements.

**61-92.280.244 Retraining**

Throughout the section, changes made to insert state wording to provide Department ability to approve external operator training programs to be used in SC and adding federal wording to meet new federal regulation requirements.

Addition of state wording to clarify the timeliness of supplemental training requirements.

**61-92.280.245 Documentation**

Throughout the section, revisions made to insert federal wording to meet new federal regulation requirements.

**SUBPART K UST Systems with Field-Constructed Tanks and Airport Hydrant Fuel Distribution Systems**

Subpart created to match federal regulation location for new requirements on previously deferred UST systems.

**61-92.280.250 Definitions**

Insert federal wording to meet new federal regulation requirements.

**61-92.280.251 General requirements**

Insert federal wording to meet new federal regulation requirements.

Addition of state wording to reference EPA form or form approved by the Department.

**61-92.280.252 Additions, exceptions, and alternatives for UST systems with field-constructed tanks and airport hydrant systems**

Insert federal wording to meet new federal regulation requirements.

In paragraph (d)(2)(iv), inserted state wording, “perform”, to provide clarification in reference to the method mentioned as a requirement. “Perform” was added to be consistent with previous paragraphs from the federal regulation.

**SUBPART L Variances - Violations and Penalties - Appeals**

Subpart created to relocate previously existing Subpart J

**61-92.280.300 Variances**

No changes.

**61-92.280.301 Violations and penalties**

No changes.

**61-92.280.302 Appeals**

No changes.

**Instructions:**

Due to numerous revisions throughout, replace R.61-92 Part 280 in entirety with this amendment.

**Text:**

**61-92. Underground Storage Tank Control Regulations.**

Statutory Authority: 1976 Code Section 44-2-10 et seq.

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## **PART 280**

### **TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS (UST)**

#### ***SUBPART A***

#### ***Program Scope and Installation Requirements for Partially Excluded UST Systems***

#### **SECTION 280.10. APPLICABILITY.**

(a) The requirements of this part apply to all owners and operators of an UST system as defined in Section 280.12 (pp) and (rr) except as otherwise provided in paragraphs (b) and (c) of this section.

(1) Previously deferred UST systems. Airport hydrant fuel distribution systems, UST systems with field-constructed tanks, and UST systems that store fuel solely for use by emergency power generators must meet the requirements of this part as follows:

(i) Airport hydrant fuel distribution systems and UST systems with field-constructed tanks must meet the requirements in Subpart K of this part.

(ii) UST systems that store fuel solely for use by emergency power generators installed on or before May 23, 2008 must meet the Subpart D requirements on or before May 26, 2020.

(iii) UST systems that store fuel solely for use by emergency power generators installed after May 23, 2008 must meet all applicable requirements of this part at installation.

(2) Any UST system listed in paragraph (c) of this section must meet the requirements of Section 280.11.

(b) Exclusions. The following UST systems are excluded from the requirements of this part:

(1) Any UST system holding hazardous wastes listed or identified under Subtitle C of the Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances.

(2) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 402 or 307(b) of the Clean Water Act.

(3) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.

(4) Any UST system whose capacity is 110 gallons or less.

(5) Any UST system that contains a de minimis concentration of regulated substances.

(6) Any emergency spill or overflow containment UST system that is expeditiously emptied after use.

(c) Partial Exclusions. Subparts B, C, D, E, G, J, and K of this part do not apply to:

(1) Wastewater treatment tank systems not covered under paragraph (b)(2) of this section;

(2) Aboveground storage tanks associated with:

(i) Airport hydrant fuel distribution systems regulated under Subpart K of this part; and

(ii) UST systems with field-constructed tanks regulated under Subpart K of this part;

(3) Any UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 U.S.C. 2011 and following); and

(4) Any UST system that is part of an emergency generator system at nuclear power generation facilities licensed by the Nuclear Regulatory Commission and subject to Nuclear Regulatory Commission requirements regarding design and quality criteria, including but not limited to 10 CFR Part 50.

(d) No person may place regulated substances and no owner or operator may cause regulated substances to be placed into an UST system for which the owner or operator does not hold a currently valid registration or permit.

**SECTION 280.11. INSTALLATION REQUIREMENTS FOR PARTIALLY EXCLUDED UST SYSTEMS.**

(a) Owners and operators must install an UST system listed in Section 280.10(c)(1),(3), or (4) storing regulated substances (whether of single or doublewall construction) that meets the following requirements:

(1) Will prevent releases due to corrosion or structural failure for the operational life of the UST system;

(2) Is cathodically protected against corrosion, constructed of non-corrodible material, steel clad with a non-corrodible material, or designed in a manner to prevent the release or threatened release of any stored substance; and

(3) Is constructed or lined with material that is compatible with the stored substance.

(b) Notwithstanding paragraph (a) of this section, an UST system without corrosion protection may be installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release

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due to corrosion during its operating life. Owners and operators must maintain records that demonstrate compliance with the requirements of this paragraph for the remaining life of the tank.

[Note to paragraphs (a) and (b). The following codes of practice may be used as guidance for complying with this section:

(A) NACE International Standard Practice SP 0285, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection";

(B) NACE International Standard Practice SP 0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems";

(C) American Petroleum Institute Recommended Practice 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems"; or

(D) Steel Tank Institute Recommended Practice R892, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems".]

### SECTION 280.12. DEFINITIONS.

(a) "Aboveground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the aboveground portion of an UST system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from an UST system.

(b) "Ancillary equipment" means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from an UST.

(c) "Belowground release" means any release to the subsurface of the land and to groundwater. This includes, but is not limited to, releases from the belowground portions of an underground storage tank system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank.

(d) "Beneath the surface of the ground" means beneath the ground surface or otherwise covered with earthen materials.

(e) "Cathodic protection" is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

(f) "Cathodic protection tester" means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons must have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

(g) "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

(h) "Class A operator" means the individual who has primary responsibility to operate and maintain the UST system in accordance with applicable requirements established by the Department. The Class A operator



typically manages resources and personnel, such as establishing work assignments, to achieve and maintain compliance with regulatory requirements.

(i) "Class B operator" means the individual who has day-to-day responsibility for implementing applicable regulatory requirements established by the Department. The Class B operator typically implements in-field aspects of operation, maintenance, and associated recordkeeping for the UST system.

(j) "Class C operator" means the individual responsible for initially addressing emergencies presented by a spill or release from an UST system. The Class C operator typically controls or monitors the dispensing or sale of regulated substances.

(k) "Coastal zone" means all coastal waters and submerged lands seaward to the State's jurisdictional limits and all lands and waters in the counties of the State which contain any one or more of the critical areas. These counties are Beaufort, Berkeley, Charleston, Colleton, Dorchester, Horry, Jasper, and Georgetown.

(l) "Community Water System (CWS)" means a public water system that serves at least 15 service connections used by year-round residents of the area served by the system; or regularly serves at least 25 year-round residents. The following are included as part of the community water system:

- (1) The wellhead for groundwater and/or intake point(s) for surface water;
- (2) Collection, treatment, storage, and distribution facilities that are part of the community water system; and
- (3) The piping distribution system that delivers the water to the community.

(m) "Compatible" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the UST.

(n) "Connected piping" means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two UST systems should be allocated equally between them.

(o) "Consumptive use" with respect to heating oil means consumed on the premises.

(p) "Containment Sump" means a liquid-tight container that protects the environment by containing leaks and spills of regulated substances from piping, dispensers, pumps and related components in the containment area. Containment sumps may be single walled or secondarily contained and located at the top of tank (tank top or submersible turbine pump sump), underneath the dispenser (under-dispenser containment sump), or at other points in the piping run (transition or intermediate sump).

(q) "Corrosion expert" means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be accredited or certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

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(r) "Critical area" means any of the following: (1) coastal waters, (2) tidelands, (3) beaches; or (4) beach/dune system, which is the area from the mean high-water mark to the setback line as determined by Section 48-39-280.

(s) "Department" means the South Carolina Department of Health and Environmental Control.

(t) "Dielectric material" means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate UST systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST system (e.g., tank from piping).

(u) "Dispenser" means equipment located aboveground that dispenses regulated substances from the UST system.

(v) "Dispenser system" means the dispenser and the equipment necessary to connect the dispenser to the underground storage tank system.

(w) "Electrical equipment" means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

(x) "Excavation zone" means the volume containing the tank system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

(y) "Existing tank system" means a tank system used to contain an accumulation of regulated substances or for which installation has commenced on or before December 22, 1988. Installation is considered to have commenced if:

(1) The owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system; and if,

(2)(i) Either a continuous on-site physical construction or installation program has begun; or,

(ii) The owner or operator has entered into contractual obligations-which cannot be cancelled or modified without substantial loss-for physical construction at the site or installation of the tank system to be completed within a reasonable time.

(z) "Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes fish hatcheries, rangeland and nurseries with growing operations.

(aa) "Flow-through process tank" is a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

(bb) "Free product" refers to a regulated substance that is present as a nonaqueous phase liquid (e.g., liquid not dissolved in water.)

(cc) "Gathering lines" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

(dd) "Hazardous substance UST system" means an underground storage tank system that contains a hazardous substance defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and

Liability Act of 1980 (but not including any substance regulated as a hazardous waste under subtitle C) or any mixture of such substances and petroleum, and which is not a petroleum UST system.

(ee) "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

(ff) "Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

(gg) "Interstitial space" means the opening formed between the inner and outer wall of an UST system with double-walled construction or the opening formed between the inner wall of a containment sump and the UST system component that it contains.

(hh) "Liquid trap" means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. These liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

(ii) "Maintenance" means the normal operational upkeep to prevent an underground storage tank system from releasing product.

(jj) "Motor fuel" means a complex blend of hydrocarbons typically used in the operation of a motor engine, such as motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any blend containing one or more of these substances (for example: motor gasoline blended with alcohol).

(kk) "Navigable waters" means those waters which are now navigable, or have been navigable at any time, or are capable of being rendered navigable by the removal of accidental obstructions, by rafts of lumber or timber or by small pleasure or sport fishing boats. Navigability is defined in R.19-450.2.C, Permits for Construction in Navigable Waters. Navigability shall be determined by the Department.

(ll) "New tank system" means a tank system that will be used to contain an accumulation of regulated substances and for which installation has commenced after December 22, 1988. (See also "Existing Tank System").

(mm) "Noncommercial purposes" with respect to motor fuel means not for resale.

(nn) "On the premises where stored" with respect to heating oil means UST systems located on the same property where the stored heating oil is used.

(oo) "Operational life" refers to the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under Subpart G.

(pp) "Operator" means any person in control of, or having responsibility for the daily operation of the UST system.

(qq) "Overfill release" is a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

(rr) "Owner" means:

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(1) In the case of an UST system in use on November 8, 1984, or brought into use after that date, a person who owns an UST system used for storage, use, or dispensing of regulated substances;

(2) In the case of any UST system in use before November 8, 1984, but no longer in use on that date, a person who owned such an UST immediately before the discontinuation of its use; or

(3) A person who has assumed legal ownership of the UST through the provisions of a contract of sale or other legally binding transfer of ownership.

(ss) "Person" means an individual, partner, corporation organized or united for a business purpose, or a governmental agency.

(tt) "Petroleum UST system" means an underground storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

(uu) "Pipe" or "Piping" means a hollow cylinder or tubular conduit that is constructed of non-earthen materials.

(vv) "Pipeline facilities (including gathering lines)" are new and existing pipe rights-of-way and any associated equipment, facilities, or buildings.

(ww) "Potable Drinking Water Well" means any hole (dug, driven, drilled, or bored) that extends into the earth until it meets groundwater which:

(1) Supplies water for a non-community public water system, or

(2) Otherwise supplies water for household use (consisting of drinking, bathing, and cooking, or other similar uses).

(3) Such wells may provide water to entities such as a single-family residence, group of residences, businesses, schools, parks, campgrounds, and other permanent or seasonal communities.

(xx) "Regulated substance" means:

(1) A substance defined in Section 101(14) of CERCLA, but not including any substance regulated as a hazardous waste under subtitle C of RCRA; and

(2) Petroleum and petroleum products, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

(3) The term "regulated substance" includes but is not limited to petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

(yy) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from an UST into subsurface soils, groundwater, or surface water.

(zz) "Release detection" means determining whether a release of a regulated substance has occurred from the UST system into the environment or a leak has occurred into the interstitial space between the UST system and its secondary barrier or secondary containment around it.

(aaa) "Repair" means to restore to proper operating condition a tank, pipe, spill prevention equipment, overfill prevention equipment, corrosion protection equipment, release detection equipment or other UST system component that has caused a release of product from the UST system or has failed to function properly.

(bbb) "Replaced" means:

(1) For a tank—to remove a tank and install another tank.

(2) For piping—to remove more than 25 percent of piping and install other piping, excluding connectors, connected to a single tank. For tanks with multiple piping runs, this definition applies independently to each piping run.

(ccc) "Residential tank" is a tank located on property used primarily for dwelling purposes.

(ddd) "SARA" means the Superfund Amendments and Reauthorization Act of 1986.

(eee) "Secondary containment" or "secondarily contained" means an impervious layer of materials which is installed around a tank or system of tanks, so that any volume of regulated substances which may leak from a tank will be prevented from contacting the environment outside said impervious layer for the period of time necessary to detect and recover released regulated substances. Materials or devices used to provide a secondary containment may include concrete, impervious liners, double-wall tanks or other materials or devices, singularly or in combination, which is approved by the Department.

The term "Secondary containment" or "secondarily contained" also means a release prevention and release detection system for a tank or piping. This system has an inner and outer barrier with an interstitial space that is monitored for leaks. This term includes containment sumps when used for interstitial monitoring of piping.

(fff) "Septic tank" is a water-tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

(ggg) "Solid Waste Disposal Act" means the Solid Waste Disposal Act of 1965. The Resource Conservation and Recovery Act amended the requirements of the Solid Waste Disposal Act.

(hhh) "Storm water or wastewater collection system" means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

(iii) "Surface impoundment" is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is not an injection well.

(jjj) "Tank" is a stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials (e.g., concrete, steel, plastic) that provide structural support.

(kkk) "Training program" means any program that provides information to and evaluates the knowledge of a Class A, Class B, or Class C operator through testing, practical demonstration, or another approach acceptable to the Department regarding requirements for UST systems that meet the requirements of Subpart J of this part.

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(lll) "Under-dispenser containment" or "UDC" means containment underneath a dispenser system designed to prevent leaks from the dispenser and piping within or above the UDC from reaching soil or groundwater. Such containment must:

- (1) Be liquid-tight on its sides, bottom, and at any penetrations;
- (2) Be compatible with the substance conveyed by the piping; and
- (3) Allow for visual inspection and access to the components in the containment system and/or be monitored.

(mmm) "Underground area" means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

(nnn) "Underground release" means any belowground release.

(ooo) "Underground storage tank" or "UST" means any one or combination of tanks, including underground pipes connected to it, which is used to contain an accumulation of regulated substance, and the volume of which is ten percent or more beneath the surface of the ground. This term does not include any:

(1) Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(2) Tank used for storing heating oil for consumptive use on the premises where stored;

(3) Septic tank;

(4) Pipeline facility, including gathering line, regulated under the Federal Natural Gas Pipeline Safety Act of 1968 or the Federal Hazardous Liquid Pipeline Safety Act of 1979, or any pipeline facility regulated under state laws comparable to the provisions of these federal provisions of law;

(5) Surface impoundment, pit, pond, or lagoon;

(6) Storm water or wastewater collection system;

(7) Flow-through process tank;

(8) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

(9) Storage tank situated in an underground area, such as a basement, cellar, mineworking, drift, shaft, or tunnel, if the petroleum storage tank is situated upon or above the surface of the floor;

(10) Hydraulic lift reservoirs, such as for automobile hoists and elevators, containing hydraulic oil; or

(11) Any pipes connected to any tank which is described in subitems (1) through (10) of this definition.

(ppp) "Upgrade" means the addition or retrofit of some systems such as cathodic protection, lining, or spill and overflow controls to improve the ability of an underground storage tank system to prevent the release of product.

(qqq) "UST system" or "Tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

(rrr) "Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

***SUBPART B***

***UST Systems: Design, Construction, Installation, Notification and Permitting***

**SECTION 280.20. PERFORMANCE STANDARDS FOR NEW UST SYSTEMS.**

In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, all owners and operators of new UST systems must obtain permits in accordance with Section 280.23 and meet the following requirements. In addition, tanks and piping installed or replaced after May 23, 2008 must be secondarily contained and use interstitial monitoring in accordance with Section 280.43(g). Secondary containment must be able to contain regulated substances leaked from the primary containment until they are detected and removed and prevent the release of regulated substances to the environment at any time during the operational life of the UST system. For cases where the piping is considered to be replaced, the entire piping run must be secondarily contained.

(a) Tanks. Each tank must be properly designed and constructed, and any portion underground that routinely contains product must be protected from corrosion, in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

- (1) The tank is constructed of fiberglass-reinforced plastic; or

[Note to paragraph (a)(1). The following codes of practice may be used to comply with paragraph (a)(1) of this section:

(A) Underwriters Laboratories Standard 1316, "Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures"; or

(B) Underwriter's Laboratories of Canada S615, "Standard for Reinforced Plastic Underground Tanks for Flammable and Combustible Liquids".]

- (2) The tank is constructed of steel and cathodically protected in the following manner:

(i) The tank is coated with a suitable dielectric material;

(ii) Field-installed cathodic protection systems are designed by a corrosion expert;

(iii) Impressed current systems are designed to allow determination of current operating status as required in Section 280.31(c); and

(iv) Cathodic protection systems are operated and maintained in accordance with Section 280.31 or according to guidelines established by the Department; or

[Note to paragraph (a)(2). The following codes of practice may be used to comply with paragraph (a)(2) of this section:

(A) Steel Tank Institute "STI-P3<sup>®</sup> Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks";

(B) Underwriters Laboratories Standard 1746, "External Corrosion Protection Systems for Steel Underground Storage Tanks";

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(C) Underwriters Laboratories of Canada S603, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids," and S603.1, "Standard for External Corrosion Protection Systems for Steel Underground Tanks for Flammable and Combustible Liquids," and S631, "Standard for Isolating Bushings for Steel Underground Tanks Protected with External Corrosion Protection Systems";

(D) Steel Tank Institute Standard F841, "Standard for Dual Wall Underground Steel Storage Tanks"; or

(E) NACE International Standard Practice SP 0285, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection," and Underwriters Laboratories Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids".]

(3) The tank is constructed of steel and clad or jacketed with a non-corrodible material; or

[Note to paragraph (a)(3). The following codes of practice may be used to comply with paragraph (a)(3) of this section:

(A) Underwriters Laboratories Standard 1746, "External Corrosion Protection Systems for Steel Underground Storage Tanks";

(B) Steel Tank Institute ACT-100<sup>®</sup> Specification F894, "Specification for External Corrosion Protection of FRP Composite Steel Underground Storage Tanks";

(C) Steel Tank Institute ACT-100-U<sup>®</sup> Specification F961, "Specification for External Corrosion Protection of Composite Steel Underground Storage Tanks"; or

(D) Steel Tank Institute Specification F922, "Steel Tank Institute Specification for Permatank<sup>®</sup>".]

(4) The tank is constructed of metal without additional corrosion protection measures provided that:

(i) The tank is installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life; and

(ii) Owners and operators maintain records that demonstrate compliance with the requirements of paragraph (a)(4)(i) of this section for the remaining life of the tank; or

(5) The tank construction and corrosion protection are determined by the Department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than paragraphs (a)(1) through (4) of this section.

(b) Piping. The piping that routinely contains regulated substances and is in contact with the ground must be properly designed, constructed, and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

(1) The piping is constructed of a non-corrodible material; or

[Note to paragraph (b)(1). The following codes of practice may be used to comply with paragraph (b)(1) of this section:

(A) Underwriters Laboratories Standard 971, "Nonmetallic Underground Piping for Flammable Liquids"; or



(B) Underwriters Laboratories of Canada Standard S660, "Standard for Nonmetallic Underground Piping for Flammable and Combustible Liquids".]

(2) The piping is constructed of steel and cathodically protected in the following manner:

(i) The piping is coated with a suitable dielectric material;

(ii) Field-installed cathodic protection systems are designed by a corrosion expert;

(iii) Impressed current systems are designed to allow determination of current operating status as required in Section 280.31(c); and

(iv) Cathodic protection systems are operated and maintained in accordance with Section 280.31 or guidelines established by the Department; or

[Note to paragraph (b)(2). The following codes of practice may be used to comply with paragraph (b)(2) of this section:

(A) American Petroleum Institute Recommended Practice 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems";

(B) Underwriters Laboratories Subject 971A, "Outline of Investigation for Metallic Underground Fuel Pipe";

(C) Steel Tank Institute Recommended Practice R892, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems";

(D) NACE International Standard Practice SP 0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems"; or

(E) NACE International Standard Practice SP 0285, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection".]

(3) The piping is constructed of metal without additional corrosion protection measures provided that:

(i) The piping is installed at a site that is determined by a corrosion expert to not be corrosive enough to cause it to have a release due to corrosion during its operating life; and

(ii) Owners and operators maintain records that demonstrate compliance with the requirements of paragraph (b)(3)(i) of this section for the remaining life of the piping; or

(4) The piping construction and corrosion protection are determined by the Department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in paragraphs (b)(1) through (3) of this section.

(c) Spill and overflow prevention equipment.

(1) Except as provided in paragraphs (c)(2) and (3) of this section, to prevent spilling and overflowing associated with product transfer to the UST system, owners and operators must use the following spill and overflow prevention equipment:

(i) Spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin); and

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(ii) Overfill prevention equipment that will:

(A) Automatically shut off flow into the tank when the tank is no more than 95 percent full; or

(B) Alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high-level alarm; or

(C) Restrict flow 30 minutes prior to overfilling, alert the transfer operator with a high level alarm one minute before overfilling, or automatically shut off flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overfilling.

(2) Owners and operators are not required to use the spill and overfill prevention equipment specified in paragraph (c)(1) of this section if:

(i) Alternative equipment is used that is determined by the Department to be no less protective of human health and the environment than the equipment specified in paragraph (c)(1)(i) or (ii) of this section; or

(ii) The UST system is filled by transfers of no more than 25 gallons at one time.

(3) Flow restrictors used in vent lines may not be used to comply with paragraph (c)(1)(ii) of this section when overfill prevention is installed or replaced after May 26, 2017.

(4) Spill and overfill prevention equipment must be periodically tested or inspected in accordance with Section 280.35.

(d) Product transfer equipment. To decrease vapor emissions associated with product transfer to the UST system, all UST systems must comply with the product transfer equipment requirements as follows:

(1) All tank systems installed after December 22, 1996, must be equipped with a drop tube that enters the top of the tank at the fill port and extends to within 6 inches of the bottom of the tank; or

(2) All tank systems installed before or on December 22, 1996, must be equipped with a drop tube that enters the top of the tank at the fill port and extends to within one foot of the tank bottom by December 22, 2001; or

(3) Tank systems used for the storage of used oils are not required to be equipped with a drop tube.

(e) Installation. The UST system must be properly installed in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and in accordance with the manufacturer's instructions.

[Note to paragraph (e). Tank and piping system installation practices and procedures described in the following codes of practice may be used to comply with the requirements of paragraph (e) of this section:

(A) American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage System";

(B) Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems";

(C) National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code" and Standard 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages"; or

(D) Petroleum Equipment Institute Publication RP1000, “Recommended Practices for the Installation of Marina Fueling Systems”.]

(f) Certification of installation. All owners and operators must ensure that one or more of the following methods of certification, testing, or inspection is used to demonstrate compliance with paragraph (e) of this section by providing a certification of compliance to the Department on the Permit to Operate application form in accordance with Section 280.23.

- (1) The installer has been certified by the tank and piping manufacturers; or
- (2) The installer has been certified or licensed by the Department; or
- (3) The installation has been inspected and certified by a registered professional engineer with education and experience in UST system installation; or
- (4) The installation has been inspected and approved by the Department; or
- (5) All work listed in the manufacturer's installation checklists has been completed; or
- (6) The owner and operator have complied with another method for ensuring compliance with paragraph (e) of this section that is determined by the Department to be no less protective of human health and the environment.

(g) Dispenser systems. Each UST system must be equipped with under-dispenser containment for any new dispenser system installed after May 23, 2008.

(1) A dispenser system is considered new when both the dispenser and the equipment needed to connect the dispenser to the underground storage tank system are installed at an UST facility. The equipment necessary to connect the dispenser to the underground storage tank system includes check valves, shear valves, unburred risers or flexible connectors, or other transitional components that are underneath the dispenser and connect the dispenser to the underground piping.

(2) Under-dispenser containment must be liquid-tight on its sides, bottom, and at any penetrations. Under-dispenser containment must allow for visual inspection and access to the components in the containment system or be periodically monitored for leaks from the dispenser system.

(h) Effective May 23, 2008, each new or replacement underground storage tank or piping must be secondarily contained and monitored for leaks. In the case of a replacement of a previously installed underground storage tank or previously installed piping connected to the underground storage tank, the secondary containment and monitoring shall apply only to the specific underground storage tank or piping being replaced, not to other underground storage tanks and connected pipes comprising such system.

(1) In addition, each new or replacement motor fuel dispenser system must have under-dispenser containment. New or replaced piping associated with this installation must be secondarily contained.

(2) These requirements do not apply to repairs meant to restore an underground storage tank, pipe, or dispenser to operating condition except that when piping repairs over a consecutive 12-month period constitute more than 25 percent of the piping by length, the entire piping run must be replaced with secondarily contained piping.

(3) In the case of dispenser replacement on suction piping systems that meet the requirements of Section 280.41(b)(1)(ii)(A) through (E), this requirement does not apply if the replacement does not involve any connectors, risers, or piping below the union or check valve.

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(4) Secondary containment systems shall be designed, constructed, installed and maintained to:

(i) Contain regulated substances released from an UST system until they are detected and removed; and

(ii) Prevent a release of regulated substances to the environment at any time during the operational life of the UST system; and

(iii) Be monitored monthly for a release in accordance with Section 280.43(g), except for suction piping that meets the requirements of Section 280.41(b)(1)(ii)(A) through (E). The requirements of this section also apply to new or replacement underground storage tank systems that serve emergency generators.

(i) Release detection. Release detection, conducted in accordance with Subpart D, must begin when regulated substances are introduced into the tank system. The owner/operator must notify the Department in writing prior to introducing a regulated substance into the tank system.

### SECTION 280.21. UPGRADING OF EXISTING UST SYSTEMS.

Owners and operators must permanently close (in accordance with Subpart G of this part) any UST system that does not meet the new UST system performance standards in Section 280.20 or has not been upgraded in accordance with paragraphs (b) through (d) of this section. This does not apply to previously deferred UST systems described in Subpart K of this part and where an upgrade is determined to be appropriate by the Department.

(a) Alternatives allowed. All existing UST systems must comply with one of the following requirements:

(1) New UST system performance standards under Section 280.20;

(2) The upgrading requirements in paragraphs (b) through (d) of this section; or

(3) Closure requirements under Subpart G of this part, including applicable requirements for corrective action under Subpart F of this part.

(b) Tank upgrading requirements. Steel tanks must be upgraded to meet one of the following requirements in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory:

(1) Interior lining. Tanks upgraded by internal lining must meet the following:

(i) The lining was installed in accordance with the requirements of Section 280.33; and

(ii) Within 10 years after lining, and every 5 years thereafter, the lined tank is internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications. If the internal lining is no longer performing in accordance with original design specifications and cannot be repaired in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory, then the lined tank must be permanently closed in accordance with Subpart G of this part.

(2) Cathodic protection. Tanks upgraded by cathodic protection must meet the requirements of Section 280.20(a)(2)(ii), (iii), and (iv) and the integrity of the tank must have been ensured using one of the following methods:

(i) The tank was internally inspected and assessed to ensure that the tank was structurally sound and free of corrosion holes prior to installing the cathodic protection system; or

(ii) The tank had been installed for less than 10 years and is monitored monthly for releases in accordance with Section 280.43(d) through (i); or

(iii) The tank had been installed for less than 10 years and was assessed for corrosion holes by conducting two (2) tightness tests that meet the requirements of Section 280.43(c). The first tightness test must have been conducted prior to installing the cathodic protection system. The second tightness test must have been conducted between three (3) and six (6) months following the first operation of the cathodic protection system; or

(iv) The tank was assessed for corrosion holes by a method that is determined by the Department to prevent releases in a manner that is no less protective of human health and the environment than paragraphs (b)(2)(i) through (iii) of this section.

(3) Internal lining combined with cathodic protection. Tanks upgraded by both internal lining and cathodic protection must meet the following:

(i) The lining was installed in accordance with the requirements of Section 280.33; and

(ii) The cathodic protection system meets the requirements of Section 280.20(a)(2)(ii), (iii), and (iv).

[Note to paragraph (b). The following historical codes of practice were listed as options for complying with paragraph (b) of this section:

(A) American Petroleum Institute Publication 1631, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks";

(B) National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection";

(C) National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems"; and

(D) American Petroleum Institute Recommended Practice 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems".]

[Note to paragraph (b)(1)(ii). The following codes of practice may be used to comply with the periodic lining inspection requirement of this section:

(A) American Petroleum Institute Recommended Practice 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks";

(B) National Leak Prevention Association Standard 631, Chapter B "Future Internal Inspection Requirements for Lined Tanks"; or

(C) Ken Wilcox Associates Recommended Practice, "Recommended Practice for Inspecting Buried Lined Steel Tanks Using a Video Camera".]

(c) Piping upgrading requirements. Metal piping that routinely contains regulated substances and is in contact with the ground must be cathodically protected in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and must meet the requirements of Section 280.20(b)(2)(ii), (iii), and (iv).

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[Note to paragraph (c). The codes of practice listed in the note following Section 280.20(b)(2) may be used to comply with this requirement.]

(d) Spill and overfill prevention equipment. To prevent spilling and overfilling associated with product transfer to the UST system, all existing UST systems must comply with UST system spill and overfill prevention equipment requirements specified in Section 280.20(c).

(e) Product transfer equipment. To decrease vapor emissions associated with product transfer to the UST system, all existing UST systems must comply with product transfer equipment requirements as follows:

(1) All UST systems upgraded after December 22, 1996, must comply with the UST system product transfer equipment requirements specified in Section 280.20(d)(1); or

(2) All UST systems upgraded before or on December 22, 1996, must be equipped with a drop tube that enters the top of the tank at the fill port and extends to within one foot of the tank bottom by December 22, 2001; or

(3) UST systems used for the storage of used oils are not required to be equipped with a drop tube.

(f) At least 30 days before beginning upgrading of existing UST systems to satisfy the requirements of Section 280.21, or within another reasonable time period determined by the Department, owners and operators must notify the Department of their intent to upgrade the UST system.

### SECTION 280.22. NOTIFICATION REQUIREMENTS.

(a) After January 1, 1986, an owner of a tank storing or having stored regulated substances on or before January 1, 1986 must notify the Department of the existence of such a tank specifying the type, location, storage capacity, age, and uses of such a tank (i.e., operational status at the time of notification) and of any known past failure(s) and corrective action taken as a result of the failure. The notification shall be made using EPA Form 7530-1, a Department form, or a Department approved form.

[Note to paragraph (a). Owners and operators of UST systems that were in the ground on or after January 1, 1986, unless taken out of operation on or before January 1, 1974, were required to notify the Department in accordance with the Hazardous and Solid Waste Amendments of 1984, Public Law 98-616, on a form published by EPA on November 8, 1985 unless notice was given pursuant to section 103(c) of CERCLA. Owners and operators who have not complied with the notification requirements may use a Department approved form.]

(b) Within 30 days of acquisition, any person who assumes ownership of a regulated underground storage tank system, except as described in paragraph (a) of this section, must submit a notice of the ownership change to the Department on a Department form or a form approved by the Department, including all supporting documents required by the Department notification form.

(c) Not later than May 26, 2020, all owners of previously deferred UST systems must submit a one-time notice of tank system existence to the Department, using EPA form 7530-1, a Department form, a Department approved form, or submitted in a format as approved by the Department in accordance with Section 280.22(c). Owners and operators of UST systems in use as of May 26, 2017 must demonstrate financial responsibility at the time of submission of the notification form as required by Section 280.251.

(d) Owners required to submit notices under paragraph (a) or (b) of this section must provide notices to the Department for each tank they own. Owners may provide notice for several tanks using one notification form, but owners who own tanks located at more than one place of operation must file a separate notification form for each separate place of operation.

(e) All owners and operators of new UST systems must certify in the notification form compliance with the following requirements:

- (1) Installation of tanks and piping under Section 280.20(e);
- (2) Cathodic protection of steel tanks and piping under Section 280.20(a) and (b);
- (3) Financial responsibility under Subpart H of this part; and
- (4) Release detection under Sections 280.41 and 280.42.

(f) All owners and operators of new UST systems must ensure that the installer certifies in the notification form that the methods used to install the tanks and piping complies with the requirements in section 280.20(e).

(g) Beginning January 1, 1986, any person who sells a tank intended to be used as an underground storage tank must notify the purchaser of such tank of the owner's notification obligations under paragraph (a) of this section. After January 1, 1986, any owner of an existing tank which has not notified the Department in accordance with this section shall be in violation of these regulations.

[Note to paragraph (g). The statement provided in appendix III of 40 CFR Part 280, when used on shipping tickets and invoices, may be used to comply with this requirement.]

(h) A regulated tank for which the Department has received an approvable notification is considered to be registered.

(i) The Department may issue, deny, revoke, suspend or modify the registration under such conditions as it may prescribe herein for the operation of any tank.

**SECTION 280.23. NEW TANKS -- PERMITS REQUIRED.**

(a) After January 1, 1986, all new tanks must be permitted. The person who proposes to install a new tank must apply for an installation permit, on a form supplied by the Department or an approved substitute, and possess said permit prior to tank installation and shall meet the new tank design, construction, and installation requirements of Section 280.20.

(b) The person who proposes to place a new tank in operation must apply for a permit to operate, on a form supplied by the Department, and possess said permit prior to placing the tank in operation.

(1) The permit to operate application must certify compliance with the following requirements:

- (i) Installation of tanks and piping under Sections 280.20(c) through (h);
- (ii) Cathodic protection of steel tanks and piping under Section 280.20(a) and (b);
- (iii) Financial responsibility under Subpart H of this part;
- (iv) Release detection under Sections 280.41 and 280.42; and
- (v) Testing under Section 280.24.

(2) All owners and operators of new UST systems must ensure that the installer certifies in the permit to operate application form that the methods used to install the tanks and piping complies with the requirements in Section 280.20(e) and (f).

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(3) Beginning October 24, 1988, any person who sells a tank intended to be used as an underground storage tank must notify the purchaser of such tank of the owner's permitting obligations under this section.

(c) After January 1, 1986, any person who installs or operates a new tank without receiving permits will be in violation of these regulations.

(d) The Department may issue, deny, revoke, suspend or modify permits under such conditions as it may prescribe for the operation of any tank.

(e) Any person who plans to install a system of two or more tanks at the same location, may apply for one permit for that system of tanks.

### **SECTION 280.24. TESTING.**

(a) During installation of tank systems, tanks, piping, and secondary containment must be pneumatically and/or hydrostatically tested according to accepted industry standards and the manufacturers' installation instructions. During installation, ancillary equipment must be tested in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and in accordance with the manufacturer's instructions.

(b) The Department may require the operator to test UST system components for tightness or functionality when accurate release detection system records have not been maintained as specified in Subpart D.

(c) The Department may require the operator to test UST system components for tightness or functionality when stored regulated substances and/or their vapors have been detected in neighboring structures, sewers, wells, or other on-or-off property locations.

(d) All test results must be documented using a Department form, a Department approved form, or submitted in a format as approved by the Department.

### **SECTION 280.25. SECONDARY CONTAINMENT REQUIRED.**

(a) Secondary containment requirements contained in Section 280.20(h) of this regulation must apply to those UST systems located within 100 feet of an existing water supply well, a coastal zone critical area, or state navigable waters that also meet one of the following conditions:

(1) The UST system fails to meet the Section 280.21 upgrading provisions; or

(2) The UST system fails to meet the Substantial Compliance criteria found in SC Code Sections 44-2-40(A) and 44-2-50(A) of the SUPERB Act and evaluated in the Department Form (# 1556) based on the last three (3) consecutive annual inspections conducted by the Department.

(b) UST systems described in this Section shall meet the secondary containment requirements of Section 280.20(h) or the closure requirements under Subpart G of this part (including applicable requirements for corrective action under Subpart F), no later than December 22, 2018. The requirements of Section 280.20(h) shall also apply to any UST system determined to be described by Section 280.25(a) after December 22, 2018.

### **SECTION 280.26. DELIVERY PROHIBITION.**

(a) The Department may classify as ineligible for delivery, deposit, or acceptance of product an underground storage tank where the Department has determined:

(1) Required spill prevention equipment is not installed; or



- (2) Required overfill protection equipment is not installed; or
- (3) Required leak detection equipment is not installed; or
- (4) Required corrosion protection equipment is not installed; or
- (5) Required secondary containment is not installed; or
- (6) Other conditions the Department deems appropriate.

(b) When the Department determines that an underground storage tank or tanks should be classified as ineligible for delivery, deposit or acceptance of product under paragraph (a) of this section, the Department shall notify the owner/operator of the Department's intent to declare the tank(s) ineligible for delivery, deposit, or acceptance of product if the deficiency is not corrected within fifteen (15) calendar days.

(c) The Department may classify as ineligible for delivery, deposit, or acceptance of product an underground storage tank if the owner/operator of that tank has been issued a written warning or citation (notice of alleged violation) under any of the following circumstances and the owner/operator has failed to take corrective action within thirty (30) days:

- (1) Failure to properly operate and/or maintain leak detection equipment; or
- (2) Failure to properly operate and/or maintain spill, overfill, or corrosion protection equipment; or
- (3) Failure to maintain financial responsibility; or
- (4) Failure to protect metal components from corrosion.

(d) When the Department determines that an underground storage tank or tanks should be classified as ineligible for delivery, deposit or acceptance of product under paragraph (c) of this section, or for other conditions the Department deems appropriate, the Department shall notify the owner/operator of the Department's intent to declare the tank(s) ineligible for delivery, deposit, or acceptance of product if the deficiency is not corrected within fifteen (15) calendar days.

(e) When the out of compliance condition has not been corrected after the fifteen (15) calendar days established under paragraph (b) or (d) of this section, the Department will declare the tank ineligible for delivery, deposit, or acceptance of product and notify the owner/operator and supplier of the delivery prohibition.

(1) The notification of owner/operator of a delivery prohibition will be by at least two means of communication (for example: telephone, e-mail, facsimile, or messenger); and

(2) The Department will post the delivery prohibition notice on the Department's website for the notification of the owner/operator and supplier; and

(3) The Department will affix a delivery prohibition notice to the fill port of the affected tank(s).

(f) It shall be illegal for any person to deliver, deposit, or accept product into a tank where the Department has imposed delivery prohibition and has notified the owner/operator and supplier of the delivery prohibition via website or other means of communication as stated in paragraph (e).

(g) When the owner/operator notifies the Department that the deficiency has been corrected and the Department has verified that the tank(s) is in compliance:

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(1) The delivery prohibition will be lifted and the delivery prohibition notice will be removed from the tank fill port within two (2) working days (Monday-Friday) of the notification; and

(2) The Department will notify the owner/operator and the supplier via website or other means of communication as stated in paragraph (e) that delivery to the tank(s) may resume; and

(3) The delivery prohibition website posting will be cleared.

(h) The Department retains the discretion to decide whether to identify an underground storage tank as ineligible for delivery, deposit, or acceptance of product based on whether the prohibition is in the best interest of the public. In some cases, prohibition of delivery, deposit, or acceptance of product to an underground storage tank is not in the best interest of the public, even in the case of significant and/or sustained noncompliance (e.g., certain emergency generator underground storage tanks). In other cases, the Department may choose to classify an underground storage tank as ineligible to receive product but then authorize delivery in emergency situations such as natural disasters.

[Note to Section 280.26. Delivery Prohibition does not relieve the owner/operator from administrative enforcement actions due to the out of compliance condition(s).]

### ***SUBPART C*** ***General Operating Requirements***

#### **SECTION 280.30. SPILL AND OVERFILL CONTROL.**

(a) Owners and operators must ensure that releases due to spilling or overfilling do not occur. The owner and operator must ensure that the volume available in the tank is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling.

[Note to paragraph (a). The transfer procedures described in National Fire Protection Association Standard 385, "Standard for Tank Vehicles for Flammable and Combustible Liquids" or American Petroleum Institute Recommended Practice 1007, "Loading and Unloading of MC 306/ DOT 406 Cargo Tank Motor Vehicles" may be used to comply with paragraph (a) of this section. Further guidance on spill and overfill prevention appears in American Petroleum Institute Recommended Practice 1621, "Bulk Liquid Stock Control at Retail Outlets."]

(b) The owner and operator must report, investigate, and clean up any spills and overfills in accordance with Section 280.53.

#### **SECTION 280.31. OPERATION AND MAINTENANCE OF CORROSION PROTECTION.**

All owners and operators of metal UST systems with corrosion protection must comply with the following requirements to ensure that releases due to corrosion are prevented until the UST system is permanently closed or undergoes a change-in-service pursuant to Section 280.71:

(a) All corrosion protection systems must be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contain regulated substances and are in contact with the ground.

(b) All UST systems equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:

(1) Frequency. All cathodic protection systems must be tested within 6 months of installation and at least every 3 years thereafter or according to another reasonable time frame established by the Department; and

(2) Inspection criteria. The criteria that are used to determine that cathodic protection is adequate as required by this section must be in accordance with a code of practice developed by a nationally recognized association.

[Note to paragraph (b). The following codes of practice may be used to comply with paragraph (b) of this section:

(A) NACE International Test Method TM 0101, “Measurement Techniques Related to Criteria for Cathodic Protection of Underground Storage Tank Systems”;

(B) NACE International Test Method TM 0497, “Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Piping Systems”;

(C) Steel Tank Institute Recommended Practice R051, “Cathodic Protection Testing Procedures for STI-P3® USTs”;

(D) NACE International Standard Practice SP 0285, “External Control of Underground Storage Tank Systems by Cathodic Protection”; or

(E) NACE International Standard Practice SP 0169, “Control of External Corrosion on Underground or Submerged Metallic Piping Systems”.]

(c) UST systems with impressed current cathodic protection systems must also be inspected every 60 days to ensure the equipment is running properly.

(d) For UST systems using cathodic protection, records of the operation of the cathodic protection must be maintained (in accordance with Section 280.34) to demonstrate compliance with the performance standards in this section. These records must provide the following:

- (1) The results of the last three inspections required in paragraph (c) of this section; and
- (2) The results of testing from the last two inspections required in paragraph (b) of this section.

**SECTION 280.32. COMPATIBILITY.**

(a) Owners and operators must use an UST system made of or lined with materials that are compatible with the substance stored in the UST system.

(b) Owners and operators must notify the Department at least 30 days prior to switching to a regulated substance containing greater than 10 percent ethanol, greater than 20 percent biodiesel, or any other regulated substance identified by the Department. In addition, owners and operators with UST systems storing these regulated substances must meet one of the following:

(1) Demonstrate compatibility of the UST system (including the tank, piping, containment sumps, pumping equipment, release detection equipment, spill equipment, and overfill equipment). Owners and operators may demonstrate compatibility of the UST system by using one of the following options:

(i) Certification or listing of UST system equipment or components by a nationally recognized, independent testing laboratory for use with the regulated substance stored; or

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(ii) Equipment or component manufacturer approval. The manufacturer's approval must be in writing, indicate an affirmative statement of compatibility, specify the range of biofuel blends the equipment or component is compatible with, and be from the equipment or component manufacturer; or

(2) Use another option determined by the Department to be no less protective of human health and the environment than the options listed in paragraph (b)(1) of this section.

(c) Owners and operators must maintain records in accordance with Section 280.34(b) documenting compliance with paragraph (b) of this section for as long as the UST system is used to store the regulated substance.

[Note to Section 280.32. The following code of practice may be useful in complying with the requirements of this section:

American Petroleum Institute Recommended Practice 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Filling Stations"]

### SECTION 280.33. REPAIRS ALLOWED.

Owners and operators of UST systems must ensure that repairs will prevent releases due to structural failure or corrosion as long as the UST system is used to store regulated substances. The repairs must meet the following requirements:

(a) Repairs to UST systems must be properly conducted in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.

[Note to paragraph (a). The following codes of practice may be used to comply with paragraph (a) of this section:

(A) National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";

(B) American Petroleum Institute Recommended Practice RP 2200, "Repairing Hazardous Liquid Pipelines";

(C) American Petroleum Institute Recommended Practice RP 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks";

(D) National Fire Protection Association Standard 326, "Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair";

Request to correct typho by removing hyphen between of and Underground below. Hyphen not in federal regulation.

(E) National Leak Prevention Association Standard 631, Chapter A, "Entry, Cleaning, Interior Inspection, Repair, and Lining of Underground Storage Tanks";

(F) Steel Tank Institute Recommended Practice R972, "Recommended Practice for the Addition of Supplemental Anodes to STI-P3<sup>®</sup> Tanks";

(G) NACE International Standard Practice SP 0285, "External Control of Underground Storage Tank Systems by Cathodic Protection"; or

(H) Fiberglass Tank and Pipe Institute Recommended Practice T-95-02, “Remanufacturing of Fiberglass Reinforced Plastic (FRP) Underground Storage Tanks.”]

(b) Repairs to fiberglass-reinforced plastic tanks may be made by the manufacturer's authorized representatives or in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.

(c) Metal pipe sections and fittings that have released product as a result of corrosion or other damage must be replaced. Non-corrodible pipes and fittings may be repaired in accordance with the manufacturer's specifications. As required in Section 280.20(h), should the piping replacement or repair within a consecutive 12 month period constitute more than 25 percent of the piping by length, the entire piping run must be replaced with secondarily contained piping.

(d) Repairs to secondary containment areas of tanks and piping used for interstitial monitoring and to containment sumps used for interstitial monitoring of piping must have the secondary containment tested for tightness according to the manufacturer’s instructions, a code of practice developed by a nationally recognized association or independent testing laboratory, or according to requirements established by the Department within 30 days following the date of completion of the repair. All test results must be documented using a Department form, a Department approved form, or submitted in a format as approved by the Department. All other repairs to tanks and piping must be tightness tested in accordance with Sections 280.43(c) and 280.44(b) within 30 days following the date of the completion of the repair except as provided in paragraphs (d)(1) through (3), of this section:

(1) The repaired tank is internally inspected in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory; or

(2) The repaired portion of the UST system is monitored monthly for releases in accordance with a method specified in Section 280.43(d) through (i); or

(3) Another test method is used that is determined by the Department to be no less protective of human health and the environment than those listed in paragraphs (d)(1) and (2) of this section.

[Note to paragraph (d).The following codes of practice may be used to comply with paragraph (d) of this section:

(A) Steel Tank Institute Recommended Practice R012, “Recommended Practice for Interstitial Tightness Testing of Existing Underground Double Wall Steel Tanks”; or

(B) Fiberglass Tank and Pipe Institute Protocol, “Field Test Protocol for Testing the Annular Space of Installed Underground Fiberglass Double and Triple-Wall Tanks with Dry Annular Space”;

(C) Petroleum Equipment Institute Recommended Practice RP1200, “Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities.”]

(e) Within 6 months following the repair of any cathodically protected UST system, the cathodic protection system must be tested in accordance with Section 280.31(b) and (c) to ensure that it is operating properly. All test results must be documented using a Department form or a Department approved form, or submitted in a format as approved by the Department.

(f) Within 30 days following any repair to spill or overfill prevention equipment, the repaired spill or overfill prevention equipment must be tested or inspected, as appropriate, in accordance with Section 280.35 to ensure it

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is operating properly. All test results must be documented using a Department form or a Department approved form, or submitted in a format as approved by the Department.

(g) UST system owners and operators must maintain records (in accordance with Section 280.34) of each repair until the UST system is permanently closed or undergoes a change-in-service pursuant to Section 280.71.

### SECTION 280.34. REPORTING AND RECORDKEEPING.

Owners and operators of UST systems must cooperate fully with inspections, upon request, including but not limited to, providing access to all UST system components for visual inspection, monitoring and testing conducted by the Department, as well as requests for document submission, testing, and monitoring by the owner or operator pursuant to Section 9005 of Subtitle I of the Solid Waste Disposal Act, as amended.

All test results required to be submitted to the Department must be documented using a Department form or a Department approved form, or submitted in a format as directed by the Department, and must demonstrate proper testing protocols, per manufacturer's guidelines, code of practice developed by a nationally recognized association or independent laboratory or other Department approved guidelines, were used.

(a) Reporting. Owners and operators must submit the following information to the Department:

(1) Notification for all UST systems (Section 280.22), which includes certification of installation for new UST systems (Section 280.20(f) and notification when any person assumes ownership of an UST system (Section 280.22(b));

(2) Notification prior to UST systems switching to certain regulated substances (Section 280.32(b));

(3) Reports of all releases including suspected releases (Section 280.50), spills and overfills (Section 280.53), and confirmed releases (Section 280.61);

(4) Corrective actions planned or taken including initial abatement measures (Section 280.62), initial site characterization (Section 280.63), free product removal (Section 280.64), investigation of soil and groundwater cleanup (Section 280.65), and corrective action plan (Section 280.66);

(5) A notification before permanent closure or change-in-service (Section 280.71);

(6) Documentation of all completed UST system upgrading (Section 280.21); and;

(7) Results of site investigation on a form supplied by the Department or an approved substitute (Section 280.72).

(b) Recordkeeping. Owners and operators must maintain the following information:

(1) A corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used (Section 280.20(a)(4); Section 280.20(b)(3)).

(2) Documentation of operation of corrosion protection equipment (Section 280.31(d));

(3) Documentation of compatibility for UST systems (Section 280.32(c));

(4) Documentation of UST system repairs and testing results (Section 280.33(g));

(5) Documentation of compliance for spill and overfill prevention equipment and containment sumps used for interstitial monitoring of piping (Section 280.35(c));

- (6) Documentation of periodic walkthrough inspections (Section 280.36(b)).
- (7) Documentation of compliance with release detection requirements (Section 280.45);
- (8) Results of the site investigation conducted at permanent closure (Section 280.74); and
- (9) Documentation of operator training (Section 280.245).

(c) Availability and Maintenance of Records. Owners and operators must keep the records required either:

- (1) At the UST site and immediately available for inspection by the Department; or
- (2) At a readily available alternative site and be provided for inspection to the Department upon request.

(3) In the case of permanent closure records required under Section 280.74, owners and operators are also provided with the additional alternative of mailing closure records to the Department if they cannot be kept at the site or an alternative site as indicated in paragraphs (c)(1) and (2) of this section.

**SECTION 280.35. PERIODIC TESTING OF SPILL PREVENTION EQUIPMENT AND CONTAINMENT SUMPS USED FOR INTERSTITIAL MONITORING OF PIPING AND PERIODIC INSPECTION OF OVERFILL PREVENTION EQUIPMENT.**

(a) Owners and operators of UST systems with spill and overfill prevention equipment and containment sumps used for interstitial monitoring of piping must meet these requirements to ensure the equipment is operating properly and will prevent releases to the environment:

(1) Spill prevention equipment (such as a catchment basin, spill bucket, or other spill containment device) and containment sumps used for interstitial monitoring of piping must prevent releases to the environment by meeting one of the following:

(i) The equipment is double-walled and the integrity of both walls is periodically monitored at a frequency not less than the frequency of the walkthrough inspections described in Section 280.36. Owners and operators must begin meeting paragraph (a)(1)(ii) of this section and conduct a test within 30 days of discontinuing periodic monitoring of this equipment; or

(ii) The spill prevention equipment and containment sumps used for interstitial monitoring of piping are tested at least once every three years to ensure the equipment is liquid tight by using vacuum, pressure, or liquid testing in accordance with one of the following criteria:

(A) Requirements developed by the manufacturer (Note: Owners and operators may use this option only if the manufacturer has developed requirements);

(B) Code of practice developed by a nationally recognized association or independent testing laboratory; or

(C) Requirements determined by the Department to be no less protective of human health and the environment than the requirements listed in paragraphs (a)(1)(ii)(A) and (B) of this section.

(2) Overfill prevention equipment must be inspected at least once every three years. At a minimum, the inspection must ensure that overfill prevention equipment is set to activate at the correct level specified in Section 280.20(c) and will activate when regulated substance reaches that level. Inspections must be conducted in accordance with one of the criteria in paragraph (a)(1)(ii)(A) through (C) of this section.

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[Note to paragraphs (a)(1)(ii) and (a)(2). The following code of practice may be used to comply with paragraphs (a)(1)(ii) and (a)(2) of this section: Petroleum Equipment Institute Publication RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities".]

(b) Owners and operators must begin meeting these requirements as follows:

(1) For UST systems in use on or before May 26, 2017, the initial spill prevention equipment test, containment sump test and overfill prevention equipment inspection must be conducted not later than May 26, 2020. All results must be documented using a Department form or a Department approved form, or submitted in a format as approved by the Department.

(2) For UST systems brought into use after May 26, 2017, these requirements apply at installation. All results must be documented using a Department form or a Department approved form, or submitted in a format as approved by the Department.

(c) Owners and operators must maintain records as follows (in accordance with Section 280.34) for spill prevention equipment, containment sumps used for interstitial monitoring of piping, and overfill prevention equipment:

(1) All records of testing or inspection must be documented using a Department form, a Department approved form, or submitted in a format as directed by the Department and maintained for three years; and

(2) For spill prevention equipment and containment sumps used for interstitial monitoring of piping not tested every three years, documentation showing that the prevention equipment is double-walled and the integrity of both walls is periodically monitored must be maintained for as long as the equipment is periodically monitored.

### **SECTION 280.36. PERIODIC OPERATION AND MAINTENANCE WALKTHROUGH INSPECTIONS.**

(a) To properly operate and maintain UST systems, not later than May 26, 2020 owners and operators must meet one of the following:

(1) Conduct a walkthrough inspection that, at a minimum, checks the following equipment as specified below:

(i) Every 30 days:

(A) Spill prevention equipment— visually check for damage; remove liquid or debris; check for and remove obstructions in the fill pipe; check the fill cap to make sure it is securely on the fill pipe; and, for double walled spill prevention equipment with interstitial monitoring, check for a leak in the interstitial area; and

(B) Release detection equipment— check to make sure the release detection equipment is operating with no alarms or other unusual operating conditions present; and ensure records of release detection testing are reviewed and current; and

(ii) Annually:

(A) Containment sumps—visually check for damage, leaks to the containment area, or releases to the environment; remove liquid (in contained sumps) or debris; and, for double walled sumps with interstitial monitoring, check for a leak in the interstitial area; and



(B) Hand held release detection equipment—check devices such as tank gauge sticks or groundwater bailers for operability and serviceability;

(2) Conduct operation and maintenance walkthrough inspections according to a standard code of practice developed by a nationally recognized association or independent testing laboratory that checks equipment comparable to paragraph (a)(1) of this section; or

[Note to paragraph (a)(2). The following code of practice may be used to comply with paragraph (a)(2) of this section: Petroleum Equipment Institute Recommended Practice RP 900, “Recommended Practices for the Inspection and Maintenance of UST Systems.”]

(3) Conduct operation and maintenance walkthrough inspections developed by the Department that checks equipment comparable to paragraph (a)(1) of this section.

(b) Owners and operators must maintain records (in accordance with Section 280.34) of operation and maintenance walkthrough inspections for one year. Records must include a list of each area checked, whether each area checked was acceptable or needed action taken, and a description of actions taken to correct an issue. All operation and maintenance walkthrough records must be documented using a Department form, a Department approved form, or submitted in a format as approved by the Department.

***SUBPART D***  
***Release Detection***

**SECTION 280.40. GENERAL REQUIREMENTS FOR ALL UST SYSTEMS.**

(a) Owners and operators of UST systems must provide a method, or combination of methods, of release detection that:

(1) Can detect a release from any portion of the tank and the connected underground piping that routinely contains product;

(2) Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and

(3) Beginning on May 26, 2020, is operated and maintained, and electronic and mechanical components are tested for proper operation, in accordance with one of the following: manufacturer’s instructions; a code of practice developed by a nationally recognized association or independent testing laboratory; or requirements determined by the Department to be no less protective of human health and the environment than the two options listed in paragraphs (a)(1) and (2) of this section. A test of the proper operation must be performed at least annually, documented on a Department form, a Department approved form, or submitted in a format as approved by the Department and, at a minimum, as applicable to the facility, cover the following components and criteria:

(i) Automatic tank gauge and other controllers: test alarm; verify system configuration; test battery backup;

(ii) Probes and sensors: inspect for residual buildup; ensure floats move freely; ensure shaft is not damaged; ensure cables are free of kinks and breaks; test alarm operability and communication with controller;

(iii) Automatic line leak detector: test operation to meet criteria in Section 280.44(a) by simulating a leak;

(iv) Vacuum pumps and pressure gauges: ensure proper communication with sensors and controller; and

(v) Hand-held electronic sampling equipment associated with groundwater and vapor monitoring: ensure proper operation.

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[Note to paragraph (a)(3). The following code of practice may be used to comply with paragraph (a)(3) of this section: Petroleum Equipment Institute Publication RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities."]

(4) Meets the performance requirements in Sections 280.43, 280.44, or subpart K of this part, as applicable, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, the methods listed in Section 280.43(b), (c), (d), (h), and (i), Section 280.44(a), (b), and subpart K of this part, must be capable of detecting the leak rate or quantity specified for that method in the corresponding section of the rule with a probability of detection of 0.95 and a probability of false alarm of 0.05.

(b) When a release detection method operated in accordance with the performance standards in Sections 280.43, 280.44, or subpart K of this part indicates a release may have occurred, owners and operators must notify the Department in accordance with Subpart E of this part.

(c) Any UST system that cannot apply a method of release detection that complies with the requirements of this subpart must complete the closure procedures in Subpart G of this part. For previously deferred UST systems described in Subparts A and K of this part, this requirement applies after the effective dates described in Section 280.10(a)(1)(ii) and (iii) and Section 280.251(a).

### SECTION 280.41. REQUIREMENTS FOR PETROLEUM UST SYSTEMS.

Owners and operators of petroleum UST systems must provide release detection for tanks and piping as follows:

(a) Tanks. Tanks must be monitored for releases as follows:

(1) Tanks installed on or before May 23, 2008 must be monitored for releases at least every 30 days using one of the methods listed in Section 280.43(d) through (i) except that tanks with capacity of 550 gallons or less may use manual tank gauging (conducted in accordance with Section 280.43(b)).

(2) Tanks installed after May 23, 2008 must be monitored for releases at least every 30 days in accordance with Section 280.43(g).

(b) Piping. Underground piping that routinely contains regulated substances must be monitored for releases in a manner that meets one of the following requirements:

(1) Piping installed on or before May 23, 2008 must meet one of the following:

(i) Pressurized piping. Underground piping that conveys regulated substances under pressure must:

(A) Be equipped with an automatic line leak detector conducted in accordance with Section 280.44(a);

(B) Have a line tightness test conducted in accordance with Section 280.44(b) or have monthly monitoring conducted in accordance with Section 280.44(c).

(ii) Suction piping. Underground piping that conveys regulated substances under suction must either have a line tightness test conducted at least every 3 years and in accordance with Section 280.44(b), or use a monthly monitoring method conducted in accordance with Section 280.44(c). No release detection is required for suction piping that is designed and constructed to meet the following standards:

(A) The below-grade piping operates at less than atmospheric pressure;

(B) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;

(C) Only one check valve is included in each suction line;

(D) The check valve is located directly below and as close as practical to the suction pump; and

(E) A method is provided that allows compliance with paragraphs (b)(1)(ii)(B) through (D) of this section to be readily determined.

(2) Piping installed or replaced after May 23, 2008 must meet one of the following:

(i) Pressurized piping must be monitored for releases at least every 30 days in accordance with Section 280.43(g) and be equipped with an automatic line leak detector in accordance with Section 280.44(a).

(ii) Suction piping must be monitored for releases at least every 30 days in accordance with Section 280.43(g). No release detection is required for suction piping that meets paragraphs (b)(1)(ii)(A) through (E) of this section.

**SECTION 280.42. REQUIREMENTS FOR HAZARDOUS SUBSTANCE UST SYSTEMS.**

Owners and operators of hazardous substance UST systems must provide containment that meets the following requirements and monitor these systems using Section 280.43(g) at least every 30 days:

(a) Secondary containment systems must be designed, constructed and installed to:

(1) Contain regulated substances leaked from the primary containment until they are detected and removed;

(2) Prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and

(3) Be checked for evidence of a release at least every 30 days.

[Note to paragraph (a). The provisions of 40 CFR 265.193, Containment and Detection of Releases, may be used to comply with these requirements for tanks installed on or before May 23, 2008.]

(b) Double-walled tanks must be designed, constructed, and installed to:

(1) Contain a leak from any portion of the inner tank within the outer wall; and

(2) Detect the failure of the inner wall.

(c) External liners (including vaults) must be designed, constructed, and installed to:

(1) Contain 100 percent of the capacity of the largest tank within its boundary;

(2) Prevent the interference of precipitation or groundwater intrusion with the ability to contain or detect a release of regulated substances; and

(3) Surround the tank completely (i.e., it is capable of preventing lateral as well as vertical migration of regulated substances).

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(d) Underground piping must be equipped with secondary containment that satisfies the requirements of this section (e.g., trench liners, double-walled pipe). In addition, underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector in accordance with Section 280.44(a).

(e) For hazardous substance UST systems installed on or before May 23, 2008 other methods of release detection may be used if owners and operators:

(1) Demonstrate to the Department that an alternate method can detect a release of the stored substance as effectively as any of the methods allowed in Sections 280.43(b) through (i) can detect a release of petroleum;

(2) Provide information to the Department on effective corrective action technologies, health risks, and chemical and physical properties of the stored substance, and the characteristics of the UST site; and,

(3) Obtain approval from the Department to use the alternate release detection method before the installation and operation of the new UST system.

### SECTION 280.43. METHODS OF RELEASE DETECTION FOR TANKS.

Each method of release detection for tanks used to meet the requirements of Section 280.41 must be conducted in accordance with the following:

(a) Inventory control. Inventory control is no longer considered an acceptable method of release detection. Product inventory control (or another test of equivalent performance) must be conducted monthly to detect a release of at least 1.0 percent of flow-through plus 130 gallons on a monthly basis in the following manner:

(1) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank are recorded each operating day;

(2) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;

(3) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery;

(4) Deliveries and measurements are made through a drop tube that extends to within one foot of the tank bottom;

(5) Product dispensing is metered and recorded within the local standards for meter calibration or an accuracy of 6 cubic inches for every 5 gallons of product withdrawn; and

(6) The measurement of any water level in the bottom of the tank is made to the nearest one-eighth of an inch at least once a month.

[Note to paragraph (a). Practices described in the American Petroleum Institute Recommended Practice RP 1621, "Bulk Liquid Stock Control at Retail Outlets," may be used, where applicable, as guidance in meeting the requirements of this paragraph (a).]

(b) Manual tank gauging. Manual tank gauging must meet the following requirements:

(1) Tank liquid level measurements are taken at the beginning and ending of a period of at least 36 hours during which no liquid is added to or removed from the tank;

(2) Level measurements are based on an average of two consecutive stick readings at both the beginning and ending of the period;

(3) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;

(4) A release is suspected and subject to the requirements of Subpart E if the variation between beginning and ending measurements exceeds the ten gallon weekly or five gallon monthly standards; and,

(5) Only tanks of 550 gallons or less nominal capacity may use this as the sole method of release detection. Tanks of greater than 550 gallons nominal capacity may not use this method to meet the requirements of this subpart.

(c) Tank tightness testing. Tank tightness testing (or another test of equivalent performance) must be capable of detecting a 0.1 gallon per hour leak rate from any portion of the tank that routinely contains product while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.

(d) Automatic tank gauging. Equipment for automatic tank gauging that tests for the loss of product and conducts inventory control must meet the following requirements:

(1) The automatic product level monitor test can detect a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains product;

(2) The automatic tank gauging equipment must meet the inventory control (or other test of equivalent performance) requirements of Section 280.43(a); and

(3) The test must be performed with the system operating in one of the following modes:

(i) In-tank static testing conducted at least once every 30 days; or

(ii) Continuous in-tank leak detection operating on an uninterrupted basis or operating within a process that allows the system to gather incremental measurements to determine the leak status of the tank at least once every 30 days.

(e) Vapor monitoring. Testing or monitoring for vapors within the soil gas of the excavation zone must meet the following requirements:

(1) The materials used as backfill are sufficiently porous (e.g., gravel, sand, crushed rock) to readily allow diffusion of vapors from releases into the excavation area;

(2) The stored regulated substance, or a tracer compound placed in the tank system, is sufficiently volatile (e.g., gasoline) to result in a vapor level that is detectable by the monitoring devices located in the excavation zone in the event of a release from the tank;

(3) The measurement of vapors by the monitoring device is not rendered inoperative by the groundwater, rainfall, or soil moisture or other known interferences so that a release could go undetected for more than 30 days;

(4) The level of background contamination in the excavation zone will not interfere with the method used to detect releases from the tank;

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(5) The vapor monitors are designed and operated to detect any significant increase in concentration above background of the regulated substance stored in the tank system, a component or components of that substance, or a tracer compound placed in the tank system;

(6) In the UST excavation zone, the site is assessed in accordance with Section 280.45(a) to ensure compliance with the requirements in paragraphs (e)(1) through (4) of this section and to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains product;

(7) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering; and

(8) Monitoring wells shall be sealed from the ground surface to the top of the filter pack.

(f) Groundwater monitoring. Testing or monitoring for liquids on the groundwater must meet the following requirements:

(1) The regulated substance stored is immiscible in water and has a specific gravity of less than one;

(2) Groundwater is never more than 20 feet from the ground surface and the hydraulic conductivity of the soil(s) between the UST system and the monitoring wells or devices is not less than 0.01 cm/sec (e.g., the soil should consist of gravels, coarse to medium sands, coarse silts or other permeable materials);

(3) The slotted portion of the monitoring well casing must be designed to prevent migration of natural soils or filter pack into the well and to allow entry of regulated substance on the water table into the well under both high and low groundwater conditions;

(4) Monitoring wells shall be sealed from the ground surface to the top of the filter pack;

(5) Monitoring wells or devices intercept the excavation zone or are as close to it as is technically feasible;

(6) The continuous monitoring devices or manual methods used can detect the presence of at least one-eighth of an inch of free product on top of the groundwater in the monitoring wells;

(7) Within and immediately below the UST system excavation zone, the site is assessed in accordance with Section 280.45(a) to ensure compliance with the requirements in paragraphs (f)(1) through (5) of this section and to establish the number and positioning of monitoring wells or devices that will detect releases from any portion of the tank that routinely contains product; and

(8) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

(g) Interstitial monitoring. Interstitial monitoring between the UST system and a secondary barrier immediately around or beneath it may be used, but only if the system is designed, constructed and installed to detect a leak from any portion of the tank that routinely contains product and also meets one of the following requirements:

(1) For double-walled UST systems, the sampling or testing method can detect a leak through the inner wall in any portion of the tank that routinely contains product;

(2) For UST systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a leak between the UST system and the secondary barrier;

(i) The secondary barrier around or beneath the UST system consists of artificially constructed material that is sufficiently thick and impermeable (at least  $10^{-6}$  cm/sec for the regulated substance stored) to direct a leak to the monitoring point and permit its detection;

(ii) The barrier is compatible with the regulated substance stored so that a leak from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected;

(iii) For cathodically protected tanks, the secondary barrier must be installed so that it does not interfere with the proper operation of the cathodic protection system;

(iv) The groundwater, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than 30 days;

(v) The site is assessed to ensure that the secondary barrier is always above the groundwater and not in a 25-year flood plain, unless the barrier and monitoring designs are for use under such conditions; and,

(vi) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

(3) For tanks with an internally fitted liner, an automated device can detect a leak between the inner wall of the tank and the liner, and the liner is compatible with the substance stored.

(h) Statistical inventory reconciliation (SIR). Release detection methods based on the application of statistical principles to inventory data similar to those described in Section 280.43(a), must be conducted monthly and meet the following requirements:

(1) The method must be third party certified to satisfy the requirements of Section 280.43(i)(1);

(2) The methodology must specifically identify the results for each tank as "pass, fail, or inconclusive". The results report must also identify the threshold, minimum detection level, and calculated leak rate for each tank evaluated;

(3) SIR results must be reported in a format designated by the Department; and

(4) A leak is suspected and subject to the requirements of Subpart E for any results other than "pass."

(5) Report a quantitative result with a calculated leak rate;

(6) Be capable of detecting a leak rate of 0.2 gallon per hour or a release of 150 gallons within 30 days; and

(7) Use a threshold that does not exceed one-half the minimum detectible leak rate.

(i) Other methods. Any other type of release detection method, or combination of methods, can be used if:

(1) It can detect a 0.2 gallon per hour leak rate or a release of 150 gallons within a month with a probability of detection of 0.95 and a probability of false alarm of 0.05; or

(2) The Department may approve another method if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in paragraphs (c) through (h) of this section. In comparing methods, the Department shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator must comply with any conditions imposed by the Department on its use to ensure the protection of human health and the environment.

**SECTION 280.44. METHODS OF RELEASE DETECTION FOR PIPING.**

Each method of release detection for piping used to meet the requirements of Section 280.41 must be conducted in accordance with the following:

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(a) Automatic line leak detectors. Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm may be used only if they detect leaks of 3 gallons per hour at 10 pounds per square inch line pressure within 1 hour. An annual test of the operation of the leak detector must be conducted in accordance with Section 280.40(a)(3).

(b) Line tightness testing. A periodic test of piping may be conducted only if it can detect a 0.1 gallon per hour leak rate at one and one-half times the operating pressure.

(c) Applicable tank methods. Except as described in Section 280.41(a), any of the methods in Section 280.43(e) through (i) may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances.

### SECTION 280.45. RELEASE DETECTION RECORDKEEPING.

All UST system owners and operators must maintain records in accordance with Section 280.34 demonstrating compliance with all applicable requirements of this subpart. These records must include the following:

(a) All written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, must be maintained for 5 years, or for another reasonable period of time determined by the Department, from the date of installation. Not later than May 26, 2020, records of site assessments required under Section 280.43(e)(6) and (f)(7) must be maintained for as long as the methods are used. Records of site assessments developed after May 26, 2017 must be signed by a professional engineer or professional geologist, or equivalent licensed professional with experience in environmental engineering, hydrogeology, or other relevant technical discipline acceptable to the Department;

(b) The results of any sampling, testing, or monitoring must be maintained for at least one year, or for another reasonable period of time determined by the Department, except as follows:

(1) The results of annual operation tests conducted in accordance with Section 280.40(a)(3) must be maintained for three years. At a minimum, the results must list each component tested, indicate whether each component tested meets criteria in Section 280.40(a)(3) or needs to have action taken, and describe any action taken to correct an issue;

(2) The results of tank tightness testing conducted in accordance with Section 280.43(c) must be retained until the next test is conducted;

(3) For tank systems temporarily closed, records for the most recent 12 months of operation must be maintained as follows:

(i) For one year after taking the system out of temporary closure status and returning regulated substances to the system; or

(ii) As required by Section 280.45(b)(5) for systems subsequently permanently closed.

(4) The results of tank tightness testing, line tightness testing, and vapor monitoring using a tracer compound placed in the tank system conducted in accordance with Section 280.252(d) must be retained until the next test is conducted; and

(5) For tank systems permanently closed, records for the most recent 12 months of operation must be maintained with the results of the site assessment required in Section 280.72 and maintained in accordance with the requirements of Section 280.74; and



(c) Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site must be maintained for at least one year after the servicing work is completed, or for another reasonable time period determined by the Department. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer must be retained for 5 years from the date of installation.

### ***SUBPART E***

#### ***Release Reporting, Investigation, and Confirmation***

#### **SECTION 280.50. REPORTING OF SUSPECTED RELEASES.**

Owners and operators of UST systems must report to the Department within 24 hours and follow the procedures in Section 280.52 for any of the following conditions:

(a) The discovery by owners and operators or others of released regulated substances at the UST site or in the surrounding area (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface water).

(b) Unusual operating conditions observed by owners and operators (such as the erratic behavior of product dispensing equipment, the sudden loss of product from the UST system, an unexplained presence of water in the tank, or liquid in the interstitial space of secondarily contained systems), unless:

(1) The system equipment or component is found not to be releasing regulated substances to the environment;

(2) Any defective system equipment or component is immediately repaired or replaced; and

(3) For secondarily contained systems, except as provided for in Section 280.43(g)(2)(iv), any liquid in the interstitial space not used as part of the interstitial monitoring method (for example, brine filled) is immediately removed.

(c) Monitoring results, including investigation of an alarm, from a release detection method required under Sections 280.41 and 280.42 that indicate a release may have occurred unless:

(1) The monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring does not confirm the initial result;

(2) The leak is contained in the secondary containment and:

(i) Except as provided for in Section 280.43(g)(2)(iv), any liquid in the interstitial space not used as part of the interstitial monitoring method (for example, brine filled) is immediately removed; and

(ii) Any defective system equipment or component is immediately repaired or replaced;

(3) The alarm was investigated and determined to be a non-release event (for example, from a power surge or caused by filling the tank during release detection testing).

#### **SECTION 280.51. INVESTIGATION DUE TO OFF-SITE IMPACTS.**

When required by the Department, owners and operators of UST systems must follow the procedures in Section 280.52 to determine if the UST system is the source of off-site impacts. These impacts include the discovery of regulated substances (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface and drinking waters) that has been observed by the Department or brought to its attention by another party.

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### SECTION 280.52. RELEASE INVESTIGATION AND CONFIRMATION STEPS.

Unless corrective action is initiated in accordance with Subpart F, owners and operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under Section 280.50 within 7 days, or another reasonable time period specified by the Department, using either the following steps or another procedure approved by the Department:

(a) System test. Owners and operators must conduct tests (according to the requirements for tightness testing in Sections 280.43(c) and 280.44(b), or as appropriate, secondary containment testing described in Section 280.33(d)).

(1) The test must determine whether:

(i) A leak exists in that portion of the tank that routinely contains product, or the attached delivery piping, or both; or

(ii) A breach of either wall of the secondary containment has occurred.

(2) If the system test confirms a leak into the interstice or a release, owners and operators must repair, replace, upgrade, or close the UST system. In addition, owners and operators must begin corrective action in accordance with Subpart F of this part if the test results for the system, tank, or delivery piping indicate that a release exists.

(3) Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a release exists and if environmental contamination is not the basis for suspecting a release.

(4) Owners and operators must conduct a site check as described in paragraph (b) of this section if the test results for the system, tank, and delivery piping do not indicate that a release exists but environmental contamination is the basis for suspecting a release.

(b) Site check. Owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of backfill, the depth of groundwater, and other factors appropriate for identifying the presence and source of the release. Results of the site check, including but not limited to all items listed above, must be submitted in a format as approved by the Department.

(1) If the test results for the excavation zone or the UST site indicate that a release has occurred, owners and operators must begin corrective action in accordance with Subpart F of this part;

(2) If the test results for the excavation zone or the UST site do not indicate that a release has occurred, further investigation is not required.

### SECTION 280.53. REPORTING AND CLEANUP OF SPILLS AND OVERFILLS.

(a) Owners and operators of UST systems must contain and immediately clean up a spill or overflow and report to the Department within 24 hours and begin corrective action in accordance with Subpart F of this part in the following cases:

(1) Spill or overflow of petroleum that results in a release to the environment that exceeds 25 gallons or another reasonable amount specified by the Department, or that causes a sheen on nearby surface water; and

(2) Spill or overflow of a hazardous substance that results in a release to the environment that equals or exceeds its reportable quantity under CERCLA (40 CFR Part 302).

[Note to paragraph (a). Pursuant to Sections 302.6 and 355.40 of this chapter, a release of a hazardous substance equal to or in excess of its reportable quantity must also be reported immediately (rather than within 24 hours) to the National Response Center under sections 102 and 103 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and to appropriate state and local authorities under Title III of the Superfund Amendments and Reauthorization Act of 1986.]

(b) Owners and operators of UST systems must contain and immediately clean up a spill or overfill of petroleum that is less than 25 gallons or another reasonable amount specified by the Department, and a spill or overfill of a hazardous substance that is less than the reportable quantity. If cleanup cannot be accomplished within 24 hours owners and operators must immediately notify the Department.

### ***SUBPART F***

#### ***Release Response and Corrective Action for UST Systems Containing Petroleum or Hazardous Substances***

#### **SECTION 280.60. GENERAL.**

Owners and operators of petroleum or hazardous substance UST systems must, in response to a confirmed release from the UST system, comply with the requirements of this subpart except for USTs excluded under Section 280.10(b) and UST systems subject to RCRA Subtitle C corrective action requirements under Section 3004(u) of the Resource Conservation and Recovery Act, as amended.

#### **SECTION 280.61. INITIAL RESPONSE.**

Upon confirmation of a release in accordance with Section 280.52 or after a release from the UST system is identified in any other manner, owners and operators must perform the following initial response actions within 24 hours of a release:

- (a) Report the release to the Department (e.g., by telephone or electronic mail);
- (b) Take immediate action to prevent any further release of the regulated substance into the environment; and
- (c) Identify and mitigate fire, explosion, and vapor hazards.

#### **SECTION 280.62. INITIAL ABATEMENT MEASURES AND SITE CHECK.**

(a) Unless directed to do otherwise by the Department, owners and operators must perform the following abatement measures:

(1) Remove as much of the regulated substance from the UST system as is necessary to prevent further release to the environment;

(2) Visually inspect any aboveground releases or exposed belowground releases and prevent further migration of the released substance into surrounding soils and groundwater;

(3) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone and entered into subsurface structures (such as sewers or basements);

(4) Remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement, or corrective action activities. If these remedies include treatment or disposal of soils, the owner and operator must comply with applicable state and local requirements;

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(5) Measure for the presence of a release where contamination is most likely to be present at the UST site, unless the presence and source of the release have been confirmed in accordance with the site check required by Section 280.52(b) or the closure site assessment of Section 280.72(a). In selecting sample types, sample locations, and measurement methods, the owner and operator must consider the nature of the stored substance, the type of backfill, depth to groundwater and other factors as appropriate for identifying the presence and source of the release; and

(6) Investigate to determine the possible presence of free product, and begin free product removal as soon as practicable and in accordance with Section 280.64.

(b) Within 20 days after release confirmation, or within another reasonable period of time determined by the Department, owners and operators must submit a report to the Department summarizing the initial abatement steps taken under paragraph (a) of this section and any resulting information or data.

### **SECTION 280.63. INITIAL SITE CHARACTERIZATION.**

(a) Unless directed to do otherwise by the Department, owners and operators must assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures in Sections 280.60 and 280.61. This information must include, but is not necessarily limited to the following:

(1) Data on the nature and estimated quantity of release;

(2) Data from available sources and/or site investigations concerning the following factors: Surrounding populations, water quality, use and approximate locations of wells potentially affected by the release, subsurface soil conditions, locations of subsurface sewers, climatological conditions, and land use;

(3) Results of the site check required under Section 280.62(a)(5); and

(4) Results of the free product investigations required under Section 280.62(a)(6), to be used by owners and operators to determine whether free product must be recovered under Section 280.64.

(b) Within 45 days of release confirmation or another reasonable period of time determined by the Department, owners and operators must submit the information collected in compliance with paragraph (a) of this section to the Department in a manner that demonstrates its applicability and technical adequacy, or in a format and according to the schedule required by the Department.

### **SECTION 280.64. FREE PRODUCT REMOVAL.**

At sites where investigations under Section 280.62(a)(6) indicate the presence of free product, owners and operators must remove free product to the maximum extent practicable as determined by the Department while continuing, as necessary, any actions initiated under Sections 280.61 through 280.63, or preparing for actions required under Sections 280.65 through 280.66. In meeting the requirements of this section, owners and operators must:

(a) Conduct free product removal in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges or disposes of recovery byproducts in compliance with applicable local, state, and federal regulations;

(b) Use abatement of free product migration as a minimum objective for the design of the free product removal system;

(c) Handle any flammable products in a safe and competent manner to prevent fires or explosions; and

(d) Unless directed to do otherwise by the Department, prepare and submit to the Department, within 45 days after confirming a release, a free product removal report that provides at least the following information:

- (1) The name of the person(s) responsible for implementing the free product removal measures;
- (2) The estimated quantity, type, and thickness of free product observed or measured in wells, boreholes, and excavations;
- (3) The type of free product recovery system used;
- (4) Whether any discharge will take place on-site or off-site during the recovery operation and where this discharge will be located;
- (5) The type of treatment applied to, and the effluent quality expected from, any discharge;
- (6) The steps that have been or are being taken to obtain necessary permits for any discharge; and
- (7) The disposition of the recovered free product.

**SECTION 280.65. INVESTIGATIONS FOR SOIL AND GROUNDWATER CLEANUP.**

(a) In order to determine the full extent and location of soils contaminated by the release and the presence and concentrations of dissolved product contamination in the groundwater, owners and operators must conduct investigations of the release, the release site, and the surrounding area possibly affected by the release if any of the following conditions exist:

- (1) There is evidence that groundwater wells have been affected by the release (e.g., as found during release confirmation or previous corrective action measures);
- (2) Free product is found to need recovery in compliance with Section 280.64;
- (3) There is evidence that contaminated soils may be in contact with groundwater (e.g., as found during conduct of the initial response measures or investigations required under Sections 280.60 through 280.64); and
- (4) The Department requests an investigation, based on the potential effects of contaminated soil or groundwater on nearby surface water and groundwater resources.

(b) Owners and operators must submit the information collected under paragraph (a) of this section as soon as practicable or in accordance with a schedule established by the Department.

**SECTION 280.66. CORRECTIVE ACTION PLAN.**

(a) At any point after reviewing the information submitted in compliance with Sections 280.61 through 280.63, the Department may require owners and operators to submit additional information or to develop and submit a corrective action plan for responding to contaminated soils and groundwater. If a plan is required, owners and operators must submit the plan according to a schedule and format established by the Department. Alternatively, owners and operators may, after fulfilling the requirements of Sections 280.61 through 280.63, choose to submit a corrective action plan for responding to contaminated soil and groundwater. In either case, owners and operators are responsible for submitting a plan that provides for adequate protection of human health and the environment as determined by the Department, and must modify their plan as necessary to meet this standard.

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(b) The Department will approve the corrective action plan only after ensuring that implementation of the plan will adequately protect human health, safety, and the environment. In making this determination, the Department should consider the following factors as appropriate:

- (1) The physical and chemical characteristics of the regulated substance, including its toxicity, persistence, and potential for migration;
- (2) The hydrogeologic characteristics of the facility and the surrounding area;
- (3) The proximity, quality, and current and future uses of nearby surface water and groundwater;
- (4) The potential effects of residual contamination on nearby surface water and groundwater;
- (5) An exposure assessment; and
- (6) Any information assembled in compliance with this subpart.

(c) Upon approval of the corrective action plan or as directed by the Department, owners and operators must implement the plan, including modifications to the plan made by the Department. They must monitor, evaluate, and report the results of implementing the plan in accordance with a schedule and in a format established by the Department.

(d) Owners and operators may, in the interest of minimizing environmental contamination and promoting more effective cleanup, begin cleanup of soil and groundwater before the corrective action plan is approved provided that they:

- (1) Notify the Department of their intention to begin cleanup;
- (2) Comply with any conditions imposed by the Department, including halting cleanup or mitigating adverse consequences from cleanup activities; and
- (3) Incorporate these self-initiated cleanup measures in the corrective action plan that is submitted to the Department for approval.

### **SECTION 280.67. PUBLIC PARTICIPATION.**

(a) For each confirmed release that requires a corrective action plan, the Department must provide notice to the public by means designed to reach those members of the public directly affected by the release and the planned corrective action. This notice may include, but is not limited to, public notice in local newspapers, block advertisements, public service announcements, publication in a state register, letters to individual households, or personal contacts by field staff.

(b) The Department must ensure that site release information and decisions concerning the corrective action plan are made available to the public for inspection upon request.

(c) Before approving a corrective action plan, the Department may hold a public meeting to consider comments on the proposed corrective action plan if there is sufficient public interest, or for any other reason.

(d) The Department must give public notice that complies with paragraph (a) of this section if implementation of an approved corrective action plan does not achieve the established cleanup levels in the plan and termination of that plan is under consideration by the Department.

**SUBPART G**  
***Out-of-Service UST Systems and Closure***

**SECTION 280.70. TEMPORARY CLOSURE.**

(a) When an UST system is temporarily closed, owners and operators must continue operation and maintenance of corrosion protection in accordance with Section 280.31, and any release detection in accordance with Subparts D and K of this part. Subparts E and F of this part must be complied with if a release is suspected or confirmed. However, release detection and release detection operation and maintenance testing and inspections in Subparts C and D of this part are not required as long as the UST system is empty. The UST system is empty when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remain in the system. In addition, spill and overfill operation and maintenance testing and inspections in Subpart C of this part are not required.

(b) When an UST system is temporarily closed for 3 months or more, owners and operators must also comply with the following requirements:

- (1) Leave vent lines open and functioning; and
- (2) Cap and secure all other lines, pumps, manways, and ancillary equipment.

(c) When an UST system is temporarily closed for more than 12 months, owners and operators must permanently close the UST system if it does not meet either performance standards in Section 280.20 for new UST systems or the upgrading requirements in Section 280.21, except that the spill and overfill equipment requirements do not have to be met. Owners and operators must permanently close the substandard UST systems at the end of this 12-month period in accordance with Sections 280.71 through 280.74, unless the Department provides an extension of the 12-month temporary closure period. Owners and operators must complete a site assessment in accordance with Section 280.72 before such an extension can be applied for.

(d) When an UST system is temporarily closed, owners and operators must maintain records in accordance with Section 280.45(b)(3).

**SECTION 280.71. PERMANENT CLOSURE AND CHANGES-IN-SERVICE.**

(a) At least 30 days before beginning either permanent closure or a change-in-service under paragraphs (b) and (c) of this section, or within another reasonable time period determined by the Department, owners and operators must notify the Department in writing of their intent to permanently close or make the change-in-service, unless such action is in response to corrective action. At least 30 days before replacing previously installed piping or previously installed dispensers, owners and operators must notify the Department in writing of their intent. The required assessment of the excavation zone under Section 280.72 must be performed after notifying the Department but before completion of the permanent closure or a change-in-service.

(b) To permanently close a tank, owners and operators must empty and clean it by removing all liquids and accumulated sludges. All tanks taken out of service permanently must be removed from the ground, filled with an inert solid material, or closed in place in a manner approved by the Department.

(c) Continued use of an UST system to store a non-regulated substance is considered a change-in-service. Before a change-in-service, owners and operators must empty and clean the tank by removing all liquid and accumulated sludge and conduct a site assessment in accordance with Section 280.72. A change-in-service also includes switching from a non-regulated substance to a regulated substance.

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[Note to Section 280.71. The following cleaning and closure procedures may be used to comply with this section:

(A) American Petroleum Institute Recommended Practice RP 1604, "Closure of Underground Petroleum Storage Tanks";

(B) American Petroleum Institute Standard 2015, "Safe Entry and Cleaning of Petroleum Storage Tanks, Planning and Managing Tank Entry From Decommissioning Through Recommissioning";

(C) American Petroleum Institute Recommended Practice 2016, "Guidelines and Procedures for Entering and Cleaning Petroleum Storage Tanks";

(D) American Petroleum Institute Recommended Practice RP 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks," may be used as guidance for compliance with this section;

(E) National Fire Protection Association Standard 326, "Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair"; and

(F) National Institute for Occupational Safety and Health Publication 80–106, "Criteria for a Recommended Standard . . . Working in Confined Space" may be used as guidance for conducting safe closure procedures at some hazardous substance tanks.]

### **SECTION 280.72. ASSESSING THE SITE AT CLOSURE OR CHANGE-IN-SERVICE AND REPORTING REQUIREMENTS.**

(a) Before permanent closure or a change-in-service is completed, owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the method of closure, the nature of the stored substance, the type of backfill, the depth to groundwater, and other factors appropriate for identifying the presence of a release. The requirements of this section are satisfied if one of the external release detection methods allowed in Section 280.43(e) and (f) is operating in accordance with the requirements in Section 280.43 at the time of closure or change-in-service, and indicates no release has occurred.

(b) If contaminated soils, contaminated groundwater, or free product as a liquid or vapor is discovered under paragraph (a) of this section, or by any other manner, owners and operators must begin corrective action in accordance with Subpart F of this part.

(c) Owners and operators must submit the information collected in compliance with paragraph (a) of this section, on a form supplied by the Department or an approved substitute, to the Department not later than 60 days after the tank has been either removed from the ground or filled with an inert solid material.

### **SECTION 280.73. APPLICABILITY TO PREVIOUSLY CLOSED UST SYSTEMS.**

When directed by the Department, the owner and operator of an UST system permanently closed before December 22, 1988, must access the excavation zone and close the UST system in accordance with this subpart if releases from the UST may, in the judgment of the Department, pose a current or potential threat to human health and the environment.



**SECTION 280.74. CLOSURE RECORDS.**

Owners and operators must maintain records in accordance with Section 280.34 that are capable of demonstrating compliance with closure requirements under this subpart. The results of the excavation zone assessment required in Section 280.72 must be maintained for at least three years after completion of permanent closure or change-in-service in one of the following ways:

- (a) By the owners and operators who took the UST system out of service;
- (b) By the current owners and operators of the UST system site; or
- (c) By submitting these records to the Department if they cannot be maintained at the closed facility.

***SUBPART H***  
***Financial Responsibility***

**SECTION 280.90. APPLICABILITY.**

(a) This subpart applies to owners and operators of all petroleum underground storage tank (UST) systems in South Carolina except as otherwise provided in this section.

(b) Owners and operators of petroleum UST systems are subject to these requirements in accordance with Section 280.91.

(c) State and Federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States are exempt from the requirements of this subpart.

(d) The requirements of this subpart do not apply to owners and operators of any UST system described in Section 280.10(b), (c)(1), (c)(3), or (c)(4).

(e) If the owner and operator of a petroleum UST are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in the event of noncompliance. Regardless of which party complies, the date set for compliance at a particular facility is determined by the characteristics of the owner as set forth in Section 280.91.

**SECTION 280.91. COMPLIANCE DATES.**

[Note. Pursuant to 40 CFR Part 280, Vol. 58, No. 31 of February 18, 1993, the Federal Regulation entitled "Underground Storage Tanks Containing Petroleum--Financial Responsibility Requirements; Final Rule" became effective one year after its date of publication. The federal regulation thus became effective on February 18, 1994.]

As enacted by Title 44, Chapter 2, of the 1976 South Carolina Code of Laws, the State Underground Petroleum Environmental Response Bank Act (hereafter referred to as the SUPERB Act), all petroleum UST owners or operators are required to comply with the requirements of this subpart. Compliance with this subpart was required on September 22, 1995. Previously deferred UST systems must comply with the requirements of this subpart according to the schedule in Section 280.251(a).

**SECTION 280.92. DEFINITION OF TERMS.**

When used in this subpart, the following terms shall have the meanings given below:

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(a) "Accidental release" means any sudden or nonsudden release of petroleum from an UST that results in a need for corrective action and/or compensation for bodily injury or property damage neither expected nor intended by the UST owner or operator.

(b) "Bodily injury" shall have the meaning given to this term by applicable South Carolina law; however, this term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

(c) "Chief Financial Officer", in the case of local government owners and operators, means the individual with the overall authority and responsibility for the collection, disbursement, and use of funds by the local government. In the case of non-government owners and operators, the corporate officer officially designated as the Chief Financial Officer or functionally equivalent most senior financial officer. The Chief Financial Officer is the person who signs United States Securities and Exchange Commission ("SEC") submissions or the equivalent.

(d) "Controlling interest" means direct ownership of at least 50 percent of the voting stock of another entity.

(e) "Department" refers to the South Carolina Department of Health and Environmental Control.

(f) "Financial reporting year" means the latest consecutive twelve-month period for which any of the following reports used to support a financial test is prepared: (1) a 10-K report submitted to the SEC; (2) an annual report of tangible net worth submitted to Dun and Bradstreet; or (3) annual reports submitted to the Energy Information Administration or the Rural Utilities Service.

[Note to the definition of "financial reporting year." "Financial reporting year" may thus comprise a fiscal or a calendar year period.]

(g) "Legal defense cost" is any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought: (1) by the Environmental Protection Agency (EPA) or the state of South Carolina to require corrective action or to recover the costs of corrective action; (2) by or on behalf of a third party for bodily injury or property damage caused by an accidental release; or (3) by any person to enforce the terms of a financial assurance mechanism.

(h) "Local government" shall have the meaning given this term by applicable state law and includes Indian tribes. The term is generally intended to include: (1) counties, municipalities, townships, separately chartered and operated special districts (including local government public transit systems and redevelopment authorities), and independent school districts authorized as governmental bodies by state charter or constitution; and (2) special districts and independent school districts established by counties, municipalities, townships, and other general purpose governments to provide essential services.

(i) "Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in a release from an UST.

[Note to the definition of "Occurrence." This definition is intended to assist in the understanding of these regulations and is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence."]

(j) "Owner or operator," when the owner or operator are separate parties, refers to the party that is obtaining or has obtained financial assurances.

(k) "Petroleum marketing facilities" include all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

(l) "Petroleum marketing firms" are all firms owning petroleum marketing facilities. Firms owning other types of facilities with USTs as well as petroleum marketing facilities are considered to be petroleum marketing firms.

(m) "Property damage" shall have the meaning given this term by applicable South Carolina law. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include corrective action associated with releases from tanks which are covered by the policy.

(n) "Provider of financial assurance" means an entity that provides financial assurance to an owner or operator of an underground storage tank through one of the mechanisms listed in Sections 280.95 through 280.107, including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, issuer of a state-required mechanism, or a state.

(o) "SCUSTCR" refers to the South Carolina Underground Storage Tank Control Regulations, promulgated pursuant to Section 44-2-50 of the 1976 South Carolina Code of Laws and enacted in March, 1990.

(p) "Substantial business relationship" means the extent of a business relationship necessary under applicable South Carolina law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

(q) "Substantial compliance" as stated in Section 44-2-20(14) of the 1976 Code of Laws, as amended, means that an UST owner or operator has demonstrated a good faith effort to comply with regulations necessary and essential in preventing releases, in facilitating their early detection, and in mitigating their impact on public health and the environment.

(r) "Substantial governmental relationship" means the extent of a governmental relationship necessary under applicable South Carolina law to make an added guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from a clear commonality of interest in the event of an UST release such as coterminous boundaries, overlapping constituencies, common groundwater aquifer, or other relationship other than monetary compensation that provides a motivation for the guarantor to provide a guarantee.

(s) "Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

(t) "Termination" under Section 280.97(b)(1) and (2) means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

### **SECTION 280.93. AMOUNT AND SCOPE OF REQUIRED FINANCIAL RESPONSIBILITY.**

[Note: The SUPERB Account and the SUPERB Financial Responsibility Fund, described in Section 280.101, may be used to meet the South Carolina financial responsibility requirements for corrective action and third party liability, respectively, when used in conjunction with the owner or operator responsibilities given in Section 280.101.]

(a) Owners or operators of petroleum USTs must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs in at least the following per-occurrence amounts:

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(1) For owners or operators of petroleum USTs that are located at petroleum marketing facilities, or that handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year; \$1 million.

(2) For all other owners or operators of petroleum USTs; \$500,000.

(b) Owners or operators of petroleum USTs must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs in at least the following annual aggregate amounts:

(1) For owners or operators of 1 to 100 petroleum USTs, \$1 million; and

(2) For owners or operators of 101 or more petroleum USTs, \$2 million.

(c) For the purposes of paragraphs (b) and (f) of this section, only, "a petroleum UST" means a single containment unit and does not mean combinations of single containment units.

(d) Except as provided in paragraph (e) of this section, if the owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for:

(1) Taking corrective action;

(2) Compensating third parties for bodily injury and property damage caused by sudden accidental releases;  
or

(3) Compensating third parties for bodily injury and property damage caused by nonsudden accidental releases, the amount of assurance provided by each mechanism or combination of mechanisms must be in the full amount specified in paragraphs (a) and (b) of this section.

(e) If an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum USTs, the annual aggregate required shall be based on the number of tanks covered by each such separate mechanism or combination of mechanisms.

(f) Owners or operators shall review the amount of aggregate assurance provided whenever additional petroleum USTs are acquired or installed. If the number of petroleum USTs for which assurance must be provided exceeds 100, the owner or operator shall demonstrate financial responsibility in the amount of at least \$2 million of annual aggregate assurance by the anniversary of the date on which the mechanism demonstrating financial responsibility became effective. If assurance is being demonstrated by a combination of mechanisms, the owner or operator shall demonstrate financial responsibility in the amount of at least \$2 million of annual aggregate assurance by the first-occurring effective date anniversary of any one of the mechanisms combined (other than a financial test or guarantee) to provide assurance.

(g) The amounts of assurance required under this section exclude legal defense costs.

(h) The required per-occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator.

### **SECTION 280.94. ALLOWABLE MECHANISMS AND COMBINATIONS OF MECHANISMS.**

(a) Subject to the limitations of paragraphs (b) and (c) of this section:

(1) An owner or operator, including a local government owner or operator, may use any one or combination of the mechanisms listed in Sections 280.95 through 280.103 to demonstrate financial responsibility under this subpart for one or more USTs; and

(2) A local government owner or operator may use any one or combination of the mechanisms listed in Sections 280.104 through 280.107 to demonstrate financial responsibility under this subpart for one or more USTs.

(b) An owner or operator may use a guarantee under Section 280.96 or surety bond under Section 280.98 to establish financial responsibility only if the South Carolina Attorney General has (have) submitted a written statement to the Department that a guarantee or surety bond executed as described in this section is a legally valid and enforceable obligation in South Carolina.

(c) An owner or operator may use self-insurance in combination with a guarantee only if, for the purpose of meeting the requirements of the financial test under this rule, the financial statements of the owner or operator are not consolidated with the financial statements of the guarantor.

**SECTION 280.95. FINANCIAL TEST OF SELF-INSURANCE.**

(a) An owner or operator, and/or guarantor, may satisfy the requirements of Section 280.93 by passing a financial test as specified in this section. To pass the financial test of self-insurance, the owner or operator, and/or guarantor must meet the criteria of paragraph (b) or (c) of this section based on year-end financial statements for the latest completed fiscal year.

(b)(1) The owner or operator, and/or guarantor, must have a tangible net worth of at least ten times:

(i) The total of the applicable aggregate amount required by Section 280.93, based on the number of USTs for which a financial test is used to demonstrate financial responsibility to EPA under this section or to the Department;

(ii) The sum of the corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR Parts 264.101, 264.143, 264.145, 265.143, 265.145, 264.147, and 265.147 and to the Department (subsequent to authorization by EPA under 40 CFR Part 271); and

(iii) The sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR Part 144.63 and to the Department (subsequent to authorization by EPA under 40 CFR Part 145).

(2) The owner or operator, and/or guarantor, must have a tangible net worth of at least \$10 million.

(3) The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer worded as specified in paragraph (d) of this section.

(4) The owner or operator, and/or guarantor, must either:

(i) File financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Utilities Service; or

(ii) Report annually the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet must have assigned the firm a financial strength rating of 4A or 5A.

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(5) The firm's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

(c)(1) The owner or operator, and/or guarantor must meet the financial test requirements of 40 CFR 264.147(f)(1), substituting the appropriate amounts specified in Sections 280.93(b)(1) and (2) for the "amount of liability coverage" each time specified in that section.

(2) The fiscal year-end financial statements of the owner or operator, and/or guarantor, must be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.

(3) The firm's year-end financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

(4) The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer, worded as specified in paragraph (d) of this section.

(5) If the financial statements of the owner or operator, and/or guarantor, are not submitted annually to the U.S. Securities and Exchange Commission, the Energy Information Administration or the Rural Utilities Service, the owner or operator, and/or guarantor, must obtain a special report by an independent certified public accountant stating that:

(i) He has compared the data that the letter from the chief financial officer specifies as having been derived from the latest year-end financial statements of the owner or operator, and/or guarantor, with the amounts in such financial statements; and

(ii) In connection with that comparison, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(d) To demonstrate that it meets the financial test under paragraph (b) or (c) of this section, the chief financial officer of the owner or operator, or guarantor, must sign, within 120 days of the close of each financial reporting year, as defined by the twelve-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

### LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of the owner or operator, or guarantor]. This letter is in support of the use of [insert: "the financial test of self-insurance," and/or "guarantee"] to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following South Carolina facilities are assured by this financial test by this [insert: "owner or operator," and/or "guarantor"]: [List for each facility: the name and address of the facility where tanks assured by this financial test are located, and whether tanks are assured by this financial test. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to R.61-92.280.22.]

A [insert: "financial test," and/or "guarantee"] is also used by this [insert: "owner or operator," or "guarantor"] to demonstrate evidence of financial responsibility in the following amounts under other EPA regulations or state programs authorized by EPA under 40 CFR Parts 271 and 145:

EPA Regulation:	Amount
Closure (Sections 264.143 and 265.143).....	\$ _____
Post-Closure Care (Sections 264.145 and 265.145).....	\$ _____
Liability Coverage (Sections 264.147 and 265.147).....	\$ _____
Corrective Action (Section 264.101(b)).....	\$ _____
Plugging and Abandonment (Section 144.63) .....	\$ _____

South Carolina (Subsequent to authorization):	Amount
Closure.....	\$ _____
Post-Closure Care .....	\$ _____
Liability Coverage.....	\$ _____
Corrective Action.....	\$ _____
Plugging and Abandonment.....	\$ _____
TOTAL.....	\$ _____

This [insert: "owner or operator," or "guarantor"] has not received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on his financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the criteria of paragraph (b) of Section 280.95 are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of paragraph (c) of Section 280.95 are being used to demonstrate compliance with the financial test requirements.]

ALTERNATIVE I

1. Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee..... \$ \_\_\_\_\_
  2. Amount of corrective action, closure and post- closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or\$ \_\_\_\_\_ guarantee.....
  3. Sum of lines 1 and 2 ..... \$ \_\_\_\_\_
  4. Total tangible assets ..... \$ \_\_\_\_\_
  5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6]\$ \_\_\_\_\_
  6. Tangible net worth [subtract line 5 from line 4] ..... \$ \_\_\_\_\_
- |   |     |     |
|---|-----|-----|
|   | Yes | No  |
| 7. Is line 6 at least \$10 million? .....   | ___ | ___ |
| 8. Is line 6 at least 10 times line 3? .....  | ___ | ___ |
| 9. Have financial statements for the latest fiscal year been filed with the Securities and Exchange Commission? ..... | ___ | ___ |
| 10. Have financial statements for the latest fiscal year been filed with the Energy Information Administration? ..... | ___ | ___ |
| 11. Have financial statements for the latest fiscal year been filed with the Rural Utilities Service? .....           | ___ | ___ |

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12. Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of 4A or 5A? \_\_\_\_\_  
 [Answer "Yes" only if both criteria have been met.] .....

**ALTERNATIVE II**

- 1. Amount of annual UST aggregate coverage being assured by a financial test,\$ \_\_\_\_\_ and/or guarantee.....
- 2. Amount of corrective action, closure and post-closure care costs, liability\$ \_\_\_\_\_ coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee.....
- 3. Sum of lines 1 and 2..... \$ \_\_\_\_\_
- 4. Total tangible assets..... \$ \_\_\_\_\_
- 5. Total liabilities [if any of the amount reported on line 3 is included in total\$ \_\_\_\_\_ liabilities, you may deduct that amount from this line and add that amount to line 6].....
- 6. Tangible net worth [subtract line 5 from line 4] \$ \_\_\_\_\_
- 7. Total assets in the U.S. [required only if less than 90 percent of assets are located\$ \_\_\_\_\_ in the U.S.].....

- |  | Yes   | No    |
|--|-------|-------|
| 8. Is line 6 at least \$10 million?.....   | _____ | _____ |
| 9. Is line 6 at least 6 times line 3?.....   | _____ | _____ |
| 10. Are at least 90 percent of assets located in the U.S.? [If "No," complete line 11.]..... | _____ | _____ |
| 11. Is line 7 at least 6 times line 3?.....  | _____ | _____ |

[Fill in either lines 12-15 or lines 16-18:]

- 12. Current assets..... \$ \_\_\_\_\_
  - 13. Current liabilities..... \$ \_\_\_\_\_
  - 14. Net working capital [subtract line 13 from line 12] ..... \$ \_\_\_\_\_
- |  | Yes   | No    |
|--|-------|-------|
| 15. Is line 14 at least 6 times line 3? .....  | _____ | _____ |
| 16. Current bond rating of most recent bond issue.....   | _____ |       |
| 17. Name of rating service.....  | _____ |       |
| 18. Date of maturity of bond.....  | _____ |       |
| 19. Have financial statements for the latest fiscal year been filed with the SEC, the Energy Information Administration, or the Rural Utilities Service? ..... | _____ |       |

[If "No," please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 4-18 above and the financial statements for the latest fiscal year.]



[For both Alternative I and Alternative II complete the certification with this statement.]

I hereby certify that the wording of this letter is identical to the wording specified in R.61-92.280.95(d) as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

(e) If an owner or operator using the test to provide financial assurance finds that he or she no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator must obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.

(f) The Department may require reports of financial condition at any time from the owner or operator, and/or guarantor. If the Department finds, on the basis of such reports or other information, that the owner or operator, and/or guarantor, no longer meets the financial test requirements of Section 280.95(b) or (c) and (d), the owner or operator must obtain alternate coverage within 30 days after notification of such a finding.

(g) If the owner or operator fails to obtain alternate assurance within 150 days of finding that he or she no longer meets the requirements of the financial test based on the year-end financial statements, or within 30 days of notification by the Department that he or she no longer meets the requirements of the financial test, the owner or operator must notify the Department of such failure within 10 days.

**SECTION 280.96. GUARANTEE.**

(a) An owner or operator may satisfy the requirements of Section 280.93 by obtaining a guarantee that conforms to the requirements of this section. The guarantor must be:

(1) A firm that:

(i) Possesses a controlling interest in the owner or operator;

(ii) Possesses a controlling interest in a firm described under paragraph (a)(1)(i) of this section; or,

(iii) Is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator; or,

(2) A firm engaged in a substantial business relationship with the owner or operator and issuing the guarantee as an act incident to that business relationship.

(b) Within 120 days of the close of each financial reporting year the guarantor must demonstrate that it meets the financial test criteria of Section 280.95 based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in Section 280.95(d) and must deliver the letter to the owner or operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within 120 days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator. If the Department notifies the guarantor that he no longer meets the requirements of the financial test of Section 280.95(b) or (c) and (d), the guarantor must notify the owner or operator within 10 days of receiving such notification from the Department. In both cases, the guarantee will terminate no less than 120 days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator must obtain alternate coverage as specified in Section 280.114(e).

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(c) The guarantee must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

### GUARANTEE

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the state of [name of state], herein referred to as guarantor, to the Department of Health and Environmental Control (Department) and to any and all third parties, and obligees, on behalf of [owner or operator] of [business address].

### Recitals.

(1) Guarantor meets or exceeds the financial test criteria of R.61-92.280.95(b) or (c) and (d) and agrees to comply with the requirements for guarantors as specified in Section 280.96(b).

(2) [Owner or operator] owns or operates the following underground storage tank(s) in South Carolina covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to R.61-92.280.22 and the name and address of the facility.] This guarantee satisfies R.61-92.280, Subpart H requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(3) [Insert appropriate phrase: "On behalf of our subsidiary" (if guarantor is corporate parent of the owner or operator); "On behalf of our affiliate" (if guarantor is a related firm of the owner or operator); or "Incident to our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with owner or operator)] [owner or operator], guarantor guarantees to the Department and to any and all third parties that:

In the event that [owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Department has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the Department, shall fund a standby trust fund in accordance with the provisions of R.61-92.280.112, in an amount not to exceed the coverage limits specified above.

In the event that the Department determines that [owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with R.61-92.280, Subpart F, the guarantor upon written instructions from the Department shall fund a standby trust in accordance with the provisions of R.61-92.280.112, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the Department shall fund a standby trust in accordance with the provisions of R.61-92.280.112 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of R.61-92.280.95(b) or (c) and (d), guarantor shall send within 120 days

of such failure, by certified mail, notice to [owner or operator]. The guarantee will terminate 120 days from the date of receipt of the notice by [owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to R.61-92.280.

(7) Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial responsibility requirements of R.61-92.280, Subpart H for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily damage or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of R.61-92.280.93.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Department, by any or all third parties, or by [owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in R.61-92.280.96(c) as such regulations were constituted on the effective date shown immediately below.

Effective date: \_\_\_\_\_

[Name of guarantor] \_\_\_\_\_

[Authorized signature for guarantor] \_\_\_\_\_

[Name of person signing] \_\_\_\_\_

[Title of person signing] \_\_\_\_\_

Signature of witness or notary:

(d) An owner or operator who uses a guarantee to satisfy the requirements of Section 280.93 must establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the Department under Section 280.112. This standby trust fund must meet the requirements specified in Section 280.103.

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**SECTION 280.97. INSURANCE AND RISK RETENTION GROUP COVERAGE.**

(a) An owner or operator may satisfy the requirements of Section 280.93 by obtaining liability insurance that conforms to the requirements of this section from a qualified insurer or risk retention group. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

(b) Each insurance policy must be amended by an endorsement worded as specified in paragraph (b)(1) or evidenced by a certificate of insurance worded as specified in paragraph (b)(2), except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

(1) **ENDORSEMENT**

Name: [name of each covered location]

Address: [address of each covered location]

\_\_\_\_\_

Policy Number:

Period of Coverage: [current policy period]

Name of [Insurer or Risk Retention Group]:

\_\_\_\_\_

Address of [Insurer or Risk Retention Group]:

\_\_\_\_\_

Name of Insured:

Address of Insured:

\_\_\_\_\_

\_\_\_\_\_

Endorsement:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following underground storage tanks:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to R.61-92.280.22, and the name and address of the facility.]

for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with subsections (a) through (e) of this Paragraph 2 are hereby amended to conform with subsections (a) through (e):

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this endorsement is attached.

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in R.61-92.280.95 through 280.102 and 280.104 through 280.107.

c. Whenever requested by the Department the ["Insurer" or "Group"] agrees to furnish to the Department a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"], except for non-payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 10 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

e. The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Group"] within six months of the effective date of cancellation or non-renewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in R.61-92.280.97(b)(1) and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in South Carolina"].

[Signature of authorized representative of Insurer or Risk Retention Group]

[Name of person signing]

[Title of person signing], Authorized Representative of [name of Insurer or Risk Retention Group]

[Address of Representative]

(2) CERTIFICATE OF INSURANCE

Name: [name of each covered location]

Address: [address of each covered location]

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Policy Number:

Endorsement (if applicable):

Period of Coverage: [current policy period]

Name of [Insurer or Risk Retention Group]:

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---

Address of [Insurer or Risk Retention Group]:

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Name of Insured:

Address of Insured:

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Certification:

1. [Name of Insurer or Risk Retention Group], [the "Insurer" or "Group"], as identified above, hereby certifies that it has issued liability insurance covering the following underground storage tank(s):

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to R.61-92.280.22, and the name and address of the facility.]

for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The ["Insurer" or "Group"] further certifies the following with respect to the insurance described in Paragraph 1:

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this certificate applies.

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in R.61-92.280.95 through 280.102 and 280.104 through 280.107.

c. Whenever requested by the Department, the ["Insurer" or "Group"] agrees to furnish to the Department a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"], except for non-payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 10 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

e. The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Group"] within six months of the effective date of cancellation or other non-renewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in R.61-92.280.97(b)(2) and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in South Carolina"].

[Signature of authorized representative of Insurer]

[Type name]

[Title], Authorized Representative of [name of Insurer or Risk Retention Group]

[Address of Representative]

(c) Each insurance policy must be issued by an insurer or a risk retention group that, at a minimum, is licensed to transact the business of insurance or is eligible to provide insurance as an excess or surplus lines insurer in South Carolina.

**SECTION 280.98. SURETY BOND.**

(a) An owner or operator may satisfy the requirements of Section 280.93 by obtaining a surety bond that conforms to the requirements of this section. The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

(b) The surety bond must be worded as follows, except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

PERFORMANCE BOND

Date bond executed: \_\_\_\_\_

Period of coverage: \_\_\_\_\_

Principal: [legal name and business address of owner or operator]

Type of organization: [insert "individual", "joint venture", "partnership", or "corporation"]

State of incorporation (if applicable): \_\_\_\_\_

Surety(ies): [name(s) and business address(es)] \_\_\_\_\_

Scope of Coverage: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to R.61-92.280.22, and the name and address of the facility. List the coverage guaranteed by the bond:

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"taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases" "arising from operating the underground storage tank"].

Penal sums of bond:            Per occurrence     \$ \_\_\_\_\_  
   Annual aggregate    \$ \_\_\_\_\_

Surety's bond number: \_\_\_\_\_

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the Department, in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under Subtitle I of the Solid Waste Disposal Act, as amended, and the State Underground Petroleum Environmental Response Bank Act, as amended, to provide financial assurance for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tanks identified above, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully ["take corrective action, in accordance with R.61-92.280, Subpart F and the Department's instructions for," and/or "compensate injured third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified in R.61-92.280, Subpart H, within 120 days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of R.61-92.280.93.



The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the Department that the Principal has failed to ["take corrective action, in accordance with R.61-92.280, Subpart F and the Department's instructions," and/or "compensate injured third parties"] as guaranteed by this bond, the Surety(ies) shall either perform ["corrective action in accordance with R.61-92.280 and the Department's instructions," and/or "third-party liability compensation"] or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by the Department under R.61-92 280.112.

Upon notification by the Department that the Principal has failed to provide alternate financial assurance within 60 days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the Department has determined or suspects that a release has occurred, the Surety(ies) shall place funds in an amount not exceeding the annual aggregate penal sum into the standby trust fund as directed by the Department under R.61-92.280.112.

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal, as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Thereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in R.61-92.280.98(b) as such regulations were constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)] \_\_\_\_\_  
[Name(s)] \_\_\_\_\_  
[Title(s)] \_\_\_\_\_  
[Corporate seal]

CORPORATE SURETY(IES)

[Name and address] \_\_\_\_\_  
[State of Incorporation: \_\_\_\_\_]  
[Liability limit: \$ \_\_\_\_\_]  
[Signature(s)] \_\_\_\_\_  
[Name(s) and title(s)] \_\_\_\_\_  
[Corporate seal]

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[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$ \_\_\_\_\_

(c) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per-occurrence and annual aggregate penal sums.

(d) The owner or operator who uses a surety bond to satisfy the requirements of Section 280.93 must establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the Department under Section 280.112. This standby trust fund must meet the requirements specified in Section 280.103.

### SECTION 280.99. LETTER OF CREDIT.

(a) An owner or operator may satisfy the requirements of Section 280.93 by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section. The issuing institution must be an entity that has the authority to issue letters of credit in South Carolina and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(b) The letter of credit must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### IRREVOCABLE STANDBY LETTER OF CREDIT

[Name and address of issuing institution]

Department of Health and Environmental Control, Underground Storage Tank Program, 2600 Bull Street, Columbia, SC, 29201

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. in your favor, at the request and for the account of [owner or operator name] of [address] up to the aggregate amount of [in words] U.S. dollars (\$[insert dollar amount]), available upon presentation of

(1) your sight draft, bearing reference to this letter of credit, No. , and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of Subtitle I of the Solid Waste Disposal Act, as amended, and the State Underground Petroleum Environmental Response Bank Act, as amended."

This letter of credit may be drawn on to cover [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the underground storage tank(s) identified below in the amount of [in words] \$[insert dollar amount] per occurrence and [in words] \$[insert dollar amount] annual aggregate:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to R.61-92.280.22, and the name and address of the facility.]

The letter of credit may not be drawn on to cover any of the following:

- (a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of R.61-92.280.93.

This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify [owner or operator and the Department] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that [owner or operator] is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by [owner or operator], as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner or operator] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in R.61-92.280.99(b) as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution] \_\_\_\_\_

[Date] \_\_\_\_\_

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code"].

(c) An owner or operator who uses a letter of credit to satisfy the requirements of Section 280.93 must also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Department will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Department under Section 280.112. This standby trust fund must meet the requirements specified in Section 280.103.

(d) The letter of credit must be irrevocable with a term specified by the issuing institution. The letter of credit must provide that credit be automatically renewed for the same term as the original term, unless, at least 120 days before the current expiration date, the issuing institution notifies the owner or operator and the Department by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the 120 days will begin on the date when the owner or operator receives the notice, as evidenced by the return receipt.

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### SECTION 280.100. (Reserved)

### SECTION 280.101. STATE UNDERGROUND PETROLEUM ENVIRONMENTAL RESPONSE BANK (SUPERB) OR OTHER STATE ASSURANCE.

(a) When used in conjunction with the deductible amount[s] referenced in (c) below, the SUPERB Account and the SUPERB Financial Responsibility Fund may be used to satisfy the financial responsibility requirements of Section 280.93 for corrective action and third party bodily injury or property damage, respectively, for USTs located in South Carolina.

(b) To be qualified for coverage by these funds, the UST owner or operator shall meet the following requirements which have been extracted from Title 44, Chapter 2 of the 1976 Code of Laws, the State Underground Petroleum Environmental Response Bank Act, as amended, and the regulations promulgated thereafter:

(1) The UST for which coverage is requested is in substantial compliance with SCUSTCR.

(2) All UST registration and annual fees have been paid.

(3) Department representatives have not been denied site access during reasonable hours to perform any requested activities authorized under the SUPERB Act.

(4) The owner or operator is not cited in any enforcement action by the Department pertaining to the USTs for which coverage is requested.

(c) The deductible[s] in force at the time the site was reported may be met by using the mechanisms listed in Sections 280.95 through 280.99 and Sections 280.102 through 280.107 or:

(1) For sites where the UST systems do not yet meet the federally mandated 1998 performance standards for corrosion protection and spill and overfill protection, by submitting a financial statement signed by a Certified Public Accountant or the chief financial officer of the company showing a tangible net worth of at least four times the deductible amount.

(2) For sites where the UST systems meet or have been upgraded to meet the federally mandated 1998 performance standards for corrosion protection and spill and overfill protection, by submitting a financial statement signed by a Certified Public Accountant or the chief financial officer of the company showing a tangible net worth of at least two times the deductible amount.

(d) The owner or operator must maintain a completed certificate, provided by the Department in Section 280.111(b)(11), on file as proof of financial responsibility. [See Sections 280.110 and 280.111 for additional recordkeeping requirements.]

(e) Subsequent to the abolishment of the environmental impact fee as authorized in Section 44-2-90 of the SUPERB Act, the coverage amounts afforded by these funds as authorized by this section will no longer be applicable. At that time owners or operators must demonstrate the full state financial responsibility requirement using approved mechanisms detailed in Sections 280.95 through 280.99 and Sections 280.102 through 280.107.

### SECTION 280.102. TRUST FUND.

(a) An owner or operator may satisfy the requirements of Section 280.93 by establishing a trust fund that conforms to the requirements of this section. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or a South Carolina agency.

(b) The wording of the trust agreement must be identical to the wording specified in Section 280.103(b)(1), and must be accompanied by a formal certification of acknowledgment as specified in Section 280.103(b)(2).

(c) The trust fund, when established, must be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining required coverage.

(d) If the value of the trust fund is greater than the required amount of coverage, the owner or operator may submit a written request to the Department for release of the excess.

(e) If other financial assurance as specified in this subpart is substituted for all or part of the trust fund, the owner or operator may submit a written request to the Department for release of the excess.

(f) Within 60 days after receiving a request from the owner or operator for release of funds as specified in paragraphs (d) or (e) of this section, the Department will instruct the trustee to release to the owner or operator such funds as the Department specifies in writing.

**SECTION 280.103. STANDBY TRUST FUND.**

(a) An owner or operator using any one of the mechanisms authorized by Sections 280.96, 280.98, or 280.99 must establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or a South Carolina agency.

(b)(1) The standby trust agreement, or trust agreement, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

Trust agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "Incorporated in the state of SOUTH CAROLINA" or "a national bank"], the "Trustee."

Whereas, the United States Environmental Protection Agency, "EPA," an agency of the United States Government, and the Department of Health and Environmental Control, an agency of the state of South Carolina, have established certain regulations applicable to the Grantor, requiring that an owner or operator of an underground storage tank shall provide assurance that funds will be available when needed for corrective action and third-party compensation for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of the underground storage tank. The attached Schedule A lists the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located that are covered by the [insert "standby" where trust agreement is standby trust agreement] trust agreement.

[Whereas, the Grantor has elected to establish [insert either "a guarantee," "surety bond," or "letter of credit"] to provide all or part of such financial assurance for the underground storage tanks identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement.);];

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee;

Now, therefore, the Grantor and the Trustee agree as follows:

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Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of the Financial Assurance Mechanism. This Agreement pertains to the [identify the financial assurance mechanism, either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement.)].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Department of Health and Environmental Control (Department). The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. [The Fund is established initially as a standby to receive payments and shall not consist of any property. This sentence is only applicable to the standby trust agreement.] Payments made by the provider of financial assurance pursuant to the Department's instruction are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by the Department.

Section 4. Payment for ["Corrective Action" and/or "Third-Party Liability Claims"]. The Trustee shall make payments from the Fund as the Department shall direct, in writing, to provide for the payment of the costs of [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the tanks covered by the financial assurance mechanism identified in this Agreement.

The Fund may not be drawn upon to cover any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of R.61-92.280.93.

The Trustee shall reimburse the Grantor, or other persons as specified by the Department, from the Fund for corrective action expenditures and/or third-party liability claims in such amounts as the Department shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Department specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(a) Securities or other obligations of the Grantor, or any other owner or operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;

(b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

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(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Department to the Trustee shall be in writing, signed by the Department and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Department hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Department, except as provided for herein.

Section 14. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and the Department if the Grantor ceases to exist.

Section 15. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the Department if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 16. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Department issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.



Section 17. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the state of South Carolina, or the Comptroller of the Currency in the case of National Association banks.

Section 18. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in R.61-92.280.103(b)(1) as such regulations were constituted on the date written above.

[Signature of Grantor] \_\_\_\_\_  
 [Name of the Grantor] \_\_\_\_\_  
 [Title] \_\_\_\_\_

Attest:

[Signature of Trustee] \_\_\_\_\_  
 [Name of the Trustee] \_\_\_\_\_  
 [Title] \_\_\_\_\_  
 [Seal]

Attest:

[Signature of Witness] \_\_\_\_\_  
 [Name of Witness] \_\_\_\_\_  
 [Title] \_\_\_\_\_  
 [Seal]

(2) The standby trust agreement, or trust agreement must be accompanied by a formal certification of acknowledgment similar to the following.

State of \_\_\_\_\_  
 County of \_\_\_\_\_

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that she/he signed her/his name thereto by like order.

[Signature of Notary Public] \_\_\_\_\_  
 [Name of Notary Public] \_\_\_\_\_

(c) The Department will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the Department determines that no additional corrective action costs or third-party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.

(d) An owner or operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this rule.

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**SECTION 280.104. LOCAL GOVERNMENT BOND RATING TEST.**

(a) A general purpose local government owner or operator and/or local government serving as a guarantor may satisfy the requirements of Section 280.93 by having a currently outstanding issue or issues of general obligation bonds of \$1 million or more, excluding refunded obligations, with a Moody's rating of Aaa, Aa, A, or Baa, or a Standard & Poor's rating of AAA, AA, A, or BBB. Where a local government has multiple outstanding issues, or where a local government's bonds are rated by both Moody's and Standard and Poor's, the lowest rating must be used to determine eligibility. Bonds that are backed by credit enhancement other than municipal bond insurance may not be considered in determining the amount of applicable bonds outstanding.

(b) A local government owner or operator or local government serving as a guarantor that is not a general-purpose local government and does not have the legal authority to issue general obligation bonds may satisfy the requirements of Section 280.93 by having a currently outstanding issue or issues of revenue bonds of \$1 million or more, excluding refunded issues and by also having a Moody's rating of Aaa, Aa, A, or Baa, or a Standard & Poor's rating of AAA, AA, A, or BBB as the lowest rating for any rated revenue bond issued by the local government. Where bonds are rated by both Moody's and Standard & Poor's, the lower rating for each bond must be used to determine eligibility. Bonds that are backed by credit enhancement may not be considered in determining the amount of applicable bonds outstanding.

(c) The local government owner or operator and/or guarantor must maintain a copy of its bond rating published within the last 12 months by Moody's or Standard & Poor's.

(d) To demonstrate that it meets the local government bond rating test, the chief financial officer of a general purpose local government owner or operator and/or guarantor must sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

**LETTER FROM CHIEF FINANCIAL OFFICER**

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this bond rating test: [List for each facility: the name and address of the facility where tanks are assured by the bond rating test].

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding bond issues that are being used by [name of local government owner or operator, or guarantor] to demonstrate financial responsibility are as follows: [complete table]

Issue date: \_\_\_\_\_  
Maturity date: \_\_\_\_\_  
Outstanding amount: \_\_\_\_\_  
Bond rating: \_\_\_\_\_  
Rating agency: \_\_\_\_\_  
(Moody's or Standard & Poor's)

The total outstanding obligation of [insert amount], excluding refunded bond issues, exceeds the minimum amount of \$1 million. All outstanding general obligation bonds issued by this government that have been rated by Moody's or Standard & Poor's are rated as at least investment grade (Moody's Baa or Standard & Poor's BBB) based on the most recent ratings published within the last 12 months. Neither rating service has provided

notification within the last 12 months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in R.61-92.280.104(d) as such regulations were constituted on the date shown immediately below.

[Date] \_\_\_\_\_  
 [Signature] \_\_\_\_\_  
 [Name] \_\_\_\_\_  
 [Title] \_\_\_\_\_

(e) To demonstrate that it meets the local government bond rating test, the chief financial officer of local government owner or operator and/or guarantor other than a general purpose government must sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s). This local government is not organized to provide general governmental services and does not have the legal authority under state law or constitutional provisions to issue general obligation debt.

Underground storage tanks at the following facilities are assured by this bond rating test: [List for each facility: the name and address of the facility where tanks are assured by the bond rating test].

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding revenue bond issues that are being used by [name of local government owner or operator, or guarantor] to demonstrate financial responsibility are as follows: [complete table]

Issue date: \_\_\_\_\_  
 Maturity date: \_\_\_\_\_  
 Outstanding amount: \_\_\_\_\_  
 Bond rating: \_\_\_\_\_  
 Rating agency: \_\_\_\_\_  
 (Moody's or Standard & Poor's)

The total outstanding obligation of [insert amount], excluding refunded bond issues, exceeds the minimum amount of \$1 million. All outstanding revenue bonds issued by this government that have been rated by Moody's or Standard & Poor's are rated as at least investment grade (Moody's Baa or Standard & Poor's BBB) based on the most recent ratings published within the last 12 months. The revenue bonds listed are not backed by third-party credit enhancement or are insured by a municipal bond insurance company. Neither rating service has provided notification within the last 12 months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in R.61-92.280.104(e) as such regulations were constituted on the date shown immediately below.

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[Date] \_\_\_\_\_  
[Signature] \_\_\_\_\_  
[Name] \_\_\_\_\_  
[Title] \_\_\_\_\_

(f) The Department may require reports of financial condition at any time from the local government owner or operator, and/or local government guarantor. If the Department finds, on the basis of such reports or other information, that the local government owner or operator, and/or guarantor, no longer meets the local government bond rating test requirements of Section 280.104, the local government owner or operator must obtain alternative coverage within 30 days after notification of such a finding.

(g) If a local government owner or operator using the bond rating test to provide financial assurance finds that it no longer meets the bond rating test requirements, the local government owner or operator must obtain alternative coverage within 150 days of the change in status.

(h) If the local government owner or operator fails to obtain alternate assurance within 150 days of finding that it no longer meets the requirements of the bond rating test or within 30 days of notification by the Department that it no longer meets the requirements of the bond rating test, the owner or operator must notify the Department of such failure within 10 days.

### **SECTION 280.105. LOCAL GOVERNMENT FINANCIAL TEST.**

(a) A local government owner or operator may satisfy the requirements of Section 280.93 by passing the financial test specified in this section. To be eligible to use the financial test, the local government owner or operator must have the ability and authority to assess and levy taxes or to freely establish fees and charges. To pass the local government financial test, the owner or operator must meet the criteria of paragraphs (b)(2) and (b)(3) of this section based on year-end financial statements for the latest completed fiscal year.

(b)(1) The local government owner or operator must have the following information available, as shown in the year-end financial statements for the latest completed fiscal year:

(i) Total Revenues: Consists of the sum of general fund operating and non-operating revenues including net local taxes, licenses and permits, fines and forfeitures, revenues from use of money and property, charges for services, investment earnings, sales (property, publications, etc.), intergovernmental revenues (restricted and unrestricted), and total revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity. For purposes of this test, the calculation of total revenues shall exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers), liquidation of investments, and issuance of debt.

(ii) Total Expenditures: Consists of the sum of general fund operating and non-operating expenditures including public safety, public utilities, transportation, public works, environmental protection, cultural and recreational, community development, revenue sharing, employee benefits and compensation, office management, planning and zoning, capital projects, interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues. For purposes of this test, the calculation of total expenditures shall exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers).

(iii) Local Revenues: Consists of total revenues (as defined in paragraph (b)(1)(i) of this section) minus the sum of all transfers from other governmental entities, including all monies received from Federal, State, or local government sources.

(iv) Debt Service: Consists of the sum of all interest and principal payments on all long-term credit obligations and all interest-bearing short-term credit obligations. Includes interest and principal payments on

general obligation bonds, revenue bonds, notes, mortgages, judgments, and interest bearing warrants. Excludes payments on non-interest-bearing short-term obligation, interfund obligation, amounts owed in a trust or agency capacity, and advances and contingent loans from other governments.

(v) Total Funds: Consists of the sum of cash and investment securities from all funds, including general, enterprise, debt service, capital projects, and special revenue funds, but excluding employee retirement funds, at the end of the local government's financial reporting year. Includes Federal securities, Federal agency securities, state and local government securities, and other securities such as bonds, notes and mortgages. For purposes of this test, the calculation of total funds shall exclude agency funds, private trust funds, accounts receivable, value of real property, and other non-security assets.

(vi) Population: consists of the number of people in the area served by the local government.

(2) The local government's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion or a disclaimer of opinion. The local government cannot have outstanding issues of general obligation or revenue bonds that are rated as less than investment grade.

(3) The local government owner or operator must have a letter signed by the chief financial officer worded as specified in paragraph (c) of this section.

(c) To demonstrate that it meets the financial test under paragraph (b) of this section, the chief financial officer of the local government owner or operator, must sign, within 120 days of the close of each financial reporting year, as defined by the twelve-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of the owner or operator]. This letter is in support of the use of the local government financial test to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test [List for each facility: the name and address of the facility where tanks assured by this financial test are located. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to R.61-92.280.22.

This owner or operator has not received an adverse opinion, or a disclaimer of opinion from an independent auditor on its financial statements for the latest completed fiscal year. Any outstanding issues of general obligation or revenue bonds, if rated, have a Moody's rating of Aaa, Aa, A, or Baa or a Standard & Poor's rating of AAA, AA, A, or BBB; if rated by both firms, the bonds have a Moody's rating of Aaa, Aa, A, or Baa and a Standard and Poor's rating of AAA, AA, A, or BBB.

WORKSHEET FOR MUNICIPAL FINANCIAL TEST

Part I: Basic Information

1. Total Revenues

a. Revenues (dollars) \_\_\_\_\_

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Value of revenues excludes liquidation of investments and issuance of debt. Value includes all general fund operating and non-operating revenues, as well as all revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity.

- b. Subtract interfund transfers (dollars) \_\_\_\_\_
- c. Total Revenues (dollars) \_\_\_\_\_

### 2. Total Expenditures

- a. Expenditures (dollars) \_\_\_\_\_

Value consists of the sum of general fund operating and non-operating expenditures including interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues.

- b. Subtract interfund transfers (dollars) \_\_\_\_\_
- c. Total Expenditures (dollars) \_\_\_\_\_

### 3. Local Revenues

- a. Total Revenues (from 1c) (dollars) \_\_\_\_\_
- b. Subtract total intergovernmental transfers (dollars) \_\_\_\_\_
- c. Local Revenues (dollars) \_\_\_\_\_

### 4. Debt Service

- a. Interest and fiscal charges (dollars) \_\_\_\_\_
- b. Add debt retirement (dollars) \_\_\_\_\_
- c. Total Debt Service (dollars) \_\_\_\_\_

### 5. Total Funds (dollars) \_\_\_\_\_

(Sum of amounts held as cash and investment securities from all funds, excluding amounts held for employee retirement funds, agency funds, and trust funds)

### 6. Population (Persons)

## Part II: Application of Test

### 7. Total Revenues to Population

- a. Total Revenues (from 1c) \_\_\_\_\_
- b. Population (from 6) \_\_\_\_\_
- c. Divide 7a by 7b \_\_\_\_\_
- d. Subtract 417 \_\_\_\_\_
- e. Divide by 5,212 \_\_\_\_\_
- f. Multiply by 4.095 \_\_\_\_\_

### 8. Total Expenses to Population

- a. Total Expenses (from 2c) \_\_\_\_\_
- b. Population (from 6) \_\_\_\_\_
- c. Divide 8a by 8b \_\_\_\_\_
- d. Subtract 524 \_\_\_\_\_
- e. Divide by 5,401 \_\_\_\_\_
- f. Multiply by 4.095 \_\_\_\_\_

### 9. Local Revenues to Total Revenues

- a. Local Revenues (from 3c) \_\_\_\_\_
- b. Total Revenues (from 1c) \_\_\_\_\_
- c. Divide 9a by 9b \_\_\_\_\_

- d. Subtract .695 \_\_\_\_\_
- e. Divide by .205 \_\_\_\_\_
- f. Multiply by 2.840 \_\_\_\_\_
  
- 10. Debt Service to Population
  - a. Debt Service (from 4c) \_\_\_\_\_
  - b. Population (from 6) \_\_\_\_\_
  - c. Divide 10a by 10b \_\_\_\_\_
  - d. Subtract 51 \_\_\_\_\_
  - e. Divide by 1,038 \_\_\_\_\_
  - f. Multiply by -1.866 \_\_\_\_\_
  
- 11. Debt Service to Total Revenues
  - a. Debt Service (from 4c) \_\_\_\_\_
  - b. Total Revenues (from 1c) \_\_\_\_\_
  - c. Divide 11a by 11b \_\_\_\_\_
  - d. Subtract .068 \_\_\_\_\_
  - e. Divide by .259 \_\_\_\_\_
  - f. Multiply by -3.533 \_\_\_\_\_
  
- 12. Total Revenues to Total Expenses
  - a. Total Revenues (from 1c) \_\_\_\_\_
  - b. Total Expenses (from 2c) \_\_\_\_\_
  - c. Divide 12a by 12b \_\_\_\_\_
  - d. Subtract .910 \_\_\_\_\_
  - e. Divide by .899 \_\_\_\_\_
  - f. Multiply by 3.458 \_\_\_\_\_
  
- 13. Funds Balance to Total Revenues
  - a. Total Funds (from 5) \_\_\_\_\_
  - b. Total Revenues (from 1c) \_\_\_\_\_
  - c. Divide 13a by 13b \_\_\_\_\_
  - d. Subtract .891 \_\_\_\_\_
  - e. Divide by 9.156 \_\_\_\_\_
  - f. Multiply by 3.270 \_\_\_\_\_
  
- 14. Funds Balance to Total Expenses
  - a. Total Funds (from 5) \_\_\_\_\_
  - b. Total Expenses (from 2c) \_\_\_\_\_
  - c. Divide 14a by 14b \_\_\_\_\_
  - d. Subtract .866 \_\_\_\_\_
  - e. Divide by 6.409 \_\_\_\_\_
  - f. Multiply by 3.270 \_\_\_\_\_
  
- 15. Total Funds to Population
  - a. Total Funds (from 5) \_\_\_\_\_
  - b. Population (from 6) \_\_\_\_\_
  - c. Divide 15a by 15b \_\_\_\_\_
  - d. Subtract 270 \_\_\_\_\_
  - e. Divide by 4,548 \_\_\_\_\_
  - f. Multiply by 1.866 \_\_\_\_\_

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16. Add  $7f + 8f + 9f + 10f + 11f + 12f + 13f + 14f + 15f + 4.937$  \_\_\_\_\_

I hereby certify that the financial index shown on line 16 of the worksheet is greater than zero and that the wording of this letter is identical to the wording specified in R.61-92.280.105(c) as such regulations were constituted on the date shown immediately below.

[Date] \_\_\_\_\_

[Signature] \_\_\_\_\_

[Name] \_\_\_\_\_

[Title] \_\_\_\_\_

(d) If a local government owner or operator using the test to provide financial assurance finds that it no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator must obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.

(e) The Department may require reports of financial condition at any time from the local government owner or operator. If the Department finds, on the basis of such reports or other information, that the local government owner or operator no longer meets the financial test requirements of Section 280.105(b) and (c), the owner or operator must obtain alternate coverage within 30 days after notification of such a finding.

(f) If the local government owner or operator fails to obtain alternate assurance within 150 days of finding that it no longer meets the requirements of the financial test based on the year-end financial statements or within 30 days of notification by the Department that it no longer meets the requirements of the financial test, the owner or operator must notify the Department of such failure within 10 days.

### **SECTION 280.106. LOCAL GOVERNMENT GUARANTEE.**

(a) A local government owner or operator may satisfy the requirements of Section 280.93 by obtaining a guarantee that conforms to the requirements of this section. The guarantor must be a local government having a "substantial governmental relationship" with the owner or operator and issuing the guarantee as an act incident to that relationship. A local government acting as the guarantor must:

(1) Demonstrate that it meets the bond rating test requirement of Section 280.104 and deliver a copy of the chief financial officer's letter as contained in Section 280.104(d) and (e) to the local government owner or operator; or

(2) Demonstrate that it meets the worksheet test requirements of Section 280.105 and deliver a copy of the chief financial officer's letter as contained in Section 280.105(c) to the local government owner or operator; or

(3) Demonstrate that it meets the local government fund requirements of Sections 280.107(a), 280.107(b), or 280.107(c) and deliver a copy of the chief financial officer's letter as contained in Section 280.107 to the local government owner or operator.

(b) If the local government guarantor is unable to demonstrate financial assurance under any of Sections 280.104, 280.105, 280.107(a), 280.107(b), or 280.107(c), at the end of the financial reporting year, the guarantor shall send by certified mail, before cancellation or non-renewal of the guarantee, notice to the owner or operator. The guarantee will terminate no less than 120 days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator must obtain alternative coverage as specified in Section 280.114(e).

(c) The guarantee agreement must be worded as specified in paragraph (d) or (e) of this section, depending on which of the following alternative guarantee arrangements is selected:



(1) If, in the default or incapacity of the owner or operator, the guarantor guarantees to fund a standby trust as directed by the Department, the guarantee shall be worded as specified in paragraph (d) of this section.

(2) If, in the default or incapacity of the owner or operator, the guarantor guarantees to make payments as directed by the Department for taking corrective action or compensating third parties for bodily injury and property damage, the guarantee shall be worded as specified in paragraph (e) of this section.

(d) If the guarantor is a local government, the local government guarantee with standby trust must be worded exactly as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

#### LOCAL GOVERNMENT GUARANTEE WITH STANDBY TRUST MADE BY A LOCAL GOVERNMENT

Guarantee made this [date] by [name of guaranteeing entity], a local government organized under the laws of South Carolina, herein referred to as guarantor, to the Department and to any and all third parties, and obliges, on behalf of [local government owner or operator].

#### Recitals

(1) Guarantor meets or exceeds [select one: the local government bond rating test requirements of R.61-92.280.104, the local government financial test requirements of R.61-92.280.105, or the local government fund under R.61-92.280.107(a), R.61-92.280.107(b), or R.61-92.280.107(c).

(2) [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to R.61-92.280 and the name and address of the facility.] This guarantee satisfies R.61-92.280, Subpart H requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

(3) Incident to our substantial governmental relationship with [local government owner or operator], guarantor guarantees to the Department and to any and all third parties that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Department has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the Department, shall fund a standby trust fund in accordance with the provisions of R.61-92.280.112, in an amount not to exceed the coverage limits specified above.

In the event that the Department determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with R.61-92.280, Subpart F, the guarantor upon written instructions from the Department shall fund a standby trust fund in accordance with the provisions of R.61-92.280.112, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the Department, shall

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fund a standby trust in accordance with the provisions of R.61-92.280.112 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that, if at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in paragraph (1), guarantor shall send within 120 days of such failure, by certified mail, notice to [local government owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code naming guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to R.61-92.280.

(7) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of R.61-92.280, Subpart H for the above identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [local government owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert: local government owner or operator] arising from and in the course of employment by [insert: local government owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of R.61-92.280.93.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Department by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in R.61-92 Part 280.106(d) as such regulations were constituted on the effective date shown immediately below.

Effective date: \_\_\_\_\_

[Name of guarantor] \_\_\_\_\_

[Authorized signature of guarantor] \_\_\_\_\_

[Name of person signing] \_\_\_\_\_

[Title of person signing] \_\_\_\_\_

Signature of witness or notary: \_\_\_\_\_

(e) If the guarantor is a local government, the local government guarantee without standby trust must be worded exactly as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

LOCAL GOVERNMENT GUARANTEE WITHOUT STANDBY TRUST MADE BY A LOCAL  
GOVERNMENT

Guarantee made this [date] by [name of guaranteeing entity], a local government organized under the laws of South Carolina, herein referred to as guarantor, to the Department and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

(1) Guarantor meets or exceeds [select one: the local government bond rating test requirements of R.61-92.280.104, the local government financial test requirements of R.61-92.280.105, the local government fund under R.61-92.280.107(a), R.61-92.280.107(b), or R.61-92.280.107(c)].

(2) [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to R.61-92.280, and the name and address of the facility.] This guarantee satisfies R.61-92.280, Subpart H requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

(3) Incident to our substantial governmental relationship with [local government owner or operator], guarantor guarantees to the Department and to any and all third parties and obliges that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Department has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon written instructions from the Department shall make funds available to pay for corrective actions and compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

In the event that the Department determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with R.61-92.280, Subpart F, the guarantor upon written instructions from the Department shall make funds available to pay for corrective actions in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgement or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the Department shall make funds available to compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

(4) Guarantor agrees that if at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in paragraph (1), guarantor shall send within 120 days of such failure, by certified mail, notice to [local government owner or operator], as evidenced by the return receipt.

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(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code naming guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to R.61-92.280.

(7) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of R.61-92.280, Subpart H for the above identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt. If notified of a probable release, the guarantor agrees to remain bound to the terms of this guarantee for all charges arising from the release, up to the coverage limits specified above, notwithstanding the cancellation of the guarantee with respect to future releases.

(8) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [local government owner or operator] under a workers' compensation disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert: local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of R.61-92.280.93.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Department, by any or all third parties, or by [local government owner or operator],

I hereby certify that the wording of this guarantee is identical to the wording specified in R.61-92.280.106(e) as such regulations were constituted on the effective date shown immediately below.

Effective date: \_\_\_\_\_

[Name of guarantor] \_\_\_\_\_

[Authorized signature for guarantor] \_\_\_\_\_

[Name of person signing] \_\_\_\_\_

[Title of person signing] \_\_\_\_\_

Signature of witness or notary: \_\_\_\_\_

**SECTION 280.107. LOCAL GOVERNMENT FUND.**

A local government owner or operator may satisfy the requirements of Section 280.93 by establishing a dedicated fund account that conforms to the requirements of this section. Except as specified in paragraph (b) of this section, a dedicated fund may not be commingled with other funds or otherwise used in normal operations. A dedicated fund will be considered eligible if it meets one of the following requirements:

(a) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance or order to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks and is funded for the full amount of coverage required under Section 280.93, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage; or

(b) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or order as a contingency fund for general emergencies, including taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks and is funded for five times the full amount of coverage required under Section 280.93, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage. If the fund is funded for less than five times the amount of coverage required under Section 280.93, the amount of financial responsibility demonstrated by the fund may not exceed one-fifth the amount in the fund; or

(c) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance or order to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks. A payment is made to the fund once every year for seven years until the fund is fully funded. This seven year period is hereafter referred to as the "pay-in-period." The amount of each payment must be determined by this formula:

$$\frac{TF - CF}{Y}$$

Where TF is the total required financial assurance for the owner or operator, CF is the current amount in the fund, and Y is the number of years remaining in the pay-in-period; and,

(1) The local government owner or operator has available bonding authority, approved through voter referendum (if such approval is necessary prior to the issuance of bonds), for an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund. This bonding authority shall be available for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks; or

(2) The local government owner or operator has a letter signed by the appropriate state attorney general stating that the use of the bonding authority will not increase the local government's debt beyond the legal debt ceilings established by the relevant state laws. The letter must also state that prior voter approval is not necessary before use of the bonding authority.

(d) To demonstrate that it meets the requirements of the local government fund, the chief financial officer of the local government owner or operator and/or guarantor must sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the local government fund mechanism to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

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Underground storage tanks at the following facilities are assured by this local government fund mechanism:

[List for each facility: the name and address of the facility where tanks are assured by the local government fund].

[Insert: "The local government fund is funded for the full amount of coverage required under Section 280.93, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage." or "The local government fund is funded for five times the full amount of coverage required under Section 280.93, or funded for part of the required amount of coverage and used in combination with other mechanisms(s) that provide the remaining coverage," or "A payment is made to the fund once every year for seven years until the fund is fully-funded and [name of local government owner or operator] has available bonding authority, approved through voter referendum, of an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund" or "A payment is made to the fund once every year for seven years until the fund is fully-funded and I have attached a letter signed by the State Attorney General stating that (1) the use of the bonding authority will not increase the local government's debt beyond the legal debt ceilings established by the relevant state laws and (2) that prior voter approval is not necessary before use of the bonding authority" ].

The details of the local government fund are as follows:

Amount in Fund (market value of fund at close of last fiscal year): \_\_\_\_\_

[If fund balance is incrementally funded as specified in Section 280.107(c), insert:

Amount added to fund in the most recently completed fiscal year: \_\_\_\_\_

Number of years remaining in the pay-in-period: \_\_\_\_\_ ]

A copy of the state constitutional provision, or local government statute, charter, ordinance, or order dedicating the fund is attached.

I hereby certify that the wording of this letter is identical to the wording specified in R.61-92.280.107(d) as such regulations were constituted on the date shown immediately below.

[Date] \_\_\_\_\_

[Signature] \_\_\_\_\_

[Name] \_\_\_\_\_

[Title] \_\_\_\_\_

**SECTION 280.108. SUBSTITUTION OF FINANCIAL ASSURANCE MECHANISM BY OWNER OR OPERATOR.**

(a) An owner or operator may substitute any alternate financial assurance mechanisms as specified in this subpart, provided that at all times he maintains an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of Section 280.93.

(b) After obtaining alternate financial assurance as specified in this subpart, an owner or operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance.

**SECTION 280.109. CANCELLATION OR NONRENEWAL BY A PROVIDER OF FINANCIAL ASSURANCE.**

(a) Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator and the Department.

(1) Termination of a local government guarantee, a guarantee, a surety bond, or a letter of credit may not occur until 120 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

(2) Termination of insurance or risk retention coverage, except for non-payment or misrepresentation by the insured, may not occur until 60 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt. Termination for non-payment of premium or misrepresentation by the insured may not occur until a minimum of 10 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

(b) If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in Section 280.114, the owner or operator must obtain alternate coverage as specified in this section within 60 days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the owner or operator must notify the Department of such failure and submit:

(1) The name and address of the provider of financial assurance;

(2) The effective date of termination; and

(3) The evidence of the financial assurance mechanism subject to the termination maintained in accordance with Section 280.111(b).

**SECTION 280.110. REPORTING BY OWNER OR OPERATOR.**

(a) An owner or operator must submit the appropriate forms listed in Section 280.111(b) documenting current evidence of financial responsibility to the Department:

(1) Within 30 days after the owner or operator identifies a release from an UST required to be reported under Sections 280.53 or 280.61;

(2) If the owner or operator fails to obtain alternate coverage as required by this subpart, within 30 days after the owner or operator receives notice of:

(i) Commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a provider of financial assurance as a debtor;

(ii) Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism;

(iii) Failure of a guarantor to meet the requirements of the financial test;

(iv) Other incapacity of a provider of financial assurance; or

(3) As required by Sections 280.95(g) and 280.109(b).

(b) An owner or operator must certify compliance with the financial responsibility requirements of this part as specified in the new tank notification form when notifying the Department of the installation of a new UST under Section 280.22.

(c) The Department may require an owner or operator to submit evidence of financial assurance as described in Section 280.111(b) or other information relevant to compliance with this subpart at any time.

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### SECTION 280.111. RECORDKEEPING.

(a) Owners or operators must maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this subpart for an UST until released from the requirements of this subpart under Section 280.113. An owner or operator must maintain such evidence at the UST site or the owner's or operator's place of work. Records maintained off-site must be made available upon request of the Department.

(b) An owner or operator must maintain the following types of evidence of financial responsibility:

(1) An owner or operator using an assurance mechanism specified in Sections 280.95 through 280.100, or Section 280.102, or Sections 280.104 through 280.107, must maintain a copy of the instrument worded as specified.

(2) An owner or operator using a financial test or guarantee, or a local government financial test or a local government guarantee supported by the local government financial test must maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year. Such evidence must be on file no later than 120 days after the close of the financial reporting year.

(3) An owner or operator using a guarantee, surety bond, or letter of credit must maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

(4) A local government owner or operator using a local government guarantee under Section 280.106(d) must maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

(5) A local government owner or operator using the local government bond rating test under Section 280.104 must maintain a copy of its bond rating published within the last twelve months by Moody's or Standard & Poor's.

(6) A local government owner or operator using the local government guarantee under Section 280.106, where the guarantor's demonstration of financial responsibility relies on the bond rating test under Section 280.104 must maintain a copy of the guarantor's bond rating published within the last twelve months by Moody's or Standard & Poor's.

(7) An owner or operator using an insurance policy or risk retention group coverage must maintain a copy of the signed insurance policy or risk retention group coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.

(8) An owner or operator covered by the SUPERB fund must maintain on file a copy of the Certification of Financial Responsibility required under Section 280.101(d).

(9) An owner or operator using a local government fund under Section 280.107 must maintain the following documents:

(i) A copy of the state constitutional provision or local government statute, charter, ordinance, or order dedicating the fund; and

(ii) Year-end financial statements for the most recent completed financial reporting year showing the amount in the fund. If the fund is established under Section 280.107(c) using incremental funding backed by bonding authority, the financial statements must show the previous year's balance, the amount of funding during the year, and the closing balance in the fund.

(iii) If the fund is established under Section 280.107(c) using incremental funding backed by bonding authority, the owner or operator must also maintain documentation of the required bonding authority, including either the results of a voter referendum (under Section 280.107(c)(1)), or attestation by the State Attorney General as specified under Section 280.107(c)(2).



(10) A local government owner or operator using the local government guarantee supported by the local government fund must maintain a copy of the guarantor's year-end financial statement for the most recent completed financial reporting year showing the amount of the fund.

(11)(i) An owner or operator using an assurance mechanism specified in Sections 280.95 through 280.107 must maintain an updated copy of a certification of financial responsibility using a Department form or a Department approved form, worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**CERTIFICATION OF FINANCIAL RESPONSIBILITY**

Complete and return one copy to the Department. Keep one copy on file, to be provided upon request.

Site Name \_\_\_\_\_ Site # \_\_\_\_\_

Site Address \_\_\_\_\_

Choose one or a combination of assurance mechanisms to demonstrate financial responsibility under R.61-92.280, Subpart H of the South Carolina Underground Storage Tank Control Regulations (SCUSTCR). Complete the chart for each mechanism selected.

MECHANISM	NAME OF ISSUER	AMOUNT OF COVERAGE	PERIOD OF COVERAGE
1. State fund (SUPERB)--[If you select this, show deductible coverage here.]			
2. Self insurance			
3. Guarantee			
4. Pollution insurance or risk retention group			
5. Surety bond			
6. Letter of credit			
7. Trust fund			
8. Local government options			

\_\_\_\_\_ hereby certifies compliance with the requirements of Subpart H of SCUSTCR Part 280.  
[owner or operator]

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[Signature of owner or operator]      [Signature of witness or notary]

\_\_\_\_\_  
[Name of owner or operator]      [Name of witness or notary]

\_\_\_\_\_  
[Title]                      [Date]

\_\_\_\_\_  
[Date]

(ii) The owner or operator must update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s). As stated in Section 280.110, a copy must be sent to the Department under the following circumstances: (1) you install a new tank system; (2) you have confirmed that there has been a release; (3) you change financial mechanisms; (4) the Environmental Protection Agency or the Department requests your records. No mechanism may require expenditure of funds from the SUPERB Account or the SUPERB Financial Responsibility Fund prior to exhausting that mechanism.

**SECTION 280.112. DRAWING ON FINANCIAL ASSURANCE MECHANISMS.**

(a) Except as specified in paragraph (d) of this section, the Department shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the Department up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:

(1)(i) The owner or operator fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or, as applicable, other financial assurance mechanism; and

(ii) The Department determines or suspects that a release from an underground storage tank covered by the mechanism has occurred and so notifies the owner or operator or the owner or operator has notified the Department pursuant to Subparts E or F of a release from an UST covered by the mechanism; or

(2) The conditions of paragraph (b)(1) or (b)(2)(i) or (ii) of this section are satisfied.

(b) The Department may draw on a standby trust fund when:

(1) The Department makes a final determination that a release has occurred and immediate or long-term corrective action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted corrective action as required under R.61-92.280, Subpart F of this part; or

(2) The Department has received either:

(i) Certification from the owner or operator and the third-party liability claimant(s) and from attorneys representing the owner or operator and the third-party liability claimant(s) that a third-party liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**CERTIFICATION OF VALID CLAIM**

The undersigned, as principals and as legal representatives of [insert: owner or operator] and [insert: name and address of third-party claimant], hereby certify that the claim of bodily injury [and/or] property damage caused by an accidental release arising from operating [owner's or operator's] underground storage tank should be paid in the amount of \$[ ].

[Signatures]		[Signature(s)]	
Owner or Operator		Claimant(s)	
Attorney for Owner or Operator		Attorney(s) for Claimant(s)	
(Notary)	Date	(Notary)	Date

or (ii) A valid final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by an accidental release from an UST covered by financial assurance under this subpart and the Department determines that the owner or operator has not satisfied the judgment.

(c) If the Department determines that the amount of corrective action costs and third-party liability claims eligible for payment under paragraph (b) of this section may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health and the environment. The Department shall pay third-party liability claims in the order in which the Department receives certifications under paragraph (b)(2)(i) of this section, and valid court orders under paragraph (b)(2)(ii) of this section.

(d) A governmental entity acting as guarantor under Section 280.106(e), the local government guarantee without standby trust, shall make payments as directed by the Department under the circumstances described in Section 280.112(a), (b), and (c).

**SECTION 280.113. RELEASE FROM THE REQUIREMENTS.**

An owner or operator is no longer required to maintain financial responsibility under this subpart for an UST after the tank has been permanently closed or undergoes a change-in-service or, if corrective action is required, after corrective action has been completed and the tank has been permanently closed or undergoes a change-in-service as required by Subpart G of this part.

**SECTION 280.114. BANKRUPTCY OR OTHER INCAPACITY OF OWNER OR OPERATOR OR PROVIDER OF FINANCIAL ASSURANCE.**

(a) Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an owner or operator as debtor, the owner or operator must notify the Department by certified mail of such commencement and submit the appropriate forms listed in Section 280.111(b) documenting current financial responsibility.

(b) Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor must notify the owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in Section 280.96.

(c) Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a local government owner or operator as debtor, the local government owner or operator must notify the Department by certified mail of such commencement and submit the appropriate forms listed in Section 280.111(b) documenting current financial responsibility.

(d) Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing a local government financial assurance as debtor, such guarantor must notify the local government owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in Section 280.106.

(e) An owner or operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or

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incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, letter of credit, or state-required mechanism. The owner or operator must obtain alternate financial assurance as specified in this subpart within 30 days after receiving notice of such an event. If the owner or operator does not obtain alternate coverage within 30 days after such notification, he must notify the Department.

(f) Within 30 days after receipt of notification that a state fund or other state assurance has become incapable of paying for assured corrective action or third-party compensation costs, the owner or operator must obtain alternate financial assurance.

### **SECTION 280.115. REPLENISHMENT OF GUARANTEES, LETTERS OF CREDIT, OR SURETY BONDS.**

(a) If at any time after a standby trust is funded upon the instruction of the Department with funds drawn from a guarantee, local government guarantee with standby trust, letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, the owner or operator shall by the anniversary date of the financial mechanism from which the funds were drawn:

(1) Replenish the value of financial assurance to equal the full amount of coverage required, or

(2) Acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

(b) For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by Section 280.93. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

### **SECTION 280.116. SUSPENSION OF ENFORCEMENT [Reserved]**

#### ***SUBPART I*** ***Lender Liability***

### **SECTION 280.200. DEFINITIONS.**

(a) UST technical standards, as used in this subpart, refers to the UST preventative and operating requirements under subparts B, C, D, G, J, and K of this part and Section 280.50 of subpart E.

(b) Petroleum production, refining, and marketing.

(1) Petroleum production means the production of crude oil or other forms of petroleum (as defined in Section 280.12(xx)) as well as the production of petroleum products from purchased materials.

(2) Petroleum refining means the cracking, distillation, separation, conversion, upgrading, and finishing of refined petroleum or petroleum products.

(3) Petroleum marketing means the distribution, transfer, or sale of petroleum or petroleum products for wholesale or retail purposes.

(c) Indicia of ownership means evidence of a secured interest, evidence of an interest in a security interest, or evidence of an interest in real or personal property securing a loan or other obligation, including any legal or equitable title or deed to real or personal property acquired through or incident to foreclosure. Evidence of such interests include, but are not limited to, mortgages, deeds of trust, liens, surety bonds and guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased property

(hereinafter "lease financing transaction"), and legal or equitable title obtained pursuant to foreclosure. Evidence of such interests also includes assignments, pledges, or other rights to or other forms of encumbrance against property that are held primarily to protect a security interest. A person is not required to hold title or a security interest in order to maintain indicia of ownership.

(d) A holder is a person who, upon the effective date of this regulation or in the future, maintains indicia of ownership (as defined in Section 280.200(c)) primarily to protect a security interest (as defined in Section 280.200(f)(1)) in a petroleum or petroleum product UST or UST system or facility or property on which a petroleum or petroleum product UST or UST system is located. A holder includes the initial holder (such as a loan originator); any subsequent holder (such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market); a guarantor of an obligation, surety, or any other person who holds ownership indicia primarily to protect a security interest; or a receiver or other person who acts on behalf or for the benefit of a holder.

(e) A borrower, debtor, or obligor is a person whose UST or UST system or facility or property on which the UST or UST system is located is encumbered by a security interest. These terms may be used interchangeably.

(f) Primarily to protect a security interest means that the holder's indicia of ownership are held primarily for the purpose of securing payment or performance of an obligation.

(1) Security interest means an interest in a petroleum or petroleum product UST or UST system or in the facility or property on which a petroleum or petroleum product UST or UST system is located, created or established for the purpose of securing a loan or other obligation. Security interests include but are not limited to mortgages, deeds of trusts, liens, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, and consignments, if the transaction creates or establishes an interest in an UST or UST system or in the facility or property on which the UST or UST system is located, for the purpose of securing a loan or other obligation.

(2) Primarily to protect a security interest, as used in this subpart, does not include indicia of ownership held primarily for investment purposes, nor ownership indicia held primarily for purposes other than as protection for a security interest. A holder may have other, secondary reasons for maintaining indicia of ownership, but the primary reason why any ownership indicia are held must be as protection for a security interest.

(g) "Operation" means, for purposes of this subpart, the use, storage, filling, or dispensing of petroleum or a petroleum product contained in an UST or UST system.

#### **SECTION 280.210. PARTICIPATION IN MANAGEMENT.**

The term "participating in the management of an UST or UST system" means that, subsequent to the effective date of this subpart, the holder is engaging in decision-making control of, or activities related to, operation of the UST or UST system, as defined herein.

(a) Actions that are participation in management.

(1) Participation in the management of an UST or UST system means, for purposes of this subpart, actual participation by the holder in the management or control of decision-making related to the operation of an UST or UST system. Participation in management does not include the mere capacity or ability to influence or the unexercised right to control UST or UST system operations. A holder is participating in the management of the UST or UST system only if the holder either:

(i) Exercises decision-making control over the operational (as opposed to financial or administrative) aspects of the UST or UST system, such that the holder has undertaken responsibility for all or substantially all of the management of the UST or UST system; or

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(ii) Exercises control at a level comparable to that of a manager of the borrower's enterprise, such that the holder has assumed or manifested responsibility for the overall management of the enterprise encompassing the day-to-day decision-making of the enterprise with respect to all, or substantially all, of the operational (as opposed to financial or administrative) aspects of the enterprise.

(2) Operational aspects of the enterprise relate to the use, storage, filling, or dispensing of petroleum or a petroleum product contained in an UST or UST system, and include functions such as that of a facility or plant manager, operations manager, chief operating officer, or chief executive officer. Financial or administrative aspects include functions such as that of a credit manager, accounts payable/receivable manager, personnel manager, controller, chief financial officer, or similar functions. Operational aspects of the enterprise do not include the financial or administrative aspects of the enterprise, or actions associated with achieving or maintaining environmental compliance, or actions undertaken voluntarily to protect the environment in accordance with applicable requirements in R.61-92 Part 280.

(b) Actions that are not participation in management pre-foreclosure.

(1) Actions at the inception of the loan or other transaction. No act or omission prior to the time that indicia of ownership are held primarily to protect a security interest constitutes evidence of participation in management within the meaning of this subpart. A prospective holder who undertakes or requires an environmental investigation (which could include a site assessment, inspection, and/or audit) of the UST or UST system or facility or property on which the UST or UST system is located (in which indicia of ownership are to be held), or requires a prospective borrower to clean up contamination from the UST or UST system or to comply or come into compliance (whether prior or subsequent to the time that indicia of ownership are held primarily to protect a security interest) with any applicable law or regulation, is not by such action considered to be participating in the management of the UST or UST system or facility or property on which the UST or UST system is located.

(2) Loan policing and work out. Actions that are consistent with holding ownership indicia primarily to protect a security interest do not constitute participation in management for purposes of this subpart. The authority for the holder to take such actions may, but need not, be contained in contractual or other documents specifying requirements for financial, environmental, and other warranties, covenants, conditions, representations or promises from the borrower. Loan policing and work out activities cover and include all such activities up to foreclosure, exclusive of any activities that constitute participation in management.

(i) Policing the security interest or loan.

(A) A holder who engages in policing activities prior to foreclosure will remain within the exemption provided that the holder does not together with other actions participate in the management of the UST or UST system as provided in Section 280.210(a). Such policing actions include, but are not limited to, requiring the borrower to clean up contamination from the UST or UST system during the term of the security interest; requiring the borrower to comply or come into compliance with applicable federal, state, and local environmental and other laws, rules, and regulations during the term of the security interest; securing or exercising authority to monitor or inspect the UST or UST system or facility or property on which the UST or UST system is located (including on-site inspections) in which indicia of ownership are maintained, or the borrower's business or financial condition during the term of the security interest; or taking other actions to adequately police the loan or security interest (such as requiring a borrower to comply with any warranties, covenants, conditions, representations, or promises from the borrower).

(B) Policing activities also include undertaking by the holder of UST environmental compliance actions and voluntary environmental actions taken in compliance with R.61-92 Part 280, provided that the holder does not otherwise participate in the management or daily operation of the UST or UST system as provided in Section 280.210(a) and Section 280.230. Such allowable actions include, but are not limited to, release detection and release reporting, release response and corrective action, temporary or permanent closure of an UST or UST system, UST upgrading or replacement, and maintenance of corrosion protection. A holder who undertakes these actions must

do so in compliance with the applicable requirements in R.61-92 Part 280. A holder may directly oversee these environmental compliance actions and voluntary environmental actions, and directly hire contractors to perform the work, and is not by such action considered to be participating in the management of the UST or UST system.

(ii) Loan work out. A holder who engages in work out activities prior to foreclosure will remain within the exemption provided that the holder does not together with other actions participate in the management of the UST or UST system as provided in Section 280.210(a). For purposes of this rule, "work out" refers to those actions by which a holder, at any time prior to foreclosure, seeks to prevent, cure, or mitigate a default by the borrower or obligor; or to preserve, or prevent the diminution of, the value of the security. Work out activities include, but are not limited to, restructuring or renegotiating the terms of the security interest; requiring payment of additional rent or interest; exercising forbearance; requiring or exercising rights pursuant to an assignment of accounts or other amounts owing to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owing to an obligor; providing specific or general financial or other advice, suggestions, counseling, or guidance; and exercising any right or remedy the holder is entitled to by law or under any warranties, covenants, conditions, representations, or promises from the borrower.

(c) Foreclosure on an UST or UST system or facility or property on which an UST or UST system is located, and participation in management activities post-foreclosure.

(1) Foreclosure.

(i) Indicia of ownership that are held primarily to protect a security interest include legal or equitable title or deed to real or personal property acquired through or incident to foreclosure. For purposes of this subpart, the term "foreclosure" means that legal, marketable or equitable title or deed has been issued, approved, and recorded, and that the holder has obtained access to the UST, UST system, UST facility, and property on which the UST or UST system is located, provided that the holder acted diligently to acquire marketable title or deed and to gain access to the UST, UST system, UST facility, and property on which the UST or UST system is located. The indicia of ownership held after foreclosure continue to be maintained primarily as protection for a security interest provided that the holder undertakes to sell, re-lease an UST or UST system or facility or property on which the UST or UST system is located, held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or otherwise divest itself of the UST or UST system or facility or property on which the UST or UST system is located, in a reasonably expeditious manner, using whatever commercially reasonable means are relevant or appropriate with respect to the UST or UST system or facility or property on which the UST or UST system is located, taking all facts and circumstances into consideration, and provided that the holder does not participate in management (as defined in Section 280.210(a)) prior to or after foreclosure.

(ii) For purposes of establishing that a holder is seeking to sell, re-lease pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or divest in a reasonably expeditious manner an UST or UST system or facility or property on which the UST or UST system is located, the holder may use whatever commercially reasonable means as are relevant or appropriate with respect to the UST or UST system or facility or property on which the UST or UST system is located, or may employ the means specified in Section 280.210(c)(2). A holder that outbids, rejects, or fails to act upon a written bona fide, firm offer of fair consideration for the UST or UST system or facility or property on which the UST or UST system is located, as provided in Section 280.210(c)(2), is not considered to hold indicia of ownership primarily to protect a security interest.

(2) Holding foreclosed property for disposition and liquidation. A holder, who does not participate in management prior to or after foreclosure, may sell, re-lease, pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), an UST or UST system or facility or property on which the UST or UST system is located, liquidate, wind up operations, and take measures, prior to sale or other disposition, to preserve, protect, or prepare the secured UST or UST system or facility or property on which the UST or UST system is located. A holder may also arrange for an existing or new operator to continue or initiate

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operation of the UST or UST system. The holder may conduct these activities without voiding the security interest exemption, subject to the requirements of this subpart.

(i) A holder establishes that the ownership indicia maintained after foreclosure continue to be held primarily to protect a security interest by, within 12 months following foreclosure, listing the UST or UST system or the facility or property on which the UST or UST system is located, with a broker, dealer, or agent who deals with the type of property in question, or by advertising the UST or UST system or facility or property on which the UST or UST system is located, as being for sale or disposition on at least a monthly basis in either a real estate publication or a trade or other publication suitable for the UST or UST system or facility or property on which the UST or UST system is located, or a newspaper of general circulation (defined as one with a circulation over 10,000, or one suitable under any applicable federal, state, or local rules of court for publication required by court order or rules of civil procedure) covering the location of the UST or UST system or facility or property on which the UST or UST system is located. For purposes of this provision, the 12-month period begins to run from the effective date of this subpart or from the date that the marketable title or deed has been issued, approved and recorded, and the holder has obtained access to the UST, UST system, UST facility and property on which the UST or UST system is located, whichever is later, provided that the holder acted diligently to acquire marketable title or deed and to obtain access to the UST, UST system, UST facility and property on which the UST or UST system is located. If the holder fails to act diligently to acquire marketable title or deed or to gain access to the UST or UST system, the 12-month period begins to run from the effective date of this subpart or from the date on which the holder first acquires either title to or possession of the secured UST or UST system, or facility or property on which the UST or UST system is located, whichever is later.

(ii) A holder that outbids, rejects, or fails to act upon an offer of fair consideration for the UST or UST system or the facility or property on which the UST or UST system is located, establishes by such outbidding, rejection, or failure to act, that the ownership indicia in the secured UST or UST system or facility or property on which the UST or UST system is located are not held primarily to protect the security interest, unless the holder is required, in order to avoid liability under federal or state law, to make a higher bid, to obtain a higher offer, or to seek or obtain an offer in a different manner.

(A) Fair consideration, in the case of a holder maintaining indicia of ownership primarily to protect a senior security interest in the UST or UST system or facility or property on which the UST or UST system is located, is the value of the security interest as defined in this section. The value of the security interest includes all debt and costs incurred by the security interest holder, and is calculated as an amount equal to or in excess of the sum of the outstanding principal (or comparable amount in the case of a lease that constitutes a security interest) owed to the holder immediately preceding the acquisition of full title (or possession in the case of a lease financing transaction) pursuant to foreclosure, plus any unpaid interest, rent, or penalties (whether arising before or after foreclosure). The value of the security interest also includes all reasonable and necessary costs, fees, or other charges incurred by the holder incident to work out, foreclosure, retention, preserving, protecting, and preparing, prior to sale, the UST or UST system or facility or property on which the UST or UST system is located, re-lease, pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), of an UST or UST system or facility or property on which the UST or UST system is located, or other disposition. The value of the security interest also includes environmental investigation costs (which could include a site assessment, inspection, and/or audit of the UST or UST system or facility or property on which the UST or UST system is located), and corrective action costs incurred under Sections 280.51 through 280.67 or any other costs incurred as a result of reasonable efforts to comply with any other applicable federal, state or local law or regulation; less any amounts received by the holder in connection with any partial disposition of the property and any amounts paid by the borrower (if not already applied to the borrower's obligations) subsequent to the acquisition of full title (or possession in the case of a lease financing transaction) pursuant to foreclosure. In the case of a holder maintaining indicia of ownership primarily to protect a junior security interest, fair consideration is the value of all outstanding higher priority security interests plus the value of the security interest held by the junior holder, each calculated as set forth in this paragraph (c).



(B) Outbids, rejects, or fails to act upon an offer of fair consideration means that the holder outbids, rejects, or fails to act upon within 90 days of receipt, a written, bona fide, firm offer of fair consideration for the UST or UST system or facility or property on which the UST or UST system is located received at any time after six months following foreclosure, as defined in Section 280.210(c). A "written, bona fide, firm offer" means a legally enforceable, commercially reasonable, cash offer solely for the foreclosed UST or UST system or facility or property on which the UST or UST system is located, including all material terms of the transaction, from a ready, willing, and able purchaser who demonstrates to the holder's satisfaction the ability to perform. For purposes of this provision, the six-month period begins to run from the effective date of this subpart or from the date that marketable title or deed has been issued, approved and recorded to the holder, and the holder has obtained access to the UST, UST system, UST facility and property on which the UST or UST system is located, whichever is later, provided that the holder was acting diligently to acquire marketable title or deed and to obtain access to the UST or UST system, UST facility and property on which the UST or UST system is located. If the holder fails to act diligently to acquire marketable title or deed or to gain access to the UST or UST system, the six-month period begins to run from the effective date of this subpart or from the date on which the holder first acquires either title to or possession of the secured UST or UST system, or facility or property on which the UST or UST system is located, whichever is later.

(3) Actions that are not participation in management post-foreclosure. A holder is not considered to be participating in the management of an UST or UST system or facility or property on which the UST or UST system is located when undertaking actions under R.61-92 Part 280, provided that the holder does not otherwise participate in the management or daily operation of the UST or UST system as provided in Section 280.210(a) and Section 280.230. Such allowable actions include, but are not limited to, release detection and release reporting, release response and corrective action, temporary or permanent closure of an UST or UST system, UST upgrading or replacement, and maintenance of corrosion protection. A holder who undertakes these actions must do so in compliance with the applicable requirements in R.61-92 Part 280. A holder may directly oversee these environmental compliance actions and voluntary environmental actions, and directly hire contractors to perform the work, and is not by such action considered to be participating in the management of the UST or UST system.

**SECTION 280.220. OWNERSHIP OF AN UNDERGROUND STORAGE TANK OR UNDERGROUND STORAGE TANK SYSTEM OR FACILITY OR PROPERTY ON WHICH AN UNDERGROUND STORAGE TANK OR UNDERGROUND STORAGE TANK SYSTEM IS LOCATED.**

Ownership of an UST or UST system or facility or property on which an UST or UST system is located. A holder is not an "owner" of a petroleum or a petroleum product UST or UST system or facility or property on which a petroleum or a petroleum product UST or UST system is located for purposes of compliance with the UST technical standards as defined in Section 280.200(a), the UST corrective action requirements under Sections 280.51 through 280.67, and the UST financial responsibility requirements under Sections 280.90 through 280.111, provided the person:

- (a) Does not participate in the management of the UST or UST system as defined in Section 280.210; and
- (b) Does not engage in petroleum production, refining, and marketing as defined in Section 280.200(b).

**SECTION 280.230. OPERATING AN UNDERGROUND STORAGE TANK OR UNDERGROUND STORAGE TANK SYSTEM.**

(a) Operating an UST or UST system prior to foreclosure. A holder, prior to foreclosure, as defined in Section 280.210(c), is not an "operator" of a petroleum or a petroleum product UST or UST system for purposes of compliance with the UST technical standards as defined in Section 280.200(a), the UST corrective action requirements under Sections 280.51 through 280.67, and the UST financial responsibility requirements under Sections 280.90 through 280.111, provided that, after the effective date of this subpart, the holder is not in control of or does not have responsibility for the daily operation of the UST or UST system.

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(b) Operating an UST or UST system after foreclosure. The following provisions apply to a holder who, through foreclosure, as defined in Section 280.210(c), acquires a petroleum or a petroleum product UST or UST system or facility or property on which a petroleum or a petroleum product UST or UST system is located.

(1) A holder is not an "operator" of a petroleum or a petroleum product UST or UST system for purposes of compliance with R.61-92 Part 280 if there is an operator, other than the holder, who is in control of or has responsibility for the daily operation of the UST or UST system, and who can be held responsible for compliance with applicable requirements of R.61-92 Part 280.

(2) If another operator does not exist, as provided for under paragraph (b)(1) of this section, a holder is not an "operator" of the UST or UST system, for purposes of compliance with the UST technical standards as defined in Section 280.200(a), the UST corrective action requirements under Sections 280.51 through 280.67, and the UST financial responsibility requirements under Sections 280.90 through 280.111, provided that the holder:

(i) Empties all of its known USTs and UST systems within 60 calendar days after foreclosure or within 60 calendar days after the effective date of this subpart, whichever is later, or another reasonable time period specified by the Department, so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remains in the system; leaves vent lines open and functioning; and caps and secures all other lines, pumps, manways, and ancillary equipment; and

(ii) Empties those USTs and UST systems that are discovered after foreclosure within 60 calendar days after discovery or within 60 calendar days after the effective date of this subpart, whichever is later, or another reasonable time period specified by the Department, so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remains in the system; leaves vent lines open and functioning; and caps and secures all other lines, pumps, manways, and ancillary equipment.

(3) If another operator does not exist, as provided for under paragraph (b)(1) of this section, in addition to satisfying the conditions under paragraph (b)(2) of this section, the holder must either:

(i) Permanently close the UST or UST system in accordance with Sections 280.71 through 280.74, except Section 280.72(b); or

(ii) Temporarily close the UST or UST system in accordance with the following applicable provisions of Section 280.70:

(A) Continue operation and maintenance of corrosion protection in accordance with Section 280.31;

(B) Report suspected releases to the Department; and

(C) Conduct a site assessment in accordance with Section 280.72(a) if the UST system is temporarily closed for more than 12 months and the UST system does not meet either the performance standards in Section 280.20 for new UST systems or the upgrading requirements in Section 280.21, except that the spill and overflow equipment requirements do not have to be met. The holder must report any suspected releases to the Department. For purposes of this provision, the 12-month period begins to run from the effective date of this subpart or from the date on which the UST system is emptied and secured under paragraph (b)(2) of this section, whichever is later.

(4) The UST system can remain in temporary closure until a subsequent purchaser has acquired marketable title to the UST or UST system or facility or property on which the UST or UST system is located. Once a subsequent purchaser acquires marketable title to the UST or UST system or facility or property on which the UST or UST system is located, the purchaser must decide whether to operate or close the UST or UST system in accordance with applicable requirements in R.61-92 Part 280.

***SUBPART J***  
***Operator Training***

**SECTION 280.240. GENERAL REQUIREMENT FOR ALL UST SYSTEMS.**

(a) As of August 8, 2011, all owners and operators of UST systems must ensure they have designated Class A, Class B, and Class C operators who meet the requirements of this subpart.

(b) The Department shall:

(1) Maintain a registry of Class A and Class B operators to include facility responsibility, training completion date and training provider;

(2) Verify training and documentation is current for Class A, Class B, and Class C operators during inspections at UST facilities; and

(3) Develop supplemental training that will be provided to all designated Class A and Class B operators that completed their training prior to May 26, 2017.

**SECTION 280.241. DESIGNATION OF CLASS A, B, AND C OPERATORS.**

UST system owners and operators must designate:

(a) At least one Class A and one Class B operator for each UST or group of USTs at a facility; and

(b) Each individual who meets the definition of Class C operator at the UST facility as a Class C operator.

**SECTION 280.242. REQUIREMENTS FOR OPERATOR TRAINING.**

UST system owners and operators must ensure Class A, Class B, and Class C operators meet the requirements of this section. At small facilities, one individual may handle all three duties. However, in the operation and maintenance structure at an underground storage tank facility that is part of a large store chain, open 24-hours, a number of persons may be designated to perform duties and responsibilities of operator classes A, B, and C. Any individual designated for more than one operator class must successfully complete the required training program or comparable examination, as approved by the Department, according to the operator class in which the individual is designated. Not later than thirty days after Class A and Class B Operators complete appropriate operator training, tank owners will notify the department of the name, training completion date and training provider for each operator.

(a) Class A operators. Each designated Class A operator must either be trained in accordance with paragraphs (a)(1) and (2) of this section or pass a comparable examination, as approved by the Department, in accordance with paragraph (e) of this section.

(1) At a minimum, the training program for the Class A operator must provide general knowledge of the requirements in this paragraph (a). At a minimum, the training must teach the Class A operators, as applicable, about the purpose, methods, and function of:

(i) Spill and overflow prevention;

(ii) Release detection;

(iii) Corrosion protection;

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- (iv) Emergency response;
- (v) Product and equipment compatibility and demonstration;
- (vi) Financial responsibility;
- (vii) Notification and storage tank registration;
- (viii) Temporary and permanent closure;
- (ix) Related reporting, recordkeeping, testing, and inspections;
- (x) Environmental and regulatory consequences of releases; and
- (xi) Training requirements for Class B and Class C operators.

(2) At a minimum, the training program must evaluate Class A operators to determine these individuals have the knowledge and skills to make informed decisions regarding compliance and determine whether appropriate individuals are fulfilling the operation, maintenance, and recordkeeping requirements for UST systems in accordance with paragraph(a)(1) of this section.

(b) Class B operators. Each designated Class B operator must either receive training in accordance with paragraphs (b)(1) and (2) of this section or pass a comparable examination, as approved by the Department, in accordance with paragraph (e) of this section.

(1) At a minimum, the training program for the Class B operator must cover either: general requirements that encompass all regulatory requirements and typical equipment used at UST facilities; or site-specific requirements which address only the regulatory requirements and equipment specific to the facility. At a minimum, the training program for Class B operators must teach the Class B operator, as applicable, about the purpose, methods, and function of:

- (i) Operation and maintenance;
- (ii) Spill and overfill prevention;
- (iii) Release detection and related reporting;
- (iv) Corrosion protection;
- (v) Emergency response;
- (vi) Product and equipment compatibility and demonstration;
- (vii) Reporting, recordkeeping, testing, and inspections;
- (viii) Environmental and regulatory consequences of releases; and
- (ix) Training requirements for Class C operators.

(2) At a minimum, the training program must evaluate Class B operators to determine these individuals have the knowledge and skills to implement applicable state UST regulatory requirements on the components of typical UST systems or, as applicable, site-specific equipment used at an UST facility in accordance with paragraph (b)(1) of this section.

- (3) Once each month, Class B Operators shall validate that:
- (i) Each assigned facility has accomplished the required release and leak detection monitoring;
  - (ii) Each assigned facility has the required release and equipment monitoring records;
  - (iii) Required equipment and system testing has been accomplished;
  - (iv) Unusual operating conditions or release detection system indications have been reported and investigated;
  - (v) Routine operations and maintenance activities have been accomplished;
  - (vi) Spill, overfill, and corrosion protection systems are in place and operational; and,
  - (vii) Class C operators have been designated and trained.
- (4) Class B Operators shall physically visit each assigned facility quarterly.

(c) Class C operators. Each designated Class C operator must either: be trained by a Class A or Class B operator in accordance with paragraphs (c)(1) and (2) of this section; complete a training program in accordance with paragraphs (c)(1) and (2) of this section; or pass a comparable examination as approved by the Department, in accordance with paragraph (e) of this section.

(1) At a minimum, the training program for the Class C operator must teach the Class C operators to take appropriate actions (including notifying appropriate authorities) in response to emergencies or alarms caused by spills or releases resulting from the operation of the UST system.

(2) At a minimum, the training program must evaluate Class C operators to determine these individuals have the knowledge and skills to take appropriate action (including notifying appropriate authorities) in response to emergencies or alarms caused by spills or releases from an underground storage tank system.

(d) Training program. Any training program must meet the minimum requirements of this section and include an evaluation through testing, a practical demonstration, or another approach acceptable to the Department.

(e) Comparable examination. A comparable examination must, at a minimum, test the knowledge of the Class A, Class B, or Class C operators in accordance with the requirements of paragraphs (a), (b), or (c) of this section, as applicable.

**SECTION 280.243. TIMING OF OPERATOR TRAINING.**

(a) An owner and operator must ensure that designated Class A, Class B, and Class C operators meet the requirements in Section 280.242 not later than May 26, 2017. Class A and B operators, designated and trained prior to May 26, 2017, must complete the supplemental training no later than May 26, 2020. The supplemental training must be developed and administered by the Department or an independent organization whose program has been approved by the Department. UST system owners and operators must ensure that the Class A and Class B operators are retrained pursuant to this section no later than May 26, 2020.

(b) Class A and Class B operators designated after August 8, 2011 must meet requirements in Section 280.242 within 30 days of assuming duties.

(c) Class C operators designated after August 8, 2011 must be trained before assuming duties of a Class C operator.

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### **SECTION 280.244. RETRAINING.**

Class A and Class B operators of UST systems determined by the Department to be out of compliance must complete a training program or comparable examination in accordance with requirements in Section 280.242. The training program or comparable examination must be developed or administered by the Department or an independent organization whose program has been approved by the Department. At a minimum, the training must cover the area(s) determined to be out of compliance. UST system owners and operators must ensure that the primary Class A and Class B operators are retrained pursuant to this section no later than 30 days from the date the Department determines the facility is out of compliance.

### **SECTION 280.245. DOCUMENTATION.**

Owners and operators of underground storage tank systems must maintain a list of designated Class A, Class B, and Class C operators and maintain records verifying that training and retraining, as applicable, have been completed, in accordance with Section 280.34 as follows:

(a) The list must:

(1) Identify all Class A, Class B, and Class C operators currently designated for the facility; and

(2) Include names, class of operator trained, date assumed duties, date each completed initial training, and any retraining.

(b) Records verifying completion of training or retraining must be a paper or electronic record for Class A, Class B, and Class C operators. The records, at a minimum, must identify name of trainee, date trained, operator training class completed, and list the name of the trainer or examiner and the training company name, address, and telephone number. Owners and operators must maintain these records for as long as

Class A, Class B, and Class C operators are designated. The following requirements also apply to the following types of training:

(1) Records from classroom or field training programs (including Class C operator training provided by the Class A or Class B operator) or a comparable examination must, at a minimum, be signed by the trainer or examiner;

(2) Records from computer based training must, at a minimum, indicate the name of the training program and web address, if Internet based; and

(3) Records of retraining must include those areas on which the Class A or Class B operator has been retrained.

### ***SUBPART K***

#### ***UST Systems with Field-Constructed Tanks and Airport Hydrant Fuel Distribution Systems***

### **SECTION 280.250. DEFINITIONS.**

For purposes of this subpart, the following definitions apply:

(a) "Airport hydrant fuel distribution system (also called airport hydrant system)" means an UST system which fuels aircraft and operates under high pressure with large diameter piping that typically terminates into one or more hydrants (fill stands). The airport hydrant system begins where fuel enters one or more tanks from an external source such as a pipeline, barge, rail car, or other motor fuel carrier.

(b) “Field-constructed tank” means a tank constructed in the field. For example, a tank constructed of concrete that is poured in the field, or a steel or fiberglass tank primarily fabricated in the field is considered field-constructed.

**SECTION 280.251. GENERAL REQUIREMENTS.**

(a) Implementation of requirements. Owners and operators must comply with the requirements of this part for UST systems with field-constructed tanks and airport hydrant systems as follows:

(1) For UST systems installed on or before May 26, 2017 the requirements are effective according to the following schedule:

Requirement	Effective date
Upgrading UST systems; general operating requirements; and operator training	May 26, 2020
Release detection	May 26, 2020
Release reporting, response, and investigation; closure; financial responsibility and notification (except as provided in paragraph (b) of this section).	May 26, 2017

(2) For UST systems installed after May 26, 2017, the requirements apply at installation.

(i) Not later than May 26, 2020, all owners of previously deferred UST systems must submit a one-time notice of tank system existence to the Department, using EPA form 7530-1, a Department form, a Department approved form, or submitted in a format as approved by the Department in accordance with Section 280.22(c). Owners and operators of UST systems in use as of May 26, 2017 must demonstrate financial responsibility at the time of submission of the notification form.

(ii) Except as provided in Section 280.252, owners and operators must comply with the requirements of Subparts A through H and J of this part.

(iii) In addition to the codes of practice listed in Section 280.20, owners and operators may use military construction criteria, such as Unified Facilities Criteria (UFC) 3-460-01, “Petroleum Fuel Facilities,” when designing, constructing, and installing airport hydrant systems and UST systems with field-constructed tanks.

**SECTION 280.252. ADDITIONS, EXCEPTIONS, AND ALTERNATIVES FOR UST SYSTEMS WITH FIELD-CONSTRUCTED TANKS AND AIRPORT HYDRANT SYSTEMS.**

(a) Exception to piping secondary containment requirements. Owners and operators may use single walled piping when installing or replacing piping associated with UST systems with field-constructed tanks greater than 50,000 gallons and piping associated with airport hydrant systems. Piping associated with UST systems with field-constructed tanks less than or equal to 50,000 gallons not part of an airport hydrant system must meet the secondary containment requirement when installed or replaced.

(b) Upgrade requirements. Not later than May 26, 2020, airport hydrant systems and UST systems with field-constructed tanks where installation commenced on or before May 26, 2017 must meet the following requirements or be permanently closed pursuant to Subpart G of this part.

(1) Corrosion protection. UST system components in contact with the ground that routinely contain regulated substances must meet one of the following:

(i) Except as provided in paragraph (a) of this section, the new UST system performance standards for tanks at Section 280.20(a) and for piping at Section 280.20(b); or

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(ii) Be constructed of metal and cathodically protected according to a code of practice developed by a nationally recognized association or independent testing laboratory and meets the following:

(A) Cathodic protection must meet the requirements of Section 280.20(a)(2)(ii), (iii), and (iv) for tanks, and Sections 280.20(b)(2)(ii), (iii), and (iv) for piping.

(B) Tanks greater than 10 years old without cathodic protection must be assessed to ensure the tank is structurally sound and free of corrosion holes prior to adding cathodic protection. The assessment must be by internal inspection or another method determined by the Department to adequately assess the tank for structural soundness and corrosion holes.

[Note to paragraph (b). The following codes of practice may be used to comply with this paragraph (b):

(A) NACE International Standard Practice SP 0285, “External Control of Underground Storage Tank Systems by Cathodic Protection”;

(B) NACE International Standard Practice SP 0169, “Control of External Corrosion on Underground or Submerged Metallic Piping Systems”;

(C) National Leak Prevention Association Standard 631, Chapter C, “Internal Inspection of Steel Tanks for Retrofit of Cathodic Protection”; or

(D) American Society for Testing and Materials Standard G158, “Standard Guide for Three Methods of Assessing Buried Steel Tanks”.]

(2) Spill and overflow prevention equipment. To prevent spilling and overflowing associated with product transfer to the UST system, all UST systems with field-constructed tanks and airport hydrant systems must comply with new UST system spill and overflow prevention equipment requirements specified in Section 280.20(c).

(c) Walkthrough inspections. In addition to the walkthrough inspection requirements in Section 280.36, owners and operators must inspect the following additional areas for airport hydrant systems at least once every 30 days if confined space entry according to the Occupational Safety and Health Administration (see 29 CFR part 1910) is not required or at least once annually if confined space entry is required and keep documentation of the inspection according to Section 280.36(b).

(1) Hydrant pits—visually check for any damage; remove any liquid or debris; and check for any leaks, and

(2) Hydrant piping vaults—check for any hydrant piping leaks.

(d) Release detection. Owners and operators of UST systems with field-constructed tanks and airport hydrant systems must begin meeting the release detection requirements described in this subpart not later than May 26, 2020.

(1) Methods of release detection for field-constructed tanks. Owners and operators of field-constructed tanks with a capacity less than or equal to 50,000 gallons must meet the release detection requirements in Subpart D of this part. Owners and operators of field-constructed tanks with a capacity greater than 50,000 gallons must meet either the requirements in Subpart D (except Section 280.43(e) and (f) must be combined with inventory control as stated below) or use one or a combination of the following alternative methods of release detection:

(i) Conduct an annual tank tightness test that can detect a 0.5 gallon per hour leak rate;



(ii) Use an automatic tank gauging system to perform release detection at least every 30 days that can detect a leak rate less than or equal to one gallon per hour. This method must be combined with a tank tightness test that can detect a 0.2 gallon per hour leak rate performed at least every three years;

(iii) Use an automatic tank gauging system to perform release detection at least every 30 days that can detect a leak rate less than or equal to two gallons per hour. This method must be combined with a tank tightness test that can detect a 0.2 gallon per hour leak rate performed at least every two years;

(iv) Perform vapor monitoring (conducted in accordance with Section 280.43(e) for a tracer compound placed in the tank system) capable of detecting a 0.1 gallon per hour leak rate at least every two years;

(v) Perform inventory control (conducted in accordance with Department of Defense Directive 4140.25; ATA Airport Fuel Facility Operations and Maintenance Guidance Manual; or equivalent procedures) at least every 30 days that can detect a leak equal to or less than 0.5 percent of flow-through; and

(A) Perform a tank tightness test that can detect a 0.5 gallon per hour leak rate at least every two years; or

(B) Perform vapor monitoring or groundwater monitoring (conducted in accordance with Section 280.43(e) or (f), respectively, for the stored regulated substance) at least every 30 days; or

(vi) Another method approved by the Department if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in paragraphs (d)(1)(i) through (v) of this section. In comparing methods, the Department shall consider the size of release that the method can detect and the frequency and reliability of detection.

(2) Methods of release detection for piping. Owners and operators of underground piping associated with field-constructed tanks less than or equal to 50,000 gallons must meet the release detection requirements in Subpart D of this part. Owners and operators of underground piping associated with airport hydrant systems and field-constructed tanks greater than 50,000 gallons must follow either the requirements in Subpart D (except Section 280.43(e) and (f) must be combined with inventory control as stated below) or use one or a combination of the following alternative methods of release detection:

(i)(A) Perform a semiannual or annual line tightness test at or above the piping operating pressure in accordance with the table below.

MAXIMUM LEAK DETECTION RATE PER TEST SECTION VOLUME		
Test section volume (gallons)	Semiannual test—leak detection rate not to exceed (gallons per hour)	Annual test— leak detection rate not to exceed (gallons per hour)
<50,000	1.0	0.5
≥50,000 to <75,000	1.5	0.75
≥75,000 to <100,000	2.0	1.0
≥100,000	3.0	1.5

(B) Piping segment volumes ≥100,000 gallons not capable of meeting the maximum 3.0 gallon per hour leak rate for the semiannual test may be tested at a leak rate up to 6.0 gallons per hour according to the following schedule:

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PHASE IN FOR PIPING SEGMENTS ≥100,000 GALLONS IN VOLUME	
First test.....	Not later than May 26, 2020 (may use up to 6.0 gph leak rate).
Second test .....	Between May 26, 2020 and May 26, 2023 (may use up to 6.0 gph leak).
Third test .....	Between May 26, 2023 and May 26, 2024 (must use 3.0 gph for leak rate).
Subsequent tests .....	After May 26, 2024, begin using semiannual or annual line testing according to the Maximum Leak Detection Rate Per Test Section Volume table above.

(ii) Perform vapor monitoring (conducted in accordance with Section 280.43(e) for a tracer compound placed in the tank system) capable of detecting a 0.1 gallon per hour leak rate at least every two years;

(iii) Perform inventory control (conducted in accordance with Department of Defense Directive 4140.25; ATA “Airport Fuel Facility Operations and Maintenance Guidance Manual”; or equivalent procedures) at least every 30 days that can detect a leak equal to or less than 0.5 percent of flow-through; and

(A) Perform a line tightness test (conducted in accordance with paragraph (d)(2)(i) of this section using the leak rates for the semiannual test) at least every two years; or

(B) Perform vapor monitoring or groundwater monitoring (conducted in accordance with Section 280.43(e) or (f), respectively, for the stored regulated substance) at least every 30 days; or

(iv) Another method approved by the Department if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in paragraphs (d)(2)(i) through (iii) of this section. In comparing methods, the Department shall consider the size of release that the method can detect and the frequency and reliability of detection.

(3) Recordkeeping for release detection. Owners and operators must maintain release detection records according to the recordkeeping requirements in Section 280.45.

(e) Applicability of closure requirements to previously closed UST systems. When directed by the Department, the owner and operator of an UST system with field-constructed tanks or airport hydrant system permanently closed before May 26, 2017 must assess the excavation zone and close the UST system in accordance with Subpart G of this part if releases from the UST may, in the judgment of the Department, pose a current or potential threat to human health and the environment.

***SUBPART L***  
***Variances -- Violations and Penalties -- Appeals***

**SECTION 280.300. VARIANCES.**

The Department may vary the application of any provisions of these regulations, when, in its opinion, the applicant has demonstrated that an equivalent degree of protection will be provided to the State's waters. Any variance granted or denied by the Department shall be in writing and shall contain a brief statement of the reasons for the approval or denial.

**SECTION 280.301. VIOLATIONS AND PENALTIES.**

Any person or persons violating these regulations shall be subject to the penalties provided in Title 44 Chapter 2 Section 140 of the Code of Laws of South Carolina, as amended.

**SECTION 280.302. APPEALS.**

(a) A decision involving the issuance, denial, renewal, modification, suspension, or revocation of a permit or registration may be appealed by an affected person with standing pursuant to applicable law, including S.C. Code Title 44, Chapter 1 and Title 1, Chapter 23.

(b) Any person to whom an order is issued may appeal it pursuant to applicable law, including S.C. Code Title 44, Chapter 1 and Title 1, Chapter 23.

**Fiscal Impact Statement:**

The amended regulations will have no substantial fiscal or economic impact on the State or its political subdivisions. Implementation of this regulation will not require additional resources beyond those allowed. There is no anticipated additional cost by the Department or State Government due to any inherent requirements of this regulation.

**Statement of Need and Reasonableness:**

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

DESCRIPTION OF REGULATION: R.61-92, Underground Storage Tank Control Regulations.

Purpose: Pursuant to S.C. Code Section 44-2-10 et seq., these amendments of R.61-92 Part 280 will focus on adopting the federal underground storage tank requirements of 40 CFR Section 280 effective October 13, 2015, and revising portions of R.61-92, Part 280 pertaining to compliance requirements of the UST Control Regulations. These amendments reorganize the regulations for clarity and consistency with the format of the revised federal regulation effective October 13, 2015, along with other stylistic changes made to improve the overall quality of the regulation.

Legal Authority: 1976 Code Section 44-2-10, et. seq.

Plan for Implementation: The amendments will take effect upon approval by the S.C. General Assembly, and publication in the *State Register*. An electronic copy of R.61-92, which includes these latest amendments, will be published on the Department's Regulation Development website at: <http://www.scdhec.gov/Agency/RegulationsAndUpdates/LawsAndRegulations>. At this site, click on the Land & Waste Management category and scroll down to R.61-92. Subsequently, this regulation will be published on the S.C. Legislature website in the S.C. Code of Regulations. Printed copies will be made available at cost by request through the DHEC Freedom of Information Office.

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

The amendments are needed to realize the following anticipated benefits:

1. These amendments adopt the federal underground storage tank requirements of 40 CFR Section 280 effective October 13, 2015 that are not in existing R.61-92. This will demonstrate that the Department operates a program that is no less stringent than the federal requirements.

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2. These amendments incorporate new federal underground storage tank requirements of 40 CFR Section 280 while maintaining existing R.61-92 requirements.

3. These amendments revise portions of R.61-92 by incorporating state specific changes to enhance or clarify regulations. The revisions seek to ensure releases from underground storage tanks are minimized, protect the human health and environment, and reduce the financial liability on the State Underground Petroleum Environmental Response Bank (SUPERB) Account and the SUPERB Financial Responsibility Fund as it pertains to assessment, corrective action, and third party liability claims for petroleum releases from UST systems.

4. These amendments reorganize the regulations for clarity and consistency with the format of the revised federal regulation effective October 13, 2015, along with other stylistic changes made to improve the overall quality of the Regulation.

The above amendments are reasonable to realize the above benefits because they provide an efficient procedure without any anticipated cost increase, provide clear standards and criteria for the regulated community, and support Department goals.

### DETERMINATION OF COSTS AND BENEFITS:

There are no anticipated cost increases to the State or permittees in complying these amendments specific to South Carolina. The changes are as follows: compatibility notification when changing tank contents from unregulated to regulated products, notification change for delivery prohibition, clarification of the definition for chief financial officer, notification of the Department on letters of credit, and change in acceptable location of the certificate of financial responsibility. Though the above variables prevent putting forth an exact cost number applicable to all permittees, these amendments will benefit the regulated community by ensuring that releases from underground storage tanks are minimized, protecting human health and the environment, especially near environmentally sensitive and critical areas, and reducing the financial liability on the State Underground Petroleum Environmental Response Bank (SUPERB) Account and the SUPERB Financial Responsibility Fund as it pertains to assessment, corrective action, and third party liability claims for petroleum releases from UST systems.

The federal amendments include the following: removal of deferrals for airport hydrant systems and field constructed tanks, release detection for new and existing USTs supplying emergency generators, closure if internal lining not repairable, notification of ownership changes, record-keeping requirements for groundwater and vapor monitoring for release detection, release report timing changes, removal of allowance for ball float vent valves in new installations and no longer allowed if not repairable, notification of product compatibility, testing requirements for release detection monitoring equipment, testing requirements for containment sumps, testing requirement for overfill devices, testing requirement for overfill protection (spill buckets), addition of walkthrough compliance inspections by owners and operators, secondary containment requirement on all new installed underground tanks and piping, under dispenser containment required for all newly installed dispensers. Costs associated with these amendments may occur when permittees are required to upgrade existing UST systems, install new systems, upgrade monitoring equipment, or educate staff on new inspection requirements. Though the above variables prevent putting forth an exact cost number applicable to all permittees, implementation of the amendments will benefit the regulated community by ensuring that releases from underground storage tanks are minimized, protecting human health and the environment, especially near environmentally sensitive and critical areas, and reducing the financial liability on the State Underground Petroleum Environmental Response Bank (SUPERB) Account and the SUPERB Financial Responsibility Fund as it pertains to assessment, corrective action, and third party liability claims for petroleum releases from UST systems.

Federal amendments, such as walkthrough inspections, overfill/spill prevention equipment inspections, and containment sump testing may not have a one-time (up front) cost associated, but there may be a reoccurring

operation and maintenance cost. Other amendments, such as the performance of site assessments for sites using vapor or groundwater monitoring for release detection, elimination of flow restrictors in vent lines for all new tanks and when overflow prevention equipment is replaced, operability tests of release detection equipment, will incur a one-time cost without continued operation and maintenance costs.

**UNCERTAINTIES OF ESTIMATES:**

There are no uncertainties of estimates relative to the costs to the State or permittees.

**EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:**

The amendments to R.61-92 seek to support the Department’s goals relating to the protection of public health and the environment through the anticipated benefits highlighted above. There is no anticipated effect on the environment.

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

There is no anticipated detrimental effect on the environment associated with these amendments.

**Statement of Rationale:**

These amendments focus on adopting the federal underground storage tank requirements of 40 CFR Section 280 effective October 13, 2015, and revise portions of R.61-92, Part 280 pertaining to compliance requirements of the UST Control Regulations. The Regulation is reorganized for clarity and consistency with the format of the revised federal regulation effective October 13, 2015, along with other stylistic changes made to improve the overall quality of the Regulation.

Document No. 4671  
**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**  
 CHAPTER 61  
 Statutory Authority: 1976 Code Section 43-5-930

61-94. WIC Vendors

**Synopsis:**

These amendments of R.61-94, WIC Vendors, will incorporate provisions included in the Child Nutrition and WIC Reauthorization Act of 2004 (P.L.108-265) and the final rule published by the U.S. Department of Agriculture (USDA) in 2014 that revised the WIC food packages. The final rule also contained WIC vendor provisions and amendments to ensure adequate and appropriate monitoring of the Program’s food delivery system. Stylistic changes to the regulation are also included.

A Notice of Drafting for these amendments was published in the *State Register* on July 22, 2016.

See Statements of Need and Reasonableness and Rationale herein.

Pursuant to letter dated February 15, 2017 from the Senate Medical Affairs Committee, the Department has withdrawn and resubmitted Document No. 4671 to correct a scrivener’s error: The statutory authority for this Regulation was changed from 1976 Code Section 43-9-510 to Section 43-5-930.

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### Section-by-Section Discussion of Amendments:

The statutory authority for this regulation is added under the title of the regulation.

#### TABLE OF CONTENTS:

The table was revised to reflect the amendments.

#### 61-94.101 Definitions

Section 61-94.101(C) - Amended to update the Federal name of the program.

Section 61-94.101(D) - Amended to update the State name of the program.

Section 61-94.101(F) - Amended to remove food as part of a store's title.

#### 61-94.201 Approval of Vendors

Section 61-94.201(B)(1) - Amended to add that a vendor can request an application by phone.

Section 61-94.201(B)(2) - Amended to include the documents that are included in the vendor application packet.

Section 61-94.201(B)(3) - Amended to state that all WIC vendors must be authorized to accept SNAP, with the exception of pharmacies.

Section 61-94.201(B)(4) - Deleted

Section 61-94.201(B)(4) - New 61-94.201(B)(4) and re-numbered 61-94.201(B)(4) – 61-94.201(B)(17). Amended to ensure that an employee of a store shall not handle a WIC transaction if that employee is also employed by the WIC Program.

Section 61-94.201(B)(6) - New #61-94.201(B)(5) - Amended to state that a WIC vendor applicant must pass a pre-approval visit before authorization.

Section 61-94.201(B)(5) – Re-numbered 61-94.201(B)(9) to 61-94.201(B)(5)

Section 61-94.201(B)(7) - Deleted

Section 61-94.201(B)(8) - Deleted

Section 61-94.201(B)(10) - New # 61-94.201(B)(7) – Amended to update terminology.

Section 61-94.201(B)(11) - New # 61-94.201(B)(8)

Section 61-94.201(B)(12) - New # 61-94.201(B)(9) – Amended to add store type by Region.

Section 61-94.201(B)(13) – New # 61-94.201(B)(10) – Amended to update terminology.

Section 61-94.201(B)(14) – New # 61-94.201(B)(11) – Amended to update terminology.

Section 61-94.201(B)(15) - New # 61-94.201(B)(12) – Added to require South Carolina location.

Section 61-94.201 (B)(16) - New # 61-94.201(B)(13) – Added to require business hours of operations (as stated in the Vendor agreement).

Section 61-94.201(B)(17) - New # 61-94.201(B)(14) – Amended to add language that a vendor or its management cannot have any convictions or civil judgments that indicate a lack of business integrity.

Section 61-94.201(B) - Added # 61-94.201(B)15(i)-(xv) - Amended to update/revise the list of allowable foods that are authorized for the WIC Program. This section was re-numbered to adjust the codification.

Section 61-94.201(C)(1) – Amended to update the name of the Program.

Section 61-94.201(C) – Added # 61-94.201(C)(4) to include the requirement that a store complete and submit a price survey twice a year.

#### 61-94.301 Redemption of Food Instruments

Section 61-94.301(A) – Amended to state that a vendor can only provide foods as specified in the WIC Food Guide.

Section 61-94.301(E) – Amended to clarify that a manual food instrument should not be accepted without a program stamp.

Section 61-94.301(G) – Deleted

Section 61-94.301(J)(1) – Amended to delete trading stamps as a promotional item.

61-94.401 Submitting Food Instruments for Payment

Section 61-94.401(A) – Revised the method in which the vendor receives payment for food instruments redeemed.

Section 61-94.401(B) – Amended to clarify when the vendor must stamp the food instrument.

Section 61-94.401(C) – Deleted

61-94.501 Payment of Food Instruments

Section 61-94.501(A) - Revised the language on the rejection of food instruments when improperly redeemed by the vendor.

Section 61-94.501(A)(1) – Revised to add clarifying language.

Section 61-94.501(A)(2) – Revised to add clarifying language.

Section 61-94.501(A)(3) – Revised for clarity.

Section 61-94.501(A)(4) - Revised to add clarifying language.

Section 61-94.501(A)(7) – Revised to update the language.

Section 61-94.501(A)(8) – Deleted

Section 61-94.501(A)(10) – Deleted

Section 61-94.501(A) - New # 61-94.501(A)(10) - Amended to add that food instruments deposited more than thirty days after the “Void After” date will be rejected.

Section 61-94.501– Amended to add items 61-94.501(B) through 61-94.501(E) to provide guidance on when a claim against a vendor can be established.

61-94.601 Correction of Rejected Food Instruments

Section 61-94.601(A) – Revised to delete unnecessary language.

Section 61-94.601(B) – Revised to add clarifying language.

61-94.701 Monitoring of Vendors

Section 61-94.701(A) – Revised to delete unnecessary language.

Section 61-94.701(B) – Revised for clarity.

61-94.801 Disqualifications

61-94.801 Amended section title to read “Disqualifications and Sanctions”

Section 61-94.801 – This section was amended to include the mandatory vendor sanctions as stipulated by federal regulations.

Section 61-94.801(B) – 61-94.801(F) – statements deleted

Section 61-94.801 – Added new areas numbered 61-94.801(B) – 61-94.801(E) to include additional reasons for vendor sanctions and disqualifications.

61-94.901 Program Violations

Section 61-94.901 – Revised to delete repetitive language.

Section 61-94.901(1) – Deleted re-numbered 61-94.901(1) - 61-94.901(3)

Section 61-94.901(2) – Changed to # 61-94.901(1)(i) – 61-94.901(1)(vii) – Revised to update the point value for violations.

Section 61-94.901(3) – Changed to # 61-94.901(2)(i) – 61-94.901(2)(ix) – Revised to update the violations and add clarifying language.

Section 61-94.901(4) – This section has been revised and moved to section 61-94.801.

61-94.1001 Administrative Appeals

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Section 61-94.1001 – Revised to update the appeals process.

### Instructions:

Replace R.61-94, WIC Vendors, in its entirety with this amendment.

### Text:

61-94. WIC Vendors.

Statutory Authority: S.C. Code Section 43-5-930, 1976, as amended.

### Table of Contents

Section 101.	Definitions.
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Section 301.	Redemption of Food Instruments.
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Section 501.	Payment of Food Instruments.
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Section 701.	Monitoring of Vendors.
Section 801.	Disqualifications and Sanctions.
Section 901.	Program Violations.
Section 1001.	Administrative Appeals.

### SECTION 101. Definitions.

As used in these regulations, the following terms shall have the meaning specified:

- (A) DHEC. The South Carolina Department of Health and Environmental Control.
- (B) State Agency. The South Carolina Department of Health and Environmental Control.
- (C) WIC Program. The Special Supplemental Nutrition Program for Women, Infants and Children.
- (D) State WIC Program. Division of WIC Services. Bureau of Maternal and Child Health, South Carolina Department of Health and Environmental Control.
- (E) Food Instrument. The document which is used by a participant to obtain supplemental foods.
- (F) WIC Vendor. Any store or pharmacy approved for participation which has a valid, current WIC Vendor Agreement on file at the State WIC Program Office and continues to meet the minimum criteria for participation as listed in the agreement.

### SECTION 201. Approval of Vendors.

- (A) Only vendors authorized by the State Agency may redeem food instruments or otherwise provide supplemental foods to participants.
- (B) To be authorized for participation as a WIC Vendor, a vendor must:
  - 1. Request, in writing or by phone, a WIC Vendor application packet.



2. Submit a completed application packet to the State WIC Program Office, including the WIC Vendor Application, WIC Price Survey, Vendor Agreement, and an IRS W-9, Request for Taxpayer Identification and Certification form.

3. Be authorized to participate in the Supplemental Nutrition Assistance Program (SNAP). (Pharmacies are exempt from this requirement.)

4. Not be employed by the WIC program nor have a spouse, child, parent, or sibling who is employed by the WIC program serving the county in which the vendor applicant conducts business. The vendor applicant also shall not have an employee who handles, transacts deposits, or stores WIC food instruments who is employed by, or has a spouse, child, or parent who is employed by the WIC Program serving the county in which the vendor applicant conducts business.

5. Pass a pre-approval visit completed by the State WIC Program Office.

6. Inform and train cashiers and other staff on program requirements.

7. Ensure employees receive instruction regarding the WIC Program policies, procedures and requirements.

8. Maintain the minimum stock of WIC foods as required by the Vendor Agreement.

9. Comply with at least one established definition for store type within the four (4) Regions. Type 1 Chain, Type 2 Franchise, Type 3 Commissary, Type 4 Independent/Convenience and Type 5 Pharmacy.

10. Operate the store at a single, fixed location (no mobile/home delivery stores).

11. Purchase infant formula only from a state approved wholesaler, distributor or supplier.

12. Be located in South Carolina.

13. Must be open for business at least six (6) days a week for a minimum of eight (8) consecutive hours a day between the hours of 8 am – 10 pm.

14. Have no convictions or civil judgments within the last six (6) years that indicate a lack of business integrity on the part of the current owners, officers, or managers. Such activities include, but are not limited to: fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification of records, making false statements, receiving stolen property, making false claims, or obstruction of justice.

15. Provide to WIC participants only those foods authorized by the State WIC Program and in the exact quantities prescribed.

The following is a list of acceptable foods:

i) Infant formula must be iron-fortified, supply approximately twenty (20) kilocalories per fluid ounce, and not require the addition of any ingredient other than water.

ii) Infant cereal which contains a minimum of 45 milligrams of iron per 100 grams of dry cereal and contains no other ingredients, such as fruit, formula or DHA. No organic infant cereal.

iii) Infant juice which contains a minimum of 30 milligrams of Vitamin C per 100 milliliters of single strength or reconstituted frozen juice concentrate. Juice must be pasteurized, 100% unsweetened fruit or vegetable juice. No calcium-fortified or organic juice.

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iv) Pasteurized fluid whole, fat free, lowfat or reduced fat milk which is unflavored and contains 400 international units of Vitamin D and 2000 international units of Vitamin A per fluid quart; or

v) Nonfat dry milk solids may be substituted on a reconstituted quart basis and must contain 400 international units of Vitamin D and 2000 international units of Vitamin A per reconstituted quart; or

vi) Quarts and ½ gallons of lactose-free milk (whole, reduced fat, low fat and fat free).

vii) Domestic cheese made from 100% pasteurized milk (American, Monterey Jack, Cheddar, & Mozzarella). Block style or sliced, lowfat, reduced fat, low cholesterol and/or low sodium are allowed.

viii) Cereal (hot or cold) which contains a minimum of 28 milligrams of iron per 100 grams of dry cereal and not more than 21.2 grams of sucrose and other sugars per 100 grams of cereal (no more than 6 grams of sugar per ounce). Half of the cereals authorized must have whole grain as the primary ingredient by weight and meet labeling requirements.

ix) Eggs, Grade A large, white only..

x) Peanut butter, with no added flavorings.

xi) Mature legumes or beans.

xii) Canned tuna or pink salmon packed in water or oil.

xiii) Infant fruits and vegetables include any variety of single ingredient, commercial infant food fruits or vegetables without added sugars, starches, or salt. No organic infant foods or foods with added DHA.

xiv) Infant meats include any variety of commercial infant food having meat or poultry as a single major ingredient, with added broth or gravy, and no added sugars, salt or DHA.

xv) Whole Grains include whole wheat bread, whole grain bread, brown rice, whole wheat or soft corn tortillas. Whole grain must be the primary ingredient by weight in all whole grain products and meet labeling requirements for making a health claim as a “whole grain food with moderate fat content”.

(C) To retain authorization for participation a vendor must:

1. Renew the Vendor Agreement with the State WIC Program by the established renewal date.
2. Abide by the terms of the Agreement in effect.
3. Have prices which are competitive, based on the WIC Program definition, with similar type stores' prices.

### **SECTION 301. Redemption of Food Instruments.**

In providing supplemental foods to participants, the Vendor shall:

(A) Only provide the supplemental foods as specified in the WIC Food Guide and only the types, sizes and quantities specified on the food instrument.

(B) Accept food instruments only from individuals who present a valid South Carolina WIC Program ID Card listing them as authorized to redeem the food instruments and receive the supplemental foods.

- (C) Provide the supplemental foods at the current price or less than the current price charged to other customers, as indicated on individual food items or shelf labels indicating the price of the items.
- (D) Accept food instruments from participants only within the allowed time period, as listed on each food instrument.
- (E) Accept manual food instruments only if they have been stamped with a WIC Program stamp.
- (F) Refuse to accept any food instruments on which the valid dates or food prescriptions have been altered in any way.
- (G) Enter the date of purchase and total purchase amount (less tax) for the supplemental foods on the food instruments prior to obtaining the signature of the person authorized to receive the foods.
- (H) Obtain the signature of the person receiving the supplemental foods and check that signature against the signature on the WIC Program ID Card.
- (I) Offer WIC participants the same courtesies as other customers, including but not limited to:
  - 1. Providing promotional specials such as reduced prices on items as advertised.
  - 2. Allowing use of any open check-out line except for those indicated as “cash only”.

**SECTION 401. Submitting Food Instruments for Payment.**

- (A) The vendor must deposit food instruments into their local retail bank within thirty (30) days of the “Void after Date”.
- (B) Each food instrument must be stamped with the official WIC vendor stamp provided to the vendor by the State WIC Program Office prior to depositing.

**SECTION 501. Payment of Food Instruments.**

- (A) The State Agency may reject food instruments improperly redeemed and may request reimbursement for payments already made for improperly redeemed food instruments. Reasons food instruments may be rejected include, but are not limited to:
  - 1. Food instruments accepted prior to or after the valid dates.
  - 2. Food instruments on which the date of purchase has not been entered.
  - 3. Food instruments on which the purchase amount has not been entered.
  - 4. Manual food instruments on which the local WIC Program stamp has not been applied.
  - 5. Food instruments on which a valid WIC vendor stamp has not been applied.
  - 6. Food instruments on which the serial number is illegible.
  - 7. Food instruments on which a valid participant signature has not been applied.
  - 8. Food instruments on which the valid dates or food prescription/quantities have been altered.

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9. Food instruments accepted by a vendor which is not an authorized vendor as stipulated in Section 201 of these regulations.

10. Food instruments deposited more than thirty days (30) after the “Void after” date.

(B) The State WIC Program may delay payment or establish a claim if the Program determines the vendor has committed a violation that affects the payment to the vendor. The State WIC Program may offset any claim against current and subsequent amounts to be paid to the vendor. The vendor is responsible for any claim assessed by the State WIC Program.

(C) The State WIC Program, at its discretion, may allow the payment of a civil monetary penalty, in lieu of disqualification, as a result of the Program abuse.

### **SECTION 601. Correction of Rejected Food Instruments.**

(A) Vendors shall have the opportunity to correct food instruments which are rejected for errors.

(B) Vendors must justify, correct or provide adequate proof that food instruments were accepted according to the procedures listed in Section 401 of these regulations.

(C) The State WIC Program has the authority to refuse payment for food instruments on which proper corrections have not been made or with which adequate proof of proper acceptance has not been received.

### **SECTION 701. Monitoring of Vendors.**

(A) All vendors participating in the WIC Program agree to allow periodic monitoring of their business to assess compliance with Program requirements.

(B) During a monitoring visit, the vendor shall allow access to all food instruments accepted and located in the store at the time of the monitoring visit.

### **SECTION 801. Disqualifications and Sanctions.**

(A) The State WIC Program may disqualify a vendor for Program abuse, failure to meet the requirements of the WIC Vendor Agreement, or other just causes.

(B) Mandatory Vendor Sanctions.

1. One (1) Year Disqualification. A vendor shall be disqualified from the WIC Program for a period of one (1) year for:

(a) A pattern of providing unauthorized food items in exchange for WIC food instruments, including charging for supplemental food provided in excess of those listed on the WIC check;

(b) A pattern of charging above the maximum allowable price for WIC items;

(c) Intentionally providing false information on the WIC Vendor Application;

(d) Intentionally providing false information on the Vendor Price Survey;

(e) Non-payment of any claim for overcharges to the WIC Program;

(f) Failure to allow monitoring of stores by a WIC Investigator or failure to provide WIC food instruments for review when requested by the WIC Investigator;

(g) Forging a signature on WIC food instruments;

(h) Failure to submit a WIC Vendor Price Survey; or

(i) Failure to attend WIC Vendor Training.

2. Three (3) Year Disqualification. A vendor shall be disqualified from the WIC Program for three (3) years for:

(a) One incident of the sale of alcoholic beverage or tobacco products in exchange for WIC food instruments;

(b) A pattern of claiming reimbursement for the sale of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for a specific period of time, failing to supply store records, or failing to allow an audit of such records by the State WIC Program;

(c) A pattern of charging WIC participants more for supplemental food than non-WIC customers or charging participants more than the current shelf price;

(d) A pattern of receiving, transacting and/or redeeming WIC food instruments outside of authorized channels, including the use of an unauthorized vendor and/or an unauthorized person;

(e) A pattern of charging for supplemental food not received by the WIC participant; or

(f) A pattern of providing credit or non-food items, other than alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives or controlled substances in exchange for WIC food instruments.

3. Six (6) Year Disqualification. A vendor shall be disqualified from the WIC Program for six (6) years for:

(a) One incident of buying or selling WIC food instruments for cash (trafficking);

(b) One incident of buying or selling firearms, ammunition, explosives or controlled substances as defined in 21 U.S.C. 802 in exchange for WIC food instruments.

4. Permanent Disqualification. A vendor shall be permanently disqualified from the WIC Program for any conviction of trafficking (buying or selling WIC food instruments for cash) or selling firearms, ammunition, explosives or controlled substances in exchange for a WIC food instrument. A vendor is not entitled to receive any compensation for revenues lost as a result of such violation.

(C) A vendor who has been disqualified from SNAP shall also be disqualified from the WIC Program. This disqualification shall be the same length of time as SNAP disqualification, and may begin at a later date than the SNAP disqualification. This disqualification shall not be subject to administrative or judicial review under the WIC Program.

(D) Second Mandatory Sanction. When a vendor, who has been sanctioned for violating any of the provisions listed in this section, receives a sanction for a second violation of these provisions, the second sanction shall be double the amount of the first.

(E) Third or Subsequent Mandatory Sanctions. When a vendor, who has been assessed two or more sanctions for violation of any of the provisions listed in this section, receives a third or subsequent sanction for a violation

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of these provisions, the third and all subsequent sanctions shall be double the amount of the immediately preceding sanction.

### SECTION 901. Program Violations.

Each violation of program regulations has a set point value and a specific time period during which the points will remain on a vendor's record. If a vendor accumulates fifteen (15) or more violation points, the store will be disqualified from the WIC Program. The period of disqualification is determined by the nature of the violation(s), the number of violations and past disqualifications.

1. The following violations carry a point value of 8 and remain on a vendor's record for 18 months:

- (a) Contacting WIC participants in an attempt to recoup funds for instruments not paid by the Program.
- (b) Not providing "promotional specials" to WIC participants or not accepting cents-off coupons or store discount cards from WIC participants to reduce the amount charged to the program.
- (c) Issuing "RAIN" checks.
- (d) Requiring WIC participants to use special check-out lanes, not showing WIC participants the same courtesies as other customers, or engaging in any act of discrimination involving a WIC participant.
- (e) Knowingly entering false information on food instruments.
- (f) Requiring participants to make a cash purchase to redeem food instruments.
- (g) Failure to stock between 4-8 food items as listed in the Vendor Agreement.

2. The following violations carry a point value of 5 and remain on a vendor's record for one (1) year:

- (a) Allowing substitution for foods listed on the food instrument.
- (b) Failure to stock between 1-3 food items as listed in the Vendor Agreement.
- (c) Requiring participants to purchase a specific brand of WIC approved foods when more than one brand is available.
- (d) Using a WIC stamp other than the one issued by the State WIC Program.
- (e) Failure to properly redeem food instruments including but not limited to: not asking for I.D. cards, not completing date and purchase price on food instrument prior to obtaining participant's signature.
- (f) Not marking WIC items with price labels or shelf tags.
- (g) Collecting sales tax on WIC Purchases.
- (h) Stocking WIC approved food outside of the manufacturer's expiration date.
- (i) Providing (selling or giving) incentive items to WIC participants.

**SECTION 1001. Administrative Appeals.**

All vendors have the opportunity to request a fair hearing (administrative review) regarding certain adverse actions taken by the State Agency. The vendor must provide the State Agency with a written fair hearing request within fifteen days (15) of the receipt of the notice of the adverse action. The written request must list the actions with which the vendor disagrees, as well as reasons the vendor disagrees with these actions. If the vendor does not request a hearing within the fifteen (15) day period following notification, the State Agency's decision becomes final.

If a timely request of final review is filed with the DHEC Clerk of the Board, the Clerk will provide additional information regarding review procedures. If the DHEC Board declines, in writing, to schedule a final review conference, the State Agency's decision becomes final and the vendor may request a contested case hearing before the Administrative Law Court within thirty (30) calendar days after notice is mailed informing the vendor that the Board declined to hold a final review conference.

**Fiscal Impact Statement:**

These regulations will have no substantial fiscal or economic impact on the State. Implementation of this regulation will not require additional resources beyond those allowed. There is no anticipated additional cost by the Department or State Government due to any inherent requirements of this regulation.

**Statement of Need and Reasonableness:**

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

**DESCRIPTION OF REGULATION:**

**Purpose:** The amendments to R.61-94, WIC Vendors includes provisions included in the Child Nutrition and WIC Reauthorization Act of 2004 (P.L.108-265) and the final rule published by the USDA, Food and Nutrition Services in the Federal Register that revised the WIC food packages. The final rule also contained WIC vendor provisions and amendments to ensure adequate and appropriate monitoring of the Program's food delivery system. Stylistic changes will be made, which may include corrections for clarity and readability, grammar, punctuation, definitions, references, codification and overall improvement of the text of the regulation.

**Legal Authority:** The legal authority for R.61-94 is 1976 S.C. Code Section 43-5-930.

**Plan for Implementation:** The amendments will take effect upon approval by the S.C. General Assembly, and publication in the State Register. This revised regulation, to include these latest amendments, will be published on the Department's Laws and Regulations website under the Maternal and Child Health category and on the S.C. Legislature Online website in the S.C. Code of Regulations. Printed copies will be made available at cost by request through the DHEC Freedom of Information Office.

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

The amendments are needed to realize the following anticipated benefits:

1. The amendments update R.61-94 to include provisions in the Child Nutrition and WIC Reauthorization Act of 2004 (P.L. 108-265) that require the establishment of a vendor peer group system, distinct peer competitive price criteria, allowable reimbursement levels for each peer group and other vendor related provisions to ensure program integrity.

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2. The amendments include revisions to the WIC food packages as published in the interim rule by the USDA, Food and Nutrition Services in the Federal Register. The revisions align the WIC food packages with the Dietary Guidelines for Americans and infant feeding practice guidelines of the American Academy of Pediatrics.

3. The Department proposes vendor related amendments. The vendor provisions and amendments will be implemented to ensure adequate and appropriate monitoring of the Program's food delivery system to prevent fraud, waste and abuse from occurring and to safeguard program benefits.

The above amendments are reasonable to realize the above benefits because they provide an efficient procedure without any anticipated cost increase, provide clear standards and criteria for the regulated community.

### DETERMINATION OF COSTS AND BENEFITS:

There are no anticipated cost increases to the State or its political subdivisions in complying with these amendments. Amendments to R.61-94 will benefit the regulated community and the general public by implementing provisions to ensure program integrity. Participants served by the Program will benefit from these amendments by the provision of more nutritious foods.

There are no physical impact or cost to this change.

### UNCERTAINTIES OF ESTIMATES:

There are no uncertainties of estimates relative to the costs to the State.

### EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

The changes are not anticipated to have any negative effect on the environment or public health.

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

There is no anticipated detrimental effect on the environment or public health associated with these amendments.

### Statement of Rationale:

The Department amends R.61-94 as a result of vendor related provisions included in the Child Nutrition and WIC Reauthorization Act of 2004 (P.L. 108-265) and the final rule, published by the United States Department of Agriculture, Food and Nutrition Services in the Federal Register on March 4, 2014, revising the WIC food packages. The vendor related amendments of this interim rule were implemented to prevent fraud, waste and abuse of program benefits. The amendments also include stylistic changes.



Document No. 4675  
**SOUTH CAROLINA HUMAN AFFAIRS COMMISSION**  
 CHAPTER 65  
 Statutory Authority: 1976 Code Section 1-13-70

65-2. Complaint.

**Synopsis:**

Regulation 65-2 governs the requirements for the Agency's acceptance and retention of formal complaints of discrimination under the Human Affairs Law. Current language in the regulation requires notarization of all complaints. The proposed amendments would eliminate the need for notarization on the complaint form, and would instead reflect the statutory requirement that the complainant swear or affirm the allegations of the complaint under oath.

Notice of Drafting for the proposed amended regulation was published in the *State Register* on September 23, 2016.

**Instructions:**

Replace Regulation 65-2 as printed below.

**Text:**

65-2. Complaint.

A. Who may file.

A complaint that any person has engaged in or is engaging in an unlawful employment practice may be made by an individual claiming to be aggrieved - said individual shall be hereinafter referred to as the "complainant".

B. Complaint Form.

The complaint shall be in writing on a form provided by the Commission for this purpose. The complaint must be signed and sworn under oath or affirmation.

C. Required Contents of a Complaint. A complaint shall contain:

(1) The full name, address, and telephone number (if any) of the complainant. (Note: The person claiming to be aggrieved has the responsibility to provide the Commission with notice of any change in address and with notice of any prolonged absence from the current address and telephone number so that he/she can be located as necessary during the Commission's processing of the complaint.)

(2) The full name and address of the person against whom the complaint is made, if known (hereinafter referred to as the "respondent").

(3) A short, clear, and concise statement of the facts showing that the complainant is entitled to relief under the Act. This shall include:

(a) a clear statement of the harm alleged to be suffered by the complainant;

(b) a statement of the alleged basis of the discrimination;

(c) a statement of the complainant's knowledge, if any, concerning the respondent's reason for the alleged unlawful discrimination; and

(d) a statement of any and all other information providing the factual basis for the complaint.

(4) The date or dates when the alleged unlawful employment practice occurred, if known; if the alleged unlawful employment practice is of a continuing nature, the dates between which the alleged continuing acts occurred shall be stated, if known.

(5) If known, the approximate number of employees of the respondent employer, or the approximate number of members of the respondent labor organization, as the case may be.

(6) A statement as to any other action or proceeding, judicial or administrative, civil or criminal, instituted by the same complainant or other in his/her behalf, in any other forum based upon the same operative facts or

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harm as is alleged in the complaint filed with the Commission, together with a statement of the status or disposition of such other action or proceeding.

### D. Time of Filing.

(1) A complaint alleging an unlawful employment practice must be filed with the Commission within one hundred eighty (180) calendar days after the alleged unlawful practice occurs, unless the practice is of a continuing nature. If the alleged practice is of a continuing nature, the date of the occurrence of said practice shall be deemed to be any date after commencement of the practice up to and including the date on which the practice shall have ceased, or the date on which the complaint is filed if the unlawful practice is continuing at the time the charge is filed.

(2) The timeliness of a complaint shall be determined for purposes of satisfying the filing requirements by the date on which the complaint is received by the Commission. All charges shall be dated and time stamped upon receipt by the Commission.

### E. Place of Filing.

A complaint shall be filed with the Commission at its office at 2611 Forest Drive, Suite 200, Columbia, South Carolina, or by mail at Post Office Drawer 11300, Columbia, South Carolina 29211.

### F. Manner of Filing.

The complaint may be made in person to any member of the Commission's staff or mailed to the Commission's office in Columbia, South Carolina. A complaint may also be filed in the above manner at any other Commission office subsequently established for the filing of complaints by the Commission at any other location in the State.

### G. Service of the Complaint.

Within ten (10) days after the filing of a complaint in the Commission's office, the Commission shall serve the respondent with a copy of the complaint by mail or in person.

### H. Amendment of Complaint.

(1) A complaint may be amended by the complainant to cure technical defects, including failure to verify the complaint, or to clarify allegations made therein. A complaint shall not be amended to include additional unlawful employment practices unless such additional unlawful employment practices are clearly related to the allegations contained in the original complaint. Any additional unlawful employment practices which are not clearly related to the allegations contained in the original complaint may, if timely, be made in a separate complaint.

(2) Amendments will relate back to the date the complaint was first received. If a complaint is amended, a copy of the amended complaint shall be served within ten (10) days of Commission receipt thereof on the respondent.

(3) A complaint may only be amended while the complaint is active, and a complaint may not be amended by a complainant after a letter of determination, final order, conciliation or dismissal of a complaint has been made by the Commission.

### I. Withdrawal of Complaint.

A complaint or any part thereof may be withdrawn at any time upon Commission receipt of a written request of the complainant or his/her legal representative stating that the complainant requests that the complaint be withdrawn. Such withdrawal shall be without prejudice to the rights of the complainant; provided however, that should the complainant refile the complaint at a later time, timeliness shall be established on the basis of the latter filing. The respondent shall be notified within ten (10) days of the withdrawal of the complaint.

### J. Dismissal of Complaint.

(1) Where a complaint, on its face, or as amended, fails to state a claim under the Act, the Commission shall dismiss the complaint.

(2) A complaint shall also be dismissed:

(a) When the complaint, and every portion thereof, is not timely filed.

(b) When the complaint does not contain required contents pursuant to Section 65-2C of these Regulations.

(c) In the event that the complainant fails to provide information necessary for the proper filing or processing of a complaint, fails or refuses to appear or to be available for scheduled interviews or conferences with Commission investigators, or otherwise refuses to cooperate with the Commission to the extent that the

Commission is unable to resolve the complaint, and after due written notice, the complainant has had no less than fifteen (15) but no more than thirty (30) days in which to respond.

(d) When the complainant cannot be located the Commission shall dismiss the complaint, provided that reasonable efforts have been made to locate the complainant, and the complainant has not responded within thirty (30) days to a written notice sent by the Commission to the complainant's last known address.

(3) Where the Commission determines after investigation that there is not reasonable cause to believe that the Act has been violated, the Commission shall dismiss the complaint.

(4) In the event that a respondent has made a settlement offer, in writing and specific in its terms, the Commission shall dismiss the complaint if the complainant refuses to accept the offer; provided however, that the offer would afford full relief for the harm alleged by the person claiming to be aggrieved, and that the person claiming to be aggrieved fails to accept such an offer within thirty (30) days after actual notice of the said offer.

(5) Any complaint which has been brought as a court action alleging essentially the same facts and seeking relief for the same complainant shall be promptly dismissed.

(6) Any dismissal; pursuant to (a) through (d) above, shall constitute a final action by the Commission within the meaning of Section 706(c) of Title VII of the Civil Rights Act of 1964, as amended.

**Fiscal Impact Statement:**

No additional state funding is requested. The Agency estimates that no additional costs will be incurred by the state in complying with the proposed amendments to Regulation 65-2.

**Statement of Rationale:**

Regulation 65-2, Complaint, should be changed to eliminate the unnecessary requirement of notarization on the Complaint Form, and should instead reflect the statutory requirement of a statement that is made under oath or affirmation. The proposed amendments will parallel the requirements of the Agency's federal counterpart, the Equal Employment Opportunity Commission, thereby making the respective practices of the two entities substantially similar, which is required by the *Worksharing Agreement* between the Agency and the Equal Employment Opportunity Commission.

Document No. 4676  
**SOUTH CAROLINA HUMAN AFFAIRS COMMISSION**  
 CHAPTER 65  
 Statutory Authority: 1976 Code Section 1-13-70

65-22. Employment Records to be Retained for Six Months.

**Synopsis:**

Regulation 65-22 requires state agencies to retain personnel and employments records for six months, which is shorter than federally mandated requirements from retention.

Notice of Drafting for the proposed amended regulation was published in the *State Register* on September 23, 2016.

**Instructions:**

Repeal 65-22 in its entirety.

**Text:**

65-22. Repealed.

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### **Fiscal Impact Statement:**

No additional state funding is requested. The Agency estimates that no additional costs will be incurred by the state in complying with the proposed amendments to 65-22.

### **Statement of Rationale:**

Regulation 65-22 may confuse state agencies and may lead an agency to understand that records need only be retained for a period of six months, when in fact, federal recordkeeping obligations require longer retention periods for state agencies and other employers, specifically those found in 29 C.F.R. § 1602.

Document No. 4677  
**SOUTH CAROLINA HUMAN AFFAIRS COMMISSION**  
CHAPTER 65  
Statutory Authority: 1976 Code Section 1-13-70

65-3. Investigation and Production of Evidence.

### **Synopsis:**

Regulation 65-3 governs procedures for Agency investigations based on complaints of unlawful conduct under the Human Affairs Law, but revisions are needed to shorten the duration of an investigation and to provide consistency in Agency responses to requests for information by parties to a matter. Additionally, a citation error needs correcting, and references to the agency's subpoena powers should be clearer.

Notice of Drafting for the proposed amended regulation was published in the *State Register* on September 23, 2016.

### **Instructions:**

Replace Regulation 65-3 as printed below.

### **Text:**

65-3. Investigation and Production of Evidence.

A. Investigation.

(1) Investigator. The investigation of complaint shall be conducted by one or more investigators from the Commission's staff who shall be appointed by the Commissioner. If more than one investigator is appointed, one of the investigators shall be designated the "investigator in charge" and shall direct the investigation.

(2) Duties of the Investigator. Investigators shall do those things necessary and proper to thoroughly investigate a complaint, but shall limit their investigations to their proper scope as described in Subsection 65-3A(5) herein. Investigators assigned to investigate complaints filed pursuant to Section 1-13-90(c) of the Act (State agencies or departments and their local subdivisions) shall upon completion of their investigations submit to the supervisory commission member a statement of the facts disclosed by their investigations and recommend to the supervisory commission member that the complaint be dismissed or that a panel of commission members be designated to hear the complaint. In complaints arising under Section 1-13-90(d) of the Act (employers, employment agencies or labor organizations, including municipalities, counties, special purpose districts, school districts and local governments), investigators shall upon completion of their investigation submit to the Commissioner a statement of the facts disclosed by the investigation and recommend either that the complaint be dismissed or that the Commission endeavor to formally conciliate the matter.

(3) Supervisory Commission Members. If the complaint under investigation is brought pursuant to Section 1-13-90(c) of the Act, the Chairman of the Commission, or upon the request of the Chairman, the Commissioner

shall designate a member of the Commission to supervise the processing of the complaint who shall be known as the supervisory commission member. The supervisory commission member shall review the results of the investigation conducted by the investigator and review the investigator's recommendations for dismissal or other action.

(4) Commencement of the Investigation. The investigation shall commence immediately upon service by the Commission of a copy of the complaint or notice of complaint upon the respondent.

(5) Scope of Investigation. Insofar as practicable, the investigation shall be limited to a determination of the facts relating to the unlawful employment practice or practices under investigation or in question before the commission.

(6) Conduct of the Investigation.

(a) The investigator shall make a prompt and complete investigation of the allegations in the complaint which meet the standards of R.65-2.

(b) As part of each investigation the investigator:

(i) Will accept as evidence any statement of position and/or evidence concerning the allegations of the complaint which the complainant or respondent wishes to voluntarily submit.

(ii) Shall require the complainant or respondent to provide any evidence, including statements and documents which are relevant to the complaint, as well as, any information which is necessary to establish actual damages or to establish the date on which the alleged damages occurred.

(c) The investigator may require the complainant to provide a detailed statement which includes, but is not limited to:

(i) a statement of each specific harm that the complainant has allegedly suffered, and the date on which each alleged harm occurred;

(ii) for each alleged harm, a statement specifying the act, policy or practice of the respondent which is alleged to be unlawful; and

(iii) for each act, policy or practice alleged to have harmed the complainant a statement of the facts which lead the complainant to believe that the act, policy or practice is unlawfully discriminatory.

(d) During the investigation of a complaint, the investigator may conduct a fact-finding conference with the parties. The purpose of the conference shall be to clearly define the issues to determine which elements of the matter under investigation are undisputed, to resolve those issues that can be resolved and to determine whether there is any likelihood for a negotiated no-fault settlement of the complaint as described in Section 65-5A. Discussions during a fact-finding conference are confidential. Any conciliation efforts during the conference are also confidential and are considered conciliation attempts within the meaning of the Act.

#### B. Production of Evidence.

(1) Investigator's Formal Request for Information. An investigator may, at any reasonable time after service of complaint, formally request access to or production of records and documents in the possession of any person being investigated which are relevant to the complaint for purposes of inspection and copying. The investigator shall make the formal request for documents in writing by certified mail, transmitted to the person being investigated. The written demand shall notify the person that the investigator may apply to the Commission for a subpoena if access to or production of the documents and records is not permitted within thirty (30) days from the receipt of the investigator's written demand.

(2) Investigator's Application for Subpoena. If any person fails to comply with an investigator's formal demand for information within thirty (30) days after receipt of the written demand, the investigator may apply to the Commission for a subpoena by presenting to the Commission the investigator's written demand and the response of the person to whom the demand was made denying access to the information requested or, if no response was made, the investigator's affidavit that no response was received from the party to whom the demand for information was sent.

(3) Issuance of Subpoena. To effectuate the purpose of the Act, upon a showing by an investigator that a person has not complied with a written demand for information relevant to the complaint which was transmitted to the person by certified mail, the Chairman of the Commission and the Commissioner shall acting jointly have the authority to sign and issue a subpoena requiring:

(a) the production of evidence including but not limited to books, papers, records, correspondence or documents in the possession or under the control of the person subpoenaed;

(b) access to evidence for purposes of examination and the right to copy; and

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(c) under Section 1-13-90(c) of the Act, attendance at hearings or at prehearing depositions.

### (4) Form and Content of Subpoenas.

(a) A subpoena issued by the Commission shall:

(i) state the name and address of its issuer;

(ii) briefly and clearly state the cause of issuance;

(iii) identify the person to whom and the place, date and time at which the subpoena is returnable;

(iv) identify the person or evidence subpoenaed with reasonable clarity, specificity and particularity to readily enable the person receiving the subpoena to identify the named person or evidence;

(v) state the date and time access is requested if a subpoena is issued.

(b) A subpoena shall only be returnable to a duly authorized investigator of the Commission of the Commissioner.

(c) Neither the complainant nor the respondent shall have the right to demand that an investigative subpoena be issued.

(5) Petitions to Revoke Subpoena. Within fourteen (14) days after a subpoena is issued, the person served with the subpoena may petition the Commission by mail to revoke or modify the subpoena and shall serve a copy of the petition upon the investigator who originally demanded the information. The petition shall separately identify the portion of the subpoena with which the petitioner does not intend to comply and shall state with respect to each portion, the grounds upon which the petitioner relies. A copy of the subpoena shall be attached to the petition and shall be designated "Attachment A". Within ten (10) days after receipt of the petition or as soon thereafter as practicable, the Commission shall review the petition and make a written determination upon the petition stating in detail the reasons for the Commission's determination and shall serve a copy of the determination upon the petitioner and the investigator demanding the information. When a petition to revoke a subpoena is served upon the Commission, no enforcement of a subpoena shall be sought until the Commissioner has made a determination on the petition and served the petitioner with the determination.

### (6) Applications For Enforcement.

(a) Failure to Comply and Enforcement. A person who receives a subpoena may refuse to comply by failing to respond to the subpoena or by affirmatively stating that he/she will not respond; it is not necessary for the person to serve a petition to revoke the subpoena. If a person fails to comply with a subpoena, the Commission may, after fourteen (14) days, apply to any state court of competent jurisdiction for an order requiring the person to comply with the subpoena as provided by the Act.

(b) Notice of Hearing. Any person against whom an order is sought shall be given at least four (4) days notice (excluding Saturdays, Sundays, and state holidays) of the time and place of the hearing, and may oppose the granting of the order.

### (7) Interrogatories and Depositions.

(a) A party or witness may be required to answer written interrogatories relevant to a complaint under investigation under Section 1-13-90(c) and (d) of the Act at any time after such complaint is served.

(b) At least ten (10) days written notice (excluding Saturdays, Sundays and state holidays) shall be furnished to any party or witness sought to be deposed.

(c) The scope of discovery shall be governed by the relevance to the content of the complaint under investigation as described in Subsection 65-3A(5) of these Regulations.

(8) Petitions to Revoke Interrogatories and Depositions. If a person refuses to have his/her deposition taken or refuses to answer interrogatories, the person may petition to revoke the notice to take deposition or revoke the interrogatories within five (5) days after receipt of the notice to take deposition or within thirty (30) days after receipt of interrogatories. The petition shall be mailed to the Commission and shall be served upon the investigator who originally demanded the information. The petition shall separately identify each portion of the interrogatories with which the petitioner does not intend to comply and shall state, with respect to each such portion, the grounds upon which the petitioner relies. A copy of the notice to take deposition or the interrogatories, as the case may be, shall be attached to the petition and designated as "Attachment A". Within five (5) days after receipt of the petition or as soon thereafter as practicable, the Commission shall make a determination upon the petition stating in detail the reasons for its determination and shall serve a copy of its determination upon the petitioner. When a petition to revoke is served upon the Commission, no enforcement of a notice to take deposition or interrogatories shall be sought until the Commission has made its determination on the petition and served the petitioner.

## (9) Applications for Enforcement.

(a) Failure to Comply and Enforcement. A person who receives interrogatories or a notice to take deposition may refuse to comply by failing to respond or by affirmatively stating that he/she will not respond; it is not necessary for the person to serve a petition to revoke. If a person fails to comply with the notice to take deposition, the Commission may after ten (10) days apply to any state court of competent jurisdiction for an order requiring the person to comply as required by the Act. If a person fails to answer interrogatories the Commission may apply to any state court of competent jurisdiction for an order requiring the person to answer the interrogatories as provided by the Act.

(b) Notice of Hearing. Any person against whom an order is sought shall be given at least four (4) days notice (excluding Saturdays, Sundays and state holidays) of the time and place of the hearing, and may oppose the granting of the order.

## (10) Confidentiality.

(a) Public Access to Commission Files or Information Gathered During an Investigation. As provided in Sections 1-13-90(c)(1) and 1-13-90(d)(2) of the Act, information gathered during an investigation conducted under Section 1-13-90 of the Act, shall not be made public by the Commission, its officers or employees, unless and until that information is offered or received into evidence at a Commission hearing or court proceeding brought in accordance with the Act. In view of the prohibitions against making information public contained in Sections 1-13-90(c)(1) and 1-13-90(d)(2) of the Act, information gathered by the Commission during investigations and internal memoranda assessing evidence, discussing complaints or recommending action on complaints shall not be deemed "public records" within the meaning of the Code of Laws of South Carolina Section 30-4-20. The provisions of this Subsection apply whether the Commission's investigative file is open for an ongoing investigation or closed after a matter is completely concluded.

(b) Public Access to Final Opinions and Orders and Determinations. The public shall have access to the Commission's final opinion and order concerning a complaint under Section 1-13-90(c) of the Act or the Commission's determination on whether to dismiss a complaint or sue in the state circuit court under Section 1-13-90(d) of the Act.

(c) Commission Requests for Information from Investigators. If the Commission requires reports on investigations or on the progress of investigations, the investigator's report shall be given to the Commission while the Commission sits in executive session with member of the public excluded.

## (d) Access to Information by Complainant and Respondent.

(i) Information Provided by the Parties Themselves. The complainant may at all times have access to any information which the complainant has furnished the Commission. The respondent may at all times have access to any information which the respondent has furnished the Commission. However, neither the complainant nor the respondent shall have information furnished by the other party, except that this Subsection does not apply to disclosure to the parties or their attorneys where the disclosure is limited to matters necessary for determining appropriate relief and/or negotiating settlements or making conciliation offers and except that this Subsection does not apply to the complainant's or respondent's access to Commission files after a complaint against the respondent has been served as provided in subitem (ii), following.

(ii) Information Available to the Parties in a Proceeding. If an action is brought against a respondent in accordance with the Act, either before the Commission pursuant to Section 1-13-90(c) of the Act or in a court of competent jurisdiction pursuant to Sections 1-13-90(c) and (d) of the Act, the complainant and respondent shall from the time the complaint is served be granted access to the investigative file of the Commission which shall include access to statements, affidavits or depositions of the complainant and witnesses, whether or not the complainant and the witnesses are employees of the respondent at the time the request for access is made. The complainant and respondent shall also have access to all other facts and data gathered by the Commission during its investigation, provided however that neither shall have access to deliberative memoranda, working papers, drafts and other work products of the Commission relating to a complaint and further provided that deletions may be made where necessary to protect the personal privacy of an affiant or an individual named in a document to insure the anonymity of confidential sources or information, and to protect the confidentiality of trade secrets, confidential financial information and the like.

(iii) Copy of the Complaint. A copy of the complaint will be served in all cases upon the respondent unless a complaint received pursuant to a federal contract expressly requires that the original complaint not be served. In the event that a copy of the complaint is not provided, the respondent shall be served with a notice of

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the complaint within ten (10) days of receipt. The notice of complaint shall include the place, circumstances and identity of the person filing the complaint, a description of the violations of the Act alleged to have been committed by the respondent and the date of the alleged violation.

(e) Reports and Compilations. The Commission may publish abstracts of data derived from its closed investigative files in a form which does not reveal the identity of the parties, trade secrets, financial information or competitive commercial information or processes.

(f) Sharing Information Between Agencies. The Commission shall not provide information to any state or federal agency which does not have written regulations providing essentially the same protection against unauthorized disclosure as provided in these regulations.

### **Fiscal Impact Statement:**

No additional state funding is requested. The Agency estimates that no additional costs will be incurred by the state in complying with the proposed amendments to 65-3.

### **Statement of Rationale:**

Regulation 65-3 should be changed to shorten the timeframe for subpoena enforcement in the event a response to the agency's request for information is ignored. Additionally, the regulation should provide Complainants and Respondents with equal access to the Agency's investigative files. Currently, Complainants may not access information provided to the Agency by the Respondent; however, Respondents may access information provided by Complainant if a lawsuit has been filed. In order to be substantially equivalent to federal agency processes, and to provide parties with equal access, the Regulation should be amended to allow the respective parties to collect data provided by either party. Additionally, the citation for the Freedom of Information Act is wrong and should be corrected. Finally, the agency's ability to subpoena certain employers for documentation and information should be made clearer to reflect statutory authority.

Document No. 4679

## **SOUTH CAROLINA HUMAN AFFAIRS COMMISSION CHAPTER 65**

Statutory Authority: 1976 Code Sections 31-21-30 and 31-21-100

65-227. Issuance of Complaint.

### **Synopsis:**

Regulation 65-227 governs the requirements for issuing a reasonable cause determination and an accompanying administrative pleading in anticipation of an administrative hearing before a panel of the Board of Commissioners.

Notice of Drafting for the proposed amended regulation was published in the *State Register* on September 23, 2016.

### **Instructions:**

Replace Regulation 65-227 as printed below.

### **Text:**

65-227. Issuance of Reasonable Cause Determination.

A. Reasonable cause determination.



(1) If a conciliation agreement has not been executed by the complainant and the respondent, and approved by the Commissioner, within the time limits set forth in paragraph (3)(a) of this section, the Commission shall determine whether, based on the totality of the factual circumstances known at the time of the decision, reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur. The reasonable cause determination will be based solely on the facts concerning the alleged discriminatory housing practice, provided by complainant and respondent and otherwise, disclosed during the investigation.

(a) In all cases

(i) If the Commission determines that reasonable cause exists the Commission will immediately issue a reasonable cause determination on behalf of the aggrieved person, and shall notify the aggrieved person and the respondent of this determination by certified mail or personal service.

(ii) If the Commission determines that no reasonable cause exists, the Commission shall: issue a short and plain written statement of the facts upon which the Commission has based the no reasonable cause determination; dismiss the complaint; notify the aggrieved person and the respondent of the dismissal (including the written statement of facts) by certified mail or personal service; and make public disclosure of the dismissal. Public disclosure of the dismissal may be by issuance of a press release except that the respondent may request that no release be made. Notwithstanding a respondent's request that no press release be issued, the fact of the dismissal, including the names of the parties, shall be public information available on request.

(2) The Commission may not issue a reasonable cause determination under paragraph (1) of this section regarding an alleged discriminatory housing practice, if an aggrieved person has commenced a civil action seeking relief with respect to the alleged discriminatory housing practice, and the trial in the action has commenced. If a complaint may not be issued because of the commencement of such a trial, the Commission will so notify the aggrieved person and the respondent by certified mail or personal service.

(3)(a) The Commission shall make a reasonable cause determination within 100 days after filing of the original complaint (or where the Commission has reactivated a complaint, within 100 days after service of the notice of reactivation), unless it is impracticable to do so.

(b) If the Commission is unable to make the determination within the 100 day period specified in paragraph (3)(a) of this section, the Commission will notify the aggrieved person and the respondent, by certified mail or personal service, of the reasons for the delay.

#### B. Issuance of Administrative Pleading.

(1) An administrative pleading:

(a) Shall consist of a short and plain written statement of the facts upon which the Commission has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur.

(b) Shall be based on the final investigative report; and

(c) Need not be limited to facts or grounds that are alleged in the original complaint if the record of the investigation demonstrated that the respondent has been given notice and an opportunity to respond to the allegation.

(2) Within three business days after the issuance of the reasonable cause determination the Commission shall:

(a) Set a time and place for hearing;

(b) File the administrative pleading along with the required notifications, with the Chairman; and

(c) Serve the administrative pleading and notifications in accordance with the Act.

#### C. Election of civil action or provision of administrative proceeding.

(1) If an administrative pleading is issued under 65-227.B., a complainant, a respondent, or an aggrieved person on whose behalf the complaint is filed may elect, in lieu of an administrative proceeding, to have the claims asserted in the complaint decided in a civil action.

(2) The election must be made no later than twenty days after the receipt of service of the reasonable cause determination. The notice of the election must be filed with the Commission, the respondent, and the aggrieved persons on whose behalf the complaint was filed. The notification will be filed and served in accordance with the procedures established under Article 3.

(3) If an election is not made under this section, the Commission will maintain an administrative proceeding based on the administrative pleading in accordance with the procedures under Article 3.

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(4) If an election is made under this section, the Commission shall cause to be commenced and maintained a civil action seeking relief as provided by the Fair Housing Law on behalf of the aggrieved person in the appropriate Court of Common Pleas.

### **Fiscal Impact Statement:**

No additional state funding is requested. The Agency estimates that no additional costs will be incurred by the state in complying with the proposed amendments to 65-227.

### **Statement of Rationale:**

Regulation 65-227 needs to consistently and clearly use different terms when referring to different documents in an investigation deemed to be a 'reasonable cause' case.

Document No. 4680

### **SOUTH CAROLINA HUMAN AFFAIRS COMMISSION**

#### **CHAPTER 65**

Statutory Authority: 1976 Code Sections 31-21-30 and 31-21-100

65-233. Pleadings, Motions and Discoveries.

### **Synopsis:**

Regulation 65-233 governs the procedures for administrative hearings before a panel of commissioners following a reasonable cause determination under the Fair Housing Law.

Notice of Drafting for the proposed amended regulation was published in the *State Register* on September 23, 2016.

### **Instructions:**

Replace Regulation 65-233 as printed below.

### **Text:**

65-233. Pleadings, Motions and Discoveries.

A. Every pleading, motion, brief or other document shall contain a caption setting forth the title of the proceeding, the docket number assigned, if any, and the designation of the type of document (e.g. complaint, answer or motion to dismiss).

B. Every pleading, motion, brief, or other document filed by a party shall be signed by the party, the party's representative, or the attorney representing the party, and must include the signer's address and telephone number. The signature constitutes a certification that the signer has read the document; that to the best of the signer's knowledge, information, and belief there is good ground to support the document; and that it is not interposed for delay.

C. Timely filing. The Chief Hearing Commissioner may refuse to consider any motion or other pleading that is not filed in a timely fashion and in compliance with this rule.

D. The Commission shall prepare a formal complaint in a form that complies with these rules. All complaints filed under this section shall be verified by the aggrieved person.

E. Within three days after the issuance of a complaint, the Commission shall file the charge with the Chairman and serve copies (with the additional information required under paragraph F. of this section) on the respondent and the aggrieved person on whose behalf the complaint was filed.

F. The complaint shall consist of a short and plain written statement of the facts upon which the Commission has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur. The following notifications shall be served with the complaint:

(1) The notice shall state that a complainant, a respondent, or an aggrieved person on whose behalf the complaint was filed may elect to have the claims asserted in the complaint decided in a civil action in lieu of an administrative proceeding. This notice shall state that the election must be made no later than twenty days after the receipt of the service of the complaint. The notice shall state that the notification of the election must be served on the Commission, the respondent, and the aggrieved party of whose behalf the complaint was filed.

(2) The notice shall state that if no person timely elects to have the claims asserted in the complaint decided in a civil action, an administrative proceeding will be conducted. The notice shall state that if an administrative hearing is conducted:

(a) The parties will have an opportunity for a hearing at a date and place specified in the notice.

(b) The respondent will have an opportunity to file an answer to the complaint within thirty days of the date of service of the complaint.

(c) The aggrieved person may participate as a party to the administrative proceeding by filing a timely request for intervention.

(d) All discovery must be concluded 15 days before the date set for hearing.

(3) The notice shall state that if at any time following the service of the complaint on the respondent, the respondent intends to enter into a contract, sale, encumbrance, or lease with any person regarding the property that is the subject of the complaint the respondent must provide a copy of the complaint to the person before the respondent and the person enter into the contract, sale, encumbrance or lease.

G. Within 30 days after the service of the complaint, a respondent contesting material facts alleged in a complaint shall file an answer.

H. Request for intervention.

Upon timely application, any aggrieved person may file a request for intervention to participate as a party to the proceeding. Requests for intervention submitted within thirty days after the filing of the complaint shall be considered to be timely filed.

I.(1) The Commission may amend its complaint once as a matter of right prior to filing of the answer.

(2) Upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties, the Chief Hearing Commissioner may allow amendments to pleadings upon motion of the party.

(3) When issues not raised by the pleadings are reasonably within the scope of the original complaint and have been tried by the express or implied consent of the parties, the issues shall be treated in all respects as if they had been raised in the pleadings and amendments may be made as necessary to make the pleading conform to evidence.

(4) The Chief Hearing Commissioner may, upon reasonable notice, permit supplemental pleadings concerning transactions, occurrences or events that have happened or been discovered since the date of the pleadings and which are relevant to any of the issues involved.

J.(1) Any application for an order or other requests shall be made by a motion which, unless made during an appearance before the panel, shall be made in writing. Motions or requests made during an appearance before the panel shall be stated orally and made part of the transcript. All parties shall be given a reasonable opportunity to respond to written or oral motions or requests.

(2) Within five days after a written motion is served, any party to the proceeding may file an answer in support of, or in opposition to, the motion. Unless otherwise ordered by the Chief Hearing Commissioner, no further responsive documents may be filed.

(3) The Chief Hearing Commissioner may order oral argument on any motion.

K. Either party may cause to be taken the depositions of witnesses within or without the State. Such depositions shall be taken in accordance with and subject to the same provisions, conditions and restrictions as apply to the taking of like depositions in civil actions at law in the courts of common pleas of this State; and the same rules with respect to the giving of notice to the opposite party, the taking and transcribing of testimony, the transmission and certification thereof and matters of practice relating thereto shall apply.

L. The Chief Hearing Commissioner shall on its own behalf, or, upon request, on behalf of any other party to the case, issue in the name of the Commission subpoenas for the attendance and testimony of witnesses and the production and examination of books, papers and records.

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M. The Court of Common Pleas shall, on application of the Commission, enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and records and shall have the power to punish as for contempt of court, by a fine or imprisonment or both, the unexcused failure or refusal to attend and give testimony or produce books, papers and records as may have been required in any subpoena issued by the Commission.

N. If a party fails to comply with discovery, the hearing panel may:

- (1) Draw an inference in favor of the requesting party with regard to the information sought;
- (2) Prohibit the party failing to comply from introducing evidence or otherwise relying upon, testimony relating to the information sought;
- (3) Permit the requesting party to introduce secondary evidence concerning the information sought;
- (4) Strike any appropriate part of the pleadings or other submissions of the party failing to comply with such order; or
- (5) Take such other action as may be appropriate.

### **Fiscal Impact Statement:**

No additional state funding is requested. The Agency estimates that no additional costs will be incurred by the state in complying with the proposed amendments to 65-233.

### **Statement of Rationale:**

Regulation 65-233 should be renumbered to avoid citation errors.

Document No. 4681  
**SOUTH CAROLINA HUMAN AFFAIRS COMMISSION**  
CHAPTER 65  
Statutory Authority: 1976 Code Section 1-13-70

65-23. Preservation of Records in Event of Charge of Discrimination.

### **Synopsis:**

Regulation 65-23 requires that state agencies retain relevant personnel records during a timely investigation by the Human Affairs Commission under the Human Affairs Law, but that limitation does not reflect charges against other employers over whom the agency has jurisdiction to investigate, nor does the regulation contemplate the federal counterpart receiving files that are ultimately waived to the Agency.

Notice of Drafting for the proposed amended regulation was published in the *State Register* on September 23, 2016.

### **Instructions:**

Replace Regulation 65-23 as printed below.

### **Text:**

65-23. Preservation of Records in Event of Charge of Discrimination.

When a charge of discrimination has been filed with the Commission or its federal equivalent, or if an action brought by either entity is pending, the employer, labor organization, or employment agency, shall preserve all personnel or employment records relevant to the charge or action until final disposition of the charge or the action. Failure to retain relevant personnel or employment records may result in an adverse inference against the party during the course of an investigation.

**Fiscal Impact Statement:**

No additional state funding is requested. The Agency estimates that no additional costs will be incurred by the state in complying with the proposed amendments to 65-23.

**Statement of Rationale:**

Regulation 65-23 should apply to all employers, labor organizations, and employment agencies which are in the process of being investigated by the Human Affairs Commission. The regulation should clarify that charges originating with the Commission's federal counterpart, the Equal Employment Opportunity Commission, have the same requirement. The Human Affairs Commission should have the right to infer that, if an employer, labor organization, or employment agency fails to retain personnel records which are relevant evidence to an investigation, such evidence may have adversely affected the party's position.

Document No. 4682

**SOUTH CAROLINA HUMAN AFFAIRS COMMISSION**  
**CHAPTER 65**

Statutory Authority: 1976 Code Section 1-13-70

65-9. Procedure for the Institution of Civil Actions as Provided in Section 1-13-90(d) of the Act.

**Synopsis:**

Regulation 65-9 governs the procedures for filing a lawsuit following an investigation at the Agency, and should reflect the statutory deadlines found in the South Carolina Human Affairs Law.

Notice of Drafting for the proposed amended regulation was published in the *State Register* on September 23, 2016.

**Instructions:**

Replace Regulation 65-23 as printed below.

**Text:**

65-9. Procedure for the Institution of Civil Actions as Provided in Section 1-13-90(d) of the Act.

A. Civil Actions by the Commission.

(1) If within thirty (30) days after issuance of a determination finding reasonable cause to believe that a respondent named in a complaint has violated the Act, the Commission is unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring an action in equity against the respondent in circuit courts, provided however, that the respondent named in the complaint is not a state agency or department or a local subdivision of a state agency or department; and provided, further, that the Commission may seek preliminary or temporary injunctive relief pursuant to Section 1-13-70(s) of the Act according to the procedures set forth in Section 65-4 of these Regulations and provided that reasonable cause has been shown as specified in Section 65-4.

(2) The Commission must bring an action in the circuit court within one year of the alleged violation, unless the time for bringing the action is extended by written consent of the respondent.

(3) If, after a thorough investigation, the Commission determines that the respondent has violated the terms of a conciliation agreement, the Commission may bring an action against the respondent in the circuit court within one year from the date of the alleged violation, except that the period may be extended by written consent of the respondent.

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(4) No action may be brought by the Commission if the complainant or another party has filed an action in state or federal court which alleges essentially the same facts and seeks essentially the same relief for the same complainant. If the Commission brings a civil action against a respondent and later determines that another action in state or federal court has been filed, the Commission shall promptly dismiss its action.

### B. Notice of Right to Sue: Procedure and Authority.

#### (1) Issuance of Right to Sue upon Request.

(a) When a complaint requests in writing that a notice of right to sue be issued and the complaint to which the request relates is filed against a respondent other than a state agency or department or local subdivision of a state agency or department, the Commission shall promptly issue such notice as described in (3) below and provide copies to all parties, at any time after the expiration of one hundred eighty (180) days from the date of the filing of the complaint with the Commission, unless otherwise provided in Section 65-2J hereof.

(b) When a person claiming to be aggrieved requests, in writing, that a notice of right to sue be issued, and the complaint to which the request relates is filed against a respondent other than a state agency or department or local subdivision of a state agency or department, the Commission may issue such notice as described in (3) below and shall provide copies to all parties, at any time before the expiration of one hundred eighty (180) days from the date of filing the complaint with the Commission provided that the Commissioner has determined that it is probable the Commission will be unable to complete its administrative processing of the complaint within one hundred eighty (180) days from the filing of the complaint and has attached a written certificate to that effect. No right to sue letter will be issued before the expiration of one hundred eighty (180) days from the date of filing of the complaint when it is probable that the Commission will be able to complete its administrative processing within the one hundred eighty (180) day period.

(c) Issuance of a notice of right to sue shall terminate further processing of the complaint.

#### (2) Issuance of Notice of Right to Sue Following Commission Disposition of a Complaint.

(a) Where the Commission has found reasonable cause to believe that the Act has been violated, has been unable to obtain voluntary compliance with the Act, and where the Commission has decided not to bring a civil action against the respondent, the Commission will issue a notice of right to sue on the complaint as described in (3) below to the person claiming to be aggrieved and provide a copy thereof to all parties.

(b) Where the Commission has entered into a conciliation agreement to which the person claiming to be aggrieved is not a party, the Commission shall issue a notice of right to sue on the complaint to the person claiming to be aggrieved.

(c) Where the Commission has dismissed a complaint pursuant to Section 65-2J, it shall issue a notice of right to sue as described in (3) below to the person claiming to be aggrieved and provide a copy thereof to all parties.

#### (3) Content of Notice of Right to Sue. The notice of right to sue shall include:

(a) authorization to the complainant to bring a civil action pursuant to Section 1-13-90(d) of the Act within one hundred twenty (120) days from issuance of such authorization by the Commission to the complainant, his/her attorney of record, or, in those instances covered by 65-2J(2)(d) hereof, from the date of mailing to the complainant's last known address;

(b) advice concerning the institution of such civil action by the complainant, where appropriate;

(c) a copy of the complaint;

(d) the Commission's decision, determination, or dismissal as appropriate.

### **Fiscal Impact Statement:**

No additional state funding is requested. The Agency estimates that no additional costs will be incurred by the state in complying with the proposed amendments to 65-9.

### **Statement of Rationale:**

The Regulation should be changed to reflect the One Hundred Twenty (120) day statutory deadline for filing a lawsuit. This deadline is found in South Carolina Code Section 1-13-90(d)(6).

Document No. 4721

**DEPARTMENT OF LABOR, LICENSING AND REGULATION**  
**CHAPTER 10**

Statutory Authority: 1976 Code Sections 40-1-50, 40-1-70, 48-27-140 and 48-27-190

10-16. Board of Registration for Foresters.

**Synopsis:**

The South Carolina Department of Labor, Licensing and Regulation proposes to move the fees for registration and renewal of foresters from Regulation 53-16 to Chapter 10.

A Notice of Drafting was published in the *State Register* on August 26, 2016.

**Instructions:**

Regulation 10-16 is amended as shown below.

**Text:**

10-16. Board of Registration for Foresters.

The Board's fees are as follows:

(1) Application	\$50
(2) Registration (biennial)	\$130
(3) Initial License (including application and licensure fee)	\$180
(4) Biennial renewal	\$130
(5) Late fee (after June 30 through September 30)	\$50
(6) Reinstatement	\$100+ past renewal fees and late fees
(7) Examination fee	\$325 payable to Society of American Foresters
(8) Licensee List	\$10
(9) Duplicate license/wallet card	\$3
(10) License verification	\$5
(11) Name or address change with new license card issued. There is no charge for address or name changes made to the Board's record only.	\$3
Initial registration fees are prorated for applications received after April 1st of the year prior to renewal (even years, 2012, 2014, etc.) and approved by the Board.	\$65

**Fiscal Impact Statement:**

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

**Statement of Rationale:**

The updated regulations will move the fees for registration and renewal of foresters from Regulation 53-16 to Chapter 10-16.

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Document No. 4711

### DEPARTMENT OF LABOR, LICENSING AND REGULATION

#### CHAPTER 10

Statutory Authority: 1976 Code Sections 40-1-50, 40-1-70, 40-57-60, and 40-57-70

10-37. Real Estate Commission.

#### Synopsis:

The South Carolina Department of Labor, Licensing and Regulation proposes correct a scrivener's error in Regulation 10-37(E)(6). Specifically, the word "approval" should be changed to "renewal."

A Notice of Drafting was published in the *State Register* on September 23, 2016.

#### Instructions:

Regulation 10-37(E)(6) is amended as shown below.

#### Text:

10-37. Real Estate Commission.

The Board shall charge the following fees:

##### A. New License:

- |   |                 |
|---|-----------------|
| 1. Broker-in-Charge/Property Manager-in-Charge (biennial) | \$250           |
| 2. Broker/Property Manager (biennial)                     | \$125           |
| 3. Salesperson (Provisional), (annual)                    | \$25            |
| 4. Credit report for applicant by reciprocity             | \$10            |
| 5. Salesperson applicant from non-reciprocity states      | \$50 (biennial) |

##### B. Renewal:

- |  |       |
|--|-------|
| 1. Broker-in-Charge/Property Manager-in-Charge (biennial)  | \$75  |
| 2. Broker/Property Manager (biennial)  | \$55  |
| 3. Salesperson (biennial)  | \$45  |
| 4. Inactive Status (biennial)  | \$120 |
| 5. The late renewal fee is \$25 per month, beginning July 1st through December 31st. After December 31st, the licensee must reapply. |       |
| 6. Timeshare Salesperson:  | \$30  |

##### C. Licensing Transactions:

- |   |      |
|---|------|
| 1. Upgrade of Salesman Provisional License              | \$25 |
| 2. License Transfer                                     | \$0  |
| 3. Duplicate License                                    | \$10 |
| 4. Certification of Licensure                           | \$5  |
| 5. Personal Name Change                                 | \$10 |
| 6. Change of License Status                             |      |
| a. BIC/PMIC to Broker/Property Manager                  | \$10 |
| b. Activate License (same classification) from Inactive | \$10 |
| c. Company Name or Address Change                       | \$10 |
| (\$10 per licensee or maximum of \$250 an office)       |      |



D. Examination Process

- |   |      |
|---|------|
| 1. Application  | \$25 |
| 2. Credit Report  | \$10 |
| 3. Examination is payable directly to examination vendor. |      |

E. Provider, Course, and Instructor Fees

- |   |       |
|---|-------|
| 1. Course provider approval   | \$200 |
| 2. Course provider renewal  | \$100 |
| 3. Course approval  | \$100 |
| 4. Course approval renewal  | \$50  |
| 5. Instructor approval  | \$100 |
| 6. Instructor renewal   | \$50  |
| 7. Late renewal (after August 31st) for provider, course, or instructor | \$50  |

The education year is September 1st of even-numbered years through August 31st.

**Fiscal Impact Statement:**

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

**Statement of Rationale:**

The updated regulations will correct a scrivener’s error.

Document No. 4712  
**DEPARTMENT OF LABOR, LICENSING AND REGULATION**  
**OFFICE OF AMUSEMENT RIDES**  
 CHAPTER 71  
 Statutory Authority: 1976 Code Section 41-18-120

71-4000. Purpose and Definitions.

**Synopsis:**

The South Carolina Department of Labor, Licensing and Regulation, Office of Amusement Rides proposes to supplement the definitions contained in its regulations. This proposed regulation will clarify when an amusement device is “open to the public” and, therefore, required to be inspected and permitted by the Department.

A Notice of Drafting was published in the *State Register* on August 26, 2016.

**Instructions:**

Regulation 71-4000 is amended as shown below.

**Text:**

71-4000. Purpose and Definitions.

- Chapter 18 of Title 41, S.C. Code of Laws, 1976 (as amended) provides that the Commissioner of Labor promulgate regulations to guard against personal injuries in the assembly, disassembly, and use of amusement devices at carnivals, fairs, and amusement parks and to assure to any injured person the possibility of financial

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recovery for such injuries. It is the purpose of these regulations to set minimum acceptable safety standards for design, construction, operation and inspection of such amusement devices.

2. All definitions found in 41-18-40 apply to these regulations.

A. Accepted engineering practice: that which conforms to accepted principles, tests, or standards of nationally recognized technical or scientific authorities.

B. Operator: the person having direct control of the starting, stopping, or speed of an amusement device.

C. NDT: Non-Destructive Testing: Assorted testing methods used to disclose latent defects during which test the physical or chemical state of the material is not altered.

D. Imminent Danger: A condition which exists due to a mechanical, electrical, structural, design, or other defect which presents an excessive risk of serious injury to passengers, bystanders, operators, or attendants.

E. Operational Tests: Measurements of safety mechanisms which do not come into play during routine operation.

F. Open to the Public: Accessible or available to members of a community or population, irrespective of whether a fee is charged and without regard to the number of days that the device is available for use. It does not include a private club, organization, or institution utilizing a selection and approval process for membership that operates the device exclusively for the use of its members on premises owned or controlled by it. It also does not include a private residence where the device is operated by family members and their guests for non-business purposes. A club, organization, or institution that offers memberships for less than thirty days is not private.

### **Fiscal Impact Statement:**

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

### **Statement of Rationale:**

The updated regulations will provide the public with clarity on whether or not an amusement device is “open to the public” and, therefore, required to be inspected and permitted by the Department.

Document No. 4713

## **DEPARTMENT OF LABOR, LICENSING AND REGULATION**

### **BOARD OF BARBER EXAMINERS**

#### **CHAPTER 17**

Statutory Authority: 1976 Code Sections 40-1-50, 40-1-70, 40-7-50, and 40-7-60

17-20. Barbershop Requirements; Applications for Inspection and Registration and Shop License.

### **Synopsis:**

The Board of Barber Examiners proposes to remove the fee for barbershop inspection and registration from Regulation 17-20.

A Notice of Drafting was published in the *State Register* on September 23, 2016.

### **Instructions:**

Regulation 17-20 is amended as shown below.

### **Text:**

17-20. Barbershop Requirements; Applications for Inspection and Registration and Shop License.

A building that is to be used for a newly established barbershop or a shop reopening for business shall be separate and apart from any residence or building or room used for housing purposes. A newly established barbershop shall be a minimum of 12 feet in width at the entrance of same, and shall have 5 feet of space between each barber chair from center to center of each chair, and shall have 7 feet of space from each chair to the wall of shop, front and rear.

Each barber shall be provided with a cabinet, constructed of such material that it may be easily cleaned, consisting of adequate space for clean freshly laundered towels, and each barber shall be provided with an adequate container for discarding soiled towels; each barber chair shall be mechanically workable and have a good grade of upholstery which is unbroken, torn or ripped. Each shop shall have within said shop or building adequate toilet facilities; each shop shall have smooth finished walls ceiling and floor; be well lighted and ventilated; no exposed pipes; and a barbershop or a room to be used for a barbershop shall be separate and apart from any other room which is used for any other purpose by a substantial partition or wall of ceiling height separating such portion used for a barbershop.

All new shops opening, and any established barbershop moving to a new location shall be deemed a new shop, shall file an application for inspection and registration with the Board fifteen days prior to opening. No new shop shall be operated until all fees are paid and shop shall have passed inspection. Shop license shall not be transferable to a new owner or to a new location.

If a new or reopened shop meets the above requirements, a person who is the holder of a current certificate of registration as a registered barber may obtain an application for a shop license from the Inspector or write this office. All applications for shop license must be on file in the office of the State Board of Barber Examiners at least fifteen days prior to the date when a shop will be complete and ready for inspection.

Note: Please notify this office immediately should this shop not be ready for inspection as stated on the application that same will be complete and ready for inspection in order to save additional expense.

**Fiscal Impact Statement:**

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

**Statement of Rationale:**

The updated regulations will remove the fee for barbershop inspection and registration from Regulation 17-20 because it is no longer charged by the Board.

Document No. 4714

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

CHAPTER 8

Statutory Authority: 1976 Code Sections 6-8-20, 6-9-40, 6-9-63(E), and 40-1-70

8-604. Adoption of Model Codes.

**Synopsis:**

The South Carolina Building Codes Council proposes to correct a scrivener’s error in Regulation 8-604(3).

A Notice of Drafting was published in the *State Register* on September 23, 2016.

**Instructions:**

Regulation 8-604 is amended as shown below.

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### **Text:**

8-604. Adoption of Model Codes.

(1) The design and fabrication of modular buildings shall comply with the requirements of the building codes as listed in Chapter 9, Title 6, of the South Carolina Code of Laws, 1976 as amended.

(2) Energy code. The design and installation of thermal performance standards for all modular buildings shall comply with the requirements of the most recent edition of the International Energy Conservation Code as adopted under Title 6 Chapter 10 of the South Carolina Code of Laws, 1976 as amended.

(3) Building official. Where reference is made, in any building code, to the building, plumbing, gas or mechanical official, administrative authority, enforcement official or any such authoritative person, it shall mean the Council Administrator.

(4) All service connections and foundations installed at the building site shall be regulated by the local building official.

(5) Barrier Free Design. The design and erection of modular buildings for the purpose of public use must be in compliance with the Barrier Free Design Standard, Code of Laws of South Carolina, 1976 as amended, Sections 10-5-210 through 10-5-250, and adopted regulations.

### **Fiscal Impact Statement:**

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

### **Statement of Rationale:**

The updated regulations will correct a scrivener's error in Regulation 8-604(3).

Document No. 4715

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

#### CHAPTER 8

Statutory Authority: 1976 Code Sections 6-8-20, 6-9-40, 6-9-63(E), and 40-1-70

8-255. Energy Standards Appeal Procedure.

### **Synopsis:**

The South Carolina Building Codes Council proposes to correct a scrivener's error in Regulation 8-255(D).

A Notice of Drafting was published in the *State Register* on September 23, 2016.

### **Instructions:**

Regulation 8-255 is amended as shown below.

### **Text:**

8-255. Energy Standards Appeal Procedure.

(A) The Council shall review and decide appeals to the requirements of the energy standards when certain occupancy or construction conditions are proven to exist in areas of the state where local appeals boards have not been appointed.

(B) Appeals may be brought before Council by any person, persons or parties who may be affected by any provision of or decision made pursuant to the administration or enforcement of the Energy Standards.

(C) All appeals must fully explain and justify the issues to be considered. The submittal should include a list of the persons wishing to testify. Each appeal shall be submitted separately. Information submitted shall be legible and must contain the following:

- (1) Name, address and phone number of the person making the request:
- (2) Name of jurisdiction in which the structure involved is located:
- (3) The nature of the appeal:
- (4) The basis or reason for the appeal.

(D) Any decision of Council may be appealed by an aggrieved party to the Administrative Law Judge Division in accordance with the South Carolina Administrative Procedures Act. An appeal shall not act as a stay or suspension of the Council's decision.

**Fiscal Impact Statement:**

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

**Statement of Rationale:**

The updated regulations will correct a scrivener's error in Regulation 8-255(D).

Document No. 4716  
**DEPARTMENT OF LABOR, LICENSING AND REGULATION**  
**BUILDING CODES COUNCIL**  
CHAPTER 8  
Statutory Authority: 1976 Code Sections 6-8-20, 6-9-40, 6-9-63(E), and 40-1-70

8-1218. IRC Section R502.11.4 Truss design.

**Synopsis:**

The South Carolina Building Codes Council proposes to correct a scrivener's error in Regulation 8-1218.

A Notice of Drafting was published in the *State Register* on September 23, 2016.

**Instructions:**

Regulation 8-1218 is amended as shown below.

**Text:**

8-1218. IRC Section R502.11.4 Truss design.

Truss design drawings. Truss design drawings, prepared in compliance with Section R502.11.1, shall be provided to the building official at the time of inspection. Truss design drawings shall be provided with the shipment of trusses delivered to the job site. Truss design drawings shall include at a minimum the information specified as follows:

1. Slope or depth, span and spacing.
2. Location of all joints.
3. Required bearing widths.
4. Design loads as applicable:
  - 4.1. Top chord live load.
  - 4.2. Top chord dead load.
  - 4.3. Bottom chord live load.
  - 4.4. Bottom chord dead load.

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- 4.5. Concentrated loads and their points of application.
- 4.6. Controlling wind and earthquake loads.
5. Adjustments to lumber and joint connector design values for conditions of use.
6. Each reaction force and direction.
7. Joint connector type and description, e.g., size, thickness or gauge, and the dimensioned location of each joint connector except where symmetrically located relative to the joint interface.
8. Lumber size, species and grade for each member.
9. Connection requirements for:
  - 9.1. Truss-to-girder-truss;
  - 9.2. Truss ply-to-ply; and
  - 9.3. Field splices.
10. Calculated deflection ratio and/or maximum description for live and total load.
11. Maximum axial compression forces in the truss members to enable the building designer to design the size, connections and anchorage of the permanent continuous lateral bracing. Forces shall be shown on the truss drawing or on supplemental documents.
12. Required permanent truss member bracing location.

### **Fiscal Impact Statement:**

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

### **Statement of Rationale:**

The updated regulations will correct a scrivener's error in Regulation 8-1218.

Document No. 4717  
**DEPARTMENT OF LABOR, LICENSING AND REGULATION**  
**BUILDING CODES COUNCIL**  
CHAPTER 8

Statutory Authority: 1976 Code Sections 6-8-20, 6-9-40, 6-9-63(E), and 40-1-70

8-1221. IRC Section R703.4 Flashing.

### **Synopsis:**

The South Carolina Building Codes Council proposes to correct a scrivener's error in Regulation 8-1221.

A Notice of Drafting was published in the *State Register* on September 23, 2016.

### **Instructions:**

Regulation 8-1221 is amended as shown below.

### **Text:**

8-1221. IRC Section R703.4 Flashing.

R703.4 Flashing. Flashing shall be provided in accordance with this section and shall be installed at all of the following locations:

1. Exterior window and door openings.
2. At the intersection of chimneys or other masonry construction with frame or stucco walls, with projecting lips on both sides under stucco copings.
3. Under and at the ends of masonry, wood or metal copings and sills.

4. Continuously above all projecting wood trim.
5. Where exterior porches, decks or stairs attach to a wall or floor assembly of wood frame construction.
6. At wall and roof intersections.
7. At built-in gutters.

R703.4.1 Flashing Materials. Approved flashing materials shall be corrosion-resistant. Self adhered membranes used as flashing shall comply with AAMA 711. Pan flashing shall comply with Section R703.4.2. Installation of flashing materials shall be in accordance with Section R703.8.3.

R703.4.2 Pan Flashing. Pan flashing installed at the sill of exterior window and door openings shall comply with this section. Pan flashing shall be corrosion-resistant and shall be permitted to be pre-manufactured, fabricated, formed or applied at the job site. Self-adhered membranes complying with AAMA 711 shall be permitted to be used as pan flashing. Pan flashing shall be sealed or sloped in such a manner as to direct water to the surface of the exterior wall finish or to the water-resistive barrier for subsequent drainage.

R703.4.3 Flashing Installation. Flashing installation shall be in accordance with this section and the flashing manufacturer’s installation instructions. Flashing shall be applied shingle fashion in a manner to prevent entry of water into the wall cavity or penetration of the water to the building structural framing components. Flashing shall extend to the surface of the exterior wall finish.

R703.4.3.1 Flashing Installation at Exterior Windows and Doors. Flashing at exterior windows and doors shall be applied shingle fashion and shall extend to the surface of the exterior wall finish or to the water resistive-barrier for drainage. Installation of flashing materials shall be in accordance with one or more of the following methods:

1. The fenestration manufacturer’s installation and flashing instructions.
2. The flashing manufacturer’s installation instructions.
3. Flashing details or other methods approved by the building official.
4. As detailed by a registered design professional.

**Fiscal Impact Statement:**

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

**Statement of Rationale:**

The updated regulations will correct a scrivener’s error in Regulation 8-1221.

Document No. 4718  
**DEPARTMENT OF LABOR, LICENSING AND REGULATION**  
**BUILDING CODES COUNCIL**  
 CHAPTER 8  
 Statutory Authority: 1976 Code Sections 6-8-20, 6-9-40, 6-9-63(E), and 40-1-70

8-1222. IRC Section R802.10.1 Wood Truss Design.

**Synopsis:**

The South Carolina Building Codes Council proposes to correct a scrivener’s error in Regulation 8-1222 which was amended in the 2016 Legislative Session.

A Notice of Drafting was published in the *State Register* on September 23, 2016.

**Instructions:**

Regulation 8-1222 is amended as shown below.

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### Text:

#### 8-1222. IRC Section R802.10.1 Wood Truss Design.

Truss design drawings, prepared in conformance to Section R802.10.1 shall be provided to the building official at the time of their inspection. Truss design drawings shall be provided with the shipment of trusses delivered to the job site. Truss design drawings shall include, at a minimum, the following information:

1. Slope or depth, span and spacing.
2. Location of all joints.
3. Required bearing widths.
4. Design loads as applicable.
  - 4.1. Top chord live load (as determined from Section R301.6).
  - 4.2. Top chord dead load.
  - 4.3. Bottom chord live load.
  - 4.4. Bottom chord dead load.
  - 4.5. Concentrated loads and their points of application.
  - 4.6. Controlling wind and earthquake loads.
5. Adjustments to lumber and joint connector design values for conditions of use.
6. Each reaction force and direction.
7. Joint connector type and description such as size, thickness or gage and the dimensioned location of each joint connector except where symmetrically located relative to the joint interface.
8. Lumber size, species and *grade for each member*.
9. Connection requirements for:
  - 9.1. Truss to girder-truss.
  - 9.2. Truss ply to ply.
  - 9.3. Field splices.
10. Calculated deflection ratio and/or maximum description for live and total load.
11. Maximum axial compression forces in the truss members to enable the building designer to design the size, connections and anchorage of the permanent continuous lateral bracing. Forces shall be shown on the truss design drawing or on supplemental documents.
12. Required permanent truss member bracing location.

### Fiscal Impact Statement:

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

### Statement of Rationale:

The updated regulations will correct a scrivener's error in Regulation 8-1222.

Document No. 4719  
**DEPARTMENT OF LABOR, LICENSING AND REGULATION**  
**BUILDING CODES COUNCIL**  
CHAPTER 8  
Statutory Authority: 1976 Code Section 6-9-40

#### 8-120. Maximum Time for Certification.

### Synopsis:

The South Carolina Building Codes Council proposes to amend Regulation 8-120 regarding provisional classification certification.



A Notice of Drafting was published in the *State Register* on September 23, 2016.

**Instructions:**

Regulation 8-120 is amended as shown below.

**Text:**

8-120. Maximum Time for Certification.

A. A person registered in the provisional classification shall obtain certification within the time stated below.

1. Building Official - one (1) certification, which is a prerequisite for classification as a certified building official, shall be completed within sixty (60) days of the issuance of the provisional registration. A second prerequisite for certification for the classification as a certified building official shall be completed within twelve (12) months of the issuance of the provisional registration. Any remaining prerequisite(s) for certification(s) for the classification as a certified building official shall be completed within twenty-four (24) months of the issuance of the provisional registration.

2. Commercial Inspector - one (1) certification within the first year, then a maximum of one (1) year for each additional certification for all disciplines for which employed, based on the position description for the local jurisdiction.

3. Residential Inspector - one (1) certification within the first year, then a maximum of one (1) year for each additional certification.

4. Plans Examiner - one (1) certification within the first year, then a maximum of one (1) year for each additional certification.

5. Single Discipline Inspector - twelve (12) months for the discipline for which employed, based on the position description for the local jurisdiction.

B. If any of the times referenced above are not met for the completion of certification or for the completion of a prerequisite for certification, the provisional registration shall be lapsed and cancelled and cannot be renewed.

**Fiscal Impact Statement:**

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

**Statement of Rationale:**

The updated regulations will provide time limits for provisional licenses for building officials.

Document No. 4720  
**DEPARTMENT OF LABOR, LICENSING AND REGULATION**  
**BOARD OF COSMETOLOGY**  
CHAPTER 35

Statutory Authority: 1976 Code Sections 40-1-70 and 40-13-80

35-20. Sanitary and Safety Rules for Salons and Schools.

**Synopsis:**

The South Carolina State Board of Cosmetology proposes to amend its regulations regarding sanitary and safety rules.

A Notice of Drafting was published in the *State Register* on August 26, 2016.

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### Instructions:

Regulation 35-20 is amended as shown below.

### Text:

35-20. Sanitary and Safety Rules for Salons and Schools.

#### (A) Enforcement.

(1) The holder or holders of a salon license or a school license, and the person in charge of any such salon or school, shall be liable for implementing and maintaining the sanitary rules in such salon or school individually and jointly with all persons in or employed by or working in or on the premises of such salon or school. All licensed cosmetologists, instructors, nail technicians and estheticians shall be held individually liable for implementation and maintenance of the sanitary rules applicable to them.

(2) To assure compliance with the laws and regulations governing the operations of salons and schools, a Board designated representative shall have access to the premises of any salon or school, at any time that the instruction or practice of cosmetology and related professions are being conducted. Cosmetology related professions include but are not limited to nail technology, esthetics, and instructor training programs.

(3) Refusal to permit, or interference with, an inspection constitutes a cause for disciplinary action.

(4) A licensee's failure to observe all rules and regulations on sanitation and to maintain adequate precautionary measures for the public's protection and safety is cause for disciplinary action up to revocation of license. Failure to display, in full public view, all licenses applicable to the salon or school and the persons therein engaged in the practice of cosmetology and related professions as well as the sanitary rules and regulations and the sanitary rating given to said salon or school, is sufficient cause for revocation of licenses.

(5) A salon's or school's failure to receive a passing inspection is sufficient cause for disciplinary action up to revocation of license, if not corrected by the next inspection. Thirty days thereafter the board may schedule a show cause hearing in accordance with the provisions as established by the statutes regulating cosmetology.

#### (B) Rules.

(1) Every salon and school must occupy a separate building, or part of a building, which is suitable to render adequate sanitary services to the public, wherein cosmetology or related professions may be taught or practiced. Salons and schools must be separated from each other by a solid wall from the floor to the ceiling and separate entrances.

(2) Salons and schools shall comply with all state and local building, plumbing and electrical codes.

(3) Salons and schools shall comply with all relevant and current federal/state workplace safety laws.

(4) The use of a salon or school as living, dining or sleeping quarters is prohibited.

#### (C) Residential Salons.

(1) Residential salons must maintain a separate entrance for clients, which entrance shall not open from the living, dining or sleeping quarters, and all doors previously opening into such quarters must be permanently sealed.

(2) No portion of the salon may be used as a portion of a private residence.

(3) Entrances must permit patrons to enter salon directly without requiring passage through any portion of the residence.

(4) Separate toilet facilities for patrons must be provided apart from the living quarters.

#### (D) Physical Facilities of Salons and Schools.

(1) Cleanliness and Repair. Each salon and school must keep the floors, walls, woodwork, ceilings, furniture, furnishings, and fixtures clean and in good repair.

(2) Water Supply. Each salon and school must provide a supply of hot and cold running water.

(3) Toilet Facilities. Each salon and school must provide toilet and hand washing facilities consisting of at least one commode and one lavatory in good working order, with hot and cold running water, soap and disposable towels. Restrooms may not be used for storage.

(4) Drinking Water. Each salon and school must supply potable drinking water.

#### (E) Animals in Salons and Schools.

No person may bring any animal into, permit any animal to be brought into, or permit any animal other than a service animal for the disabled to remain in, a salon or school.

(F) Infectious Disease.

(1) Licensees must not permit any person afflicted with a known infestation of parasites or with a known infectious or communicable disease which may be transmitted during the performance of the acts of cosmetology or related professions, to work or train in a salon or in a school.

(2) No salon or school may knowingly require or permit a student or person licensed by the Board of Cosmetology to work upon a person known to suffer from any infectious or communicable disease, which may be transmitted during the performance of the acts of cosmetology or related professions.

(3) No salon or school may require or allow a student or licensee of the Board of Cosmetology to perform any service on a patron with a known infestation of parasites.

(G) Personal Cleanliness.

Washing Hands. Every person performing cosmetology or related services in a salon or school must thoroughly clean his or her hands with soap and water or any equally effective hand sanitizer before serving each patron.

(H) Implements, Supplies and Materials.

Licensees and students must dispose of all porous supplies or materials which come in direct contact with a patron and cannot be disinfected (for example, cotton pads, nail abrasives/buffers and neck strips) in a covered waste receptacle immediately after their use or when the service is completed.

(I) Disinfecting Nonelectrical Instruments and Equipment.

(1) Before use upon a patron, all non-electrical, non-porous implements, instruments and accessories used in the practice of cosmetology, nail technology, and esthetics must be disinfected in the following manner:

(a) clean with soap (or detergent) and water or a chemical cleaner, rinse, and dry completely; then

(b) totally immerse implements in, or spray/wipe, with an EPA-registered disinfectant with demonstrated bactericidal, fungicidal, pseudomonacidal and virucidal activity used according to manufacturer's instructions including concentration and contact time requirements. Alcohol is not an acceptable disinfecting agent. Bleach products must have an EPA registration for hospital-level disinfection.

(2) All disinfected implements must be stored in a clean, dry, covered container such as a clean drawer or cabinet.

(3) The disinfectant solutions specified in Regulation 35-20(I)(1):

(a) shall remain covered at all times;

(b) shall be changed daily or sooner if visible debris is present or becomes cloudy, per the manufacturer's label; and

(c) shall be of sufficient size to accommodate all implements including handles.

(4) All nondisinfected implements (those that have been used on a patron or soiled in any manner) must be placed in a closed receptacle labeled "soiled" or "items to be disinfected" until such time as they can be properly disinfected.

(J) Disinfecting Electrical Implements.

(1) Licensees and students must disinfect clippers, scalp vibrators, and other electrical implements prior to each use by:

(a) first removing all foreign matter; and

(b) disinfecting with EPA-registered disinfectant with demonstrated bactericidal, fungicidal, pseudomonacidal and virucidal activity used according to manufacturer's instructions, including contact time requirements. The following are accepted methods of disinfection: sprays, wipes or immersion.

(2) All disinfected electrical implements shall be stored in a clean manner between uses. Acceptable storage would be on a clean towel, covered by a clean towel, hooked on the side of the station, in a drawer that is disinfected daily or in a plastic/rubber "bucket" installed in the station and disinfected daily.

(3) Towel warmers must be disinfected daily. Salons using hot steam towels in service must meet these requirements:

(a) Towels must be washed with detergent and bleach, and then dried on "hot".

(b) Practitioners preparing towels for the warmers must first wash their hands or wear gloves.

(c) Wet towels used in services must be prepared fresh each day. At the end of the day, unused steamed towels must be removed and laundered as described in Regulation 35-20(J)(3).

(4) Pedicure bowls, tubs or basins.

(a) After each client:

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- (i) Drain tub completely.
- (ii) Clean with soap/detergent and brush to remove all film from bowl.
- (iii) Fill tub with clean water and drain.
- (iv) Fill tub with clean water and add EPA registered disinfectant that is bactericidal, fungicidal, pseudomonacidal and virucidal at the proper concentration as indicated on the manufacturer's label.
- (v) In non-circulating tubs, allow clean water and EPA registered disinfectant that is bactericidal, fungicidal, pseudomonacidal and virucidal to stand for contact time listed on the manufacturer's label. In circulating tubs, allow EPA registered disinfectant that is bactericidal, fungicidal, pseudomonacidal and virucidal to circulate for contact time listed on the manufacturer's label.
- (vi) Drain tub, fill with clean water and drain prior to filling for client use.
- (b) At the end of the day
  - (i) Drain tub completely.
  - (ii) Remove all removable parts, and scrub tub and all removable parts with soap/detergent and brush.
  - (iii) Rinse all removable parts and immerse in EPA registered disinfectant that is bactericidal, fungicidal, pseudomonacidal and virucidal mixed at the proper concentration for the contact time listed on the manufacturer's label.
  - (iv) Fill tub with clean water and add EPA registered disinfectant that is bactericidal, fungicidal, pseudomonacidal and virucidal mixed at the proper concentration as indicated on the manufacturer's label.
  - (v) In non-circulating tubs, allow the disinfectant to stand for contact time listed on the manufacturer's label. In circulating tubs, allow the disinfectant to circulate for contact time listed on the manufacturer's label.
  - (vi) Drain tub and replace removable parts. Fill tub with clean water and drain prior to filling for client use.
  - (vii) Implements that are considered semi-critical, such as microdermabrasion wands, should either be disposable or be treated with high-level disinfection by immersing in an enzyme detergent for a minimum of fifteen (15) minutes, rinsing, scrubbing both internally and externally using a wire bristle brush, and then immersing in an EPA registered disinfectant for a minimum of 10 minutes.

### (K) Liquids, Creams, Powders and Other Cosmetic Preparations.

- (1) Storage. All liquids, creams and other cosmetic preparations must be kept in clean, closed and properly labeled containers. Powders may be kept in a clean shaker.
- (2) Removal from Container. When only a portion of a cosmetic preparation is to be used on a patron, licensees and students must remove it from the container using a disposable or single use spatula so as not to contaminate the remaining portion. Cosmetic pencils must be sharpened after each use. Cosmetic pencil sharpeners must be disinfected after each use.
- (3) Paraffin which was removed for single use may not be returned to the paraffin warmer.
- (4) Wax for hair removal services must be kept clean of debris.
  - (a) Wax must be removed to a single use container or removed with a single use spatula that may not be re-dipped (including using the other end) into the wax pot.
  - (b) Wax pot must be completely emptied and disinfected if contaminated by double dipping or debris.

### (L) Headrests, Shampoo Bowls, and Treatment Tables.

- (1) Licensees and students must cover the headrest of chairs with a clean towel or disposable paper sheet for each patron.
- (2) Shampoo trays and bowls must be cleansed with soap and water after each shampoo and disinfected daily, including the front of the bowl that may come in contact with the client and kept in good repair at all times.
- (3) Licensees and students must cover treatment tables with a clean sheet of disposable examination paper or clean linens for each patron. Tables must be disinfected between services, prior to covering with paper or linen; sprays or wipes are acceptable as defined in Regulation I (1)(A) and (B).

### (M) Towels.

- (1) Used, disposable towels must be discarded. After a cloth towel has been used once, it must be deposited in a closed, vented receptacle, labeled "soiled linens" and shall not be used again until properly laundered.
- (2) Proper Methods of Laundering. Used towels must be laundered either by regular commercial laundering or by a noncommercial laundering process which includes washing on the "hot" setting and drying until all moisture is gone and towels are hot to the touch from the dryer.

(3) Storage. All clean towels must be stored in a clean, closed cabinet or container.

(N) Bottles and Containers.

Licensees and students must clearly, distinctly and properly label in English all bottles and containers in use in a school or salon to disclose their contents. All bottles containing poisonous or potentially hazardous substances shall be additionally and distinctly marked as such.

(O) Neck Strips.

Licensees and students must use disposable neck strips or clean towels to keep the protective covering from coming in direct contact with a patron's neck. Protective coverings (capes) must be properly laundered (see Regulation 35-20(M)(2)) after each client.

(P) Licensees may not use any of the following substances, products or tools while performing cosmetology or related services:

(1) Methyl Methacrylate Liquid Monomers (MMA).

(2) Razor-type callus shavers designed and intended to cut growths of skin such as corns and calluses (e.g. credo blades, rasps).

(3) Alum or other astringents in stick or lump form (alum or other astringents in powder or liquid form are acceptable).

(4) Fumigants such as formalin (formaldehyde) tablets or liquids.

(5) Garra rufa fish used in "fish procedures."

(6) The use of any product, preparation, device or procedure that penetrates beyond the stratum germinativum layer, also known as the basal layer of the epidermis, of the skin is strictly prohibited. (e.g. acids with a PH below 3, medium depth or physician level peels, microneedling, dermaplaning and microblading.)

(7) Roll on wax is prohibited if applied directly to the skin. If used, they must be treated as a single use item and disposed of after each use.

(8) Ultraviolet (UV) Sterilizers or light boxes are prohibited. They are not acceptable infection control devices.

(9) Autoclaves and autoclave packaging of tools are prohibited unless regular (at least once per month but not more than 30 days between tests) spore tests are performed by a contracted laboratory. If a positive spore test is received, the autoclave may not be used until a negative spore result is received.

(10) Electric files or drills not specifically manufactured for use on human nails are prohibited.

(11) Possession on licensed premises, or by a licensee, of any item(s) listed in this section is a violation under this chapter.

**Fiscal Impact Statement:**

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

**Statement of Rationale:**

The updated regulations will clarify processes ensuring safe sanitation practices.

Document No. 4722  
**DEPARTMENT OF LABOR, LICENSING AND REGULATION**  
**BOARD OF LONG TERM HEALTH CARE ADMINISTRATORS**  
 CHAPTER 93

Statutory Authority: 1976 Code Sections 40-1-70 and 40-35-60

93-80. Administrator-in-Training Program Requirements.

**Synopsis:**

The South Carolina Board of Long Term Health Care Administrators proposes to amend its regulations to update the Administrator-in-Training requirements.

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A Notice of Drafting was published in the *State Register* on August 26, 2016.

### Instructions:

Regulation 93-80 is amended as shown below.

### Text:

93-80. Administrator-in-Training Program Requirements.

A. A person shall be permitted to participate in the AIT program who submits sound evidence satisfactory to the board that the candidate meets the following criteria:

1. Nursing home administrator AIT candidates must have earned a Baccalaureate degree or higher from an accredited college or university or must be enrolled in a course of study that will award such a degree on completion.

(a) For nursing home administrator AIT candidates with a Baccalaureate degree or higher in health care administration or a related health care degree, the duration of an AIT internship shall be six months.

(b) For nursing home administrator AIT candidates with a Baccalaureate degree other than a health care administration degree, the duration of an AIT internship shall be nine months.

2. Community residential care facility administrator AIT candidates must have earned at least an Associate's degree from an accredited college or university or must be enrolled in a course of study that will award such a degree upon completion.

(a) For community residential care facility administrator AIT candidates with a Baccalaureate degree or higher, the duration of the AIT internship shall be three months.

(b) For community residential care facility administrator AIT candidates with a health related Associate's degree, the duration of the AIT internship shall be six months.

(c) For community residential care facility administrator AIT candidates with a nonhealth-related Associate's degree or who are licensed practical nurses, the duration of the AIT internship shall be nine months.

B. An AIT candidate must register with the Board by completing a Board-approved form and submitting the registration fee of \$25.00. After approval the Board shall issue an AIT training permit to the applicant valid for up to one year. If the preceptor or AIT terminates the program, the Board will invalidate the permit immediately.

C. The candidate may indicate a preceptor of his choice from a list of Board-approved preceptors. It shall be the responsibility of the candidate to contact the preceptor to determine if the preceptor will accept the AIT. Once a preceptor accepts an AIT, this must be reported to the Board. The preceptor shall not train an employer or supervisor.

D. The preceptor shall meet the following criteria:

1. Currently licensed in this state;

2. Have no disciplinary sanctions against the license;

3.(a) The Nursing Home Administrator preceptor shall be licensed for three years preceding the date of application as a preceptor, be employed as a licensed nursing home administrator employed by the facility licensed pursuant to the regulations promulgated by the Department of Health and Environmental Control.

(b) The Community Residential Care Facility Administrator preceptor shall be licensed for two years preceding the date of application as a preceptor, be employed as a licensed community residential care administrator by the facility, with at least 24 beds, licensed pursuant to the regulations promulgated by the Department of Health and Environmental Control.

E. The preceptor must register on an approved form with the Board. The Board may, for good cause, refuse to approve or renew a preceptor.

F. A preceptor shall supervise no more than one AIT concurrently.

G. The preceptor will evaluate the background and experience of the AIT to determine specific areas of concentration. The preceptor and AIT will then design a course of study and present it to the Board for approval. The curriculum shall follow the guidelines set forth in a standards manual approved by the Board. A recoupment fee for the manual not to exceed \$50.00 will be imposed on the preceptor.

H. The preceptor shall maintain a current checklist in the facility tracking progress of the AIT. This checklist may be requested and reviewed at any time by the Board. On completion of the program, the checklist shall be submitted with the final report and evaluation.

I. At the end of the AIT program, the preceptor will submit a final report and evaluation of the AIT on Board approved forms stating whether the AIT has satisfactorily completed all requirements. The final report and evaluation will become part of the AIT's permanent record with the Board.

J. Any change in preceptor requires notice to and approval by the Board. An internship which has been discontinued by a period of military service shall be allowed to be completed within a year after the service. The Board must receive notice in the event of discontinuance of training for any other reason and the AIT must comply with section (B) upon recommencement of the program.

K. The preceptor shall notify the AIT of his performance as the program progresses. If the performance is not acceptable, the preceptor will inform the AIT, and the AIT will be given the opportunity to correct the deficiencies.

L. Following the completion of the AIT program:

1. the nursing home administrator AIT may apply for licensure as a nursing home administrator as delineated in Regulation 93-70 but is not required to complete any of the qualifying work experience set forth in Regulation 93-70(A)(1).

2. the community residential care facility administrator AIT may apply for licensure as a community residential care facility administrator as delineated in Regulation 93-70 but is not required to complete any of the qualifying work experience set forth in Regulation 93-70(A)(2).

**Fiscal Impact Statement:**

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

**Statement of Rationale:**

The updated regulations will conform to changes made to the Long Term Health Care Administrators' practice act in 2014 and in regulation in 2016.

Document No. 4723  
**DEPARTMENT OF LABOR, LICENSING AND REGULATION**  
**BOARD OF EXAMINERS IN OPTICIANRY**  
 CHAPTER 96

Statutory Authority: 1976 Code Sections 40-1-50, 40-1-70, 40-38-60, and 40-38-250

96-105. Examinations.

96-106. Apprenticeship Registration and Program Provisions.

96-107. Reinstatement of Lapsed License or Lapsed Apprenticeship.

**Synopsis:**

The South Carolina Board of Examiners in Opticianry proposes to amend its regulations to clarify the waiting period after unsuccessful examination attempts; to clarify that apprenticeship is a training period and not a subclass of practice; and to adjust continuing education requirements to comport with biennial licensure.

A Notice of Drafting was published in the *State Register* on September 23, 2016.

**Instructions:**

Regulations 96-105, 96-106, and 96-107 are amended as shown below.

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### Text:

#### 96–105. Examinations.

(A) All applicants for initial licensure must take and pass an opticianry competency examination and an examination in practical areas of opticianry. Any applicant who passes one (1) of these two (2) separate examinations but fails the other examination will only be required to apply for and be reexamined on the examination which was not passed, provided that, if the time of filing the application, a period not greater than five (5) years has elapsed since the applicant took the examination which was passed. If more than five (5) years have elapsed, the Board may inquire into the applicant's training, work and study during that period and may require the applicant to retake both examinations, if, in the Board's opinion, the applicant has not had sufficient training, work or study to keep his knowledge or proficiency in the practice of opticianry current.

(1) The opticianry competency examination may be taken as many times and as often as necessary until the applicant passes it.

(2) The practical examination may be taken twice before the following restrictions apply. Upon taking and failing to pass twice, an applicant will not be permitted to take the examination within a year following notice of the second or succeeding failures. Application to take the practical examination the third and succeeding times shall be accompanied by a statement of additional training, work or study completed by the applicant since the time of the most recent notice of failure of the examination.

(B) All applicants for additional licensure as contact lens dispensing opticians must take and pass a qualifying contact lens examination. The examination may be taken as many times and as often as necessary until the applicant passes it.

#### 96–106. Apprenticeship Registration and Program Provisions.

(A) South Carolina Registered Apprenticeships must:

(1) be registered and approved in writing before the apprenticeship commences; and

(2) be for a period of two (2) continuous years; and

(3) be served under the direct supervision of an approved state licensed optician, optometrist or ophthalmologist who does not train more than two (2) registered apprentices at a time, and must be full-time employment training in the practice of opticianry. Full-time is defined as a minimum of thirty-two (32) hours a week.

(B) Any applicant desiring to be registered in the apprenticeship program must:

(1) submit an application on a form approved by the Board, along with the required fee; and

(2) submit proof satisfactory to the Board that the applicant is a graduate of an accredited public or private high school or secondary school of an equal grade approved by the Board or completed an equivalent course of study approved by the Board; and

(3) submit an apprenticeship agreement form approved by the Board, providing the name of the South Carolina licensed optician, optometrist or ophthalmologist to be approved as the sponsor to provide the two-year training program, the nature of the program, the proposed curriculum, and the facilities and equipment of the apprenticeship location; and

(4) submit, upon the request of the Board, proof that the apprenticeship has not been altered or otherwise changed from the Board-approved apprenticeship program; and

(5) annually submit an evaluation of the apprenticeship signed by the apprentice and approved sponsor.

(C) The state licensed optician, optometrist or ophthalmologist under whom the applicant shall conduct his apprenticeship shall provide the Board with a statement agreeing to supervise the apprenticeship and to conduct training for the applicant and shall have facilities and equipment determined by the Board to be adequate for training in order for the apprenticeship to be approved.

(D) The Board shall consider the following criteria when approving an apprenticeship:

(1) nature of the apprenticeship program; and

(2) proposed curriculum; and

(3) facilities and equipment of the apprenticeship location; and

(4) documentation of the sponsor's statement to supervise and to conduct training.

(E) Any change in the information supplied in the apprenticeship application shall be immediately transmitted to the Board by the approved optician, optometrist or ophthalmologist responsible for the apprentice.



(F) The Board may extend the apprenticeship for an additional year upon request of the apprentice for good cause shown, and payment of a fee as specified by the Board. The request must be accompanied by a statement signed by the apprentice’s sponsor providing the proposed curriculum for the extended apprenticeship period, to be approved by the Board. A written evaluation signed by the apprentice and the sponsor shall be submitted at the conclusion of the extended period. If the apprentice does not take the opticianry examination with five (5) years from the commencement of the apprenticeship, the apprentice must begin training over, but must wait for one year from the conclusion of the apprenticeship before recommencing the training period.

(G) The Board may rescind its approval of any apprenticeship or apprenticeship program when the curriculum is not being followed or taught, when it determines that the facilities and equipment available to the apprentice are not adequate, when the apprentice is not being properly trained or supervised by an approved sponsor, or when the apprentice is engaged in conduct which would cause the Board to discipline a licensed optician.

96–107. Reinstatement of Lapsed License or Lapsed Apprenticeship.

(A) If a license or an apprenticeship lapses, the optician or apprentice must:

- (1) apply for reinstatement on a form approved by the Board; and
- (2) pay all fees for each twelve (12) month period during which the license or the apprenticeship was lapsed; and
- (3) submit proof satisfactory to the Board that the applicant for reinstatement has completed continuing education hours for each twelve (12) month period during which the license or the apprenticeship was lapsed; and
- (4) pay a fifty (\$50.00) dollar reinstatement fee for reinstatement of the license or the apprenticeship.

(B) If a license or an apprenticeship has been lapsed more than two (2) years, the optician or apprentice must:

- (1) appear before the Board to determine if the license or apprenticeship should be reinstated and the terms under which the reinstatement is to be made; and
- (2) meet all the qualifications as set forth in Section (A) above.

**Fiscal Impact Statement:**

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

**Statement of Rationale:**

The updated regulations will clarify the waiting period after unsuccessful examination attempts; to clarify that apprenticeship is a training period and not a subclass of practice; and to adjust continuing education requirements to comport with biennial licensure.

Document No. 4724  
**DEPARTMENT OF LABOR, LICENSING AND REGULATION**  
**REAL ESTATE COMMISSION**  
 CHAPTER 105  
 Statutory Authority: 1976 Code Sections 40-1-70 and 40–57–60

- 105-2. Vacation Time Sharing Ownership Plans Defined
- 105-3. Sale of Vacation Time Sharing Plan Receivables
- 105-4. Providers of Courses
- 105-5. Application for Approval
- 105-6. Course Curriculum and Attendance
- 105-7. Enrollment Agreement, Policies, and Procedures
- 105-8. Other Operating Procedures
- 105-9. Auditing and Record Keeping
- 105-10. Instructors
- 105-11. Renewals

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105-12. Provider, Course, and Instructor Fees

105-13. Fees

### Synopsis:

The Real Estate Commission proposes to amend its regulations to comport with 2016 Act No. 170.

A Notice of Drafting was published in the *State Register* on August 26, 2016.

### Instructions:

Regulations 105-2 through 105-13 are amended as shown below.

### Text:

105-2. Vacation Time Sharing Ownership Plans Defined.

Vacation time sharing ownership plans shall specifically include:

A. time sharing ownership plans, whereby purchasers are deeded an undivided interest in the facilities with a right to use designated accommodations for a specific period of time during any given year, but not necessarily for consecutive years, which extends for a period of more than one (1) year; and

B. interval ownership plans, whereby purchasers are deeded title to designated time sharing units, accommodations, or facilities for a specific period of time during any given year, but not necessarily for consecutive years, which extends for a period of more than one (1) year, with remainder after such period to interval owners as tenants in common.

105-3. Sale of Vacation Time Sharing Plan Receivables.

The provisions of Section 27-32-80 shall not be construed to prevent the seller's right to sell, discount, or hypothecate for value receivables in favor of any bank, mortgage company, or other lending institution, and such purchasers shall be exempt from the requirements of this section.

105-4. Providers of Courses.

A. As used throughout these regulations, the term "provider" shall mean any school, organization, association, institution, or instructor.

B. Courses taught as part of a degree program at an accredited college or university and courses taught by a federal or state agency shall be deemed approved by the Commission if the courses are equivalent in hours and subject matter to those specified by the Commission. These providers are exempt from regulation by the Commission, and original transcripts or other proof of course completion with a passing grade may be recognized and accepted as a prerequisite for examination or for meeting the requirements of continuing education.

C. Accredited colleges or universities or technical, community, or junior colleges teaching courses which are not part of a degree program shall be approved if they comply with the regulations of the Commission with regard to curriculum, instructors, hours of attendance, classroom facilities, texts, examinations, and Certificates of Completion, as well as the policies and procedures of the appropriate department of the institution.

D. Courses offered by other providers shall be approved if they comply with the regulations of the Commission with regard to curriculum, instructors, hours of attendance, classroom facilities, texts, examinations, Certificates of Completion, and if the policies and procedures of the provider are also approved by the Commission.

E. All schools, organizations, associations, institutions, and other educational providers must be in good standing, and must be competent to administer and supervise the instruction of real estate subjects to the public.

F. Providers seeking approval to offer and conduct real estate or property management pre-licensing instruction and/or real estate continuing education instruction must apply on a form approved by the Commission and must be approved by the Commission and issued a Certificate of Approval prior to the commencement of

any instruction. Providers offering courses prior to approval shall not have their Certificates of Completion recognized by the Commission.

#### 105-5. Application for Approval.

A. Prospective providers of courses must furnish to the Commission completed applications for provider and course approval and all supporting documentation as required by the Commission.

B. If an application is disapproved, reason(s) for disapproval will be detailed and the provider will be given thirty (30) days to cure any deficiencies. If deficiencies are cured, the application will be approved.

C. Upon approval the Commission will issue its Certificates of Approval for provider and courses, to be renewed biennially in even-numbered years. If the Certificate of Approval is issued in an odd-numbered year, it shall be renewed the following year, and then biennially thereafter.

D. Each provider must make available, upon request, copies of the Certificates of Approval issued by the Commission when an approved course is offered.

#### 105-6. Course Curriculum and Attendance.

A. Providers must teach qualifying courses in separate and distinct units consisting of at least the minimum number of classroom hours as follows:

- (1) the pre-licensing course for sales license applicants (Unit I) must include instruction in fundamentals of real estate principles and practices; and
- (2) the Unit II courses must include instruction in advanced real estate principles and practices; and
- (3) the pre-licensing course for broker license applicants (Unit III) must include instruction in advanced real estate principles and practices; and
- (4) the course for property management license applicants must include instruction in property management principles and practices.

B. Providers must teach continuing education courses in subjects which increase the knowledge, skill and/or competence of real estate licensees with regard to the performance of their duties in a manner that best serves the public interest. Core courses are those which must include a minimum of four (4) classroom hours of instruction on current federal and state real estate law. Elective courses are those which are offered in general subjects prescribed by the Commission.

C. Learning objectives and detailed lesson plans reflecting the course content with time allotments must be furnished by the provider to the Commission at the time of application for approval, along with copies of all quizzes and examinations for Unit I, Unit II Modules A-E and Unit III B qualifying courses. In order to successfully complete each of the Unit I, Unit II Modules A-E or Unit III B course, students shall take and score a minimum of 70% on a proctored final examination administered in an educational facility by an approved real estate instructor, school administrator or qualified person. The Commission may, however, direct alterations in examination procedures, criteria for passing, and administration whenever deemed necessary.

D. Providers must identify the texts to be used in any approved course of instruction. The Commission may direct that the school withdraw texts and may require additional instructional materials.

E. For Unit I, Unit II or Unit III qualifying courses, providers must establish uniform testing and grading procedures for their quizzes and examinations and must use approved instructors for administering and monitoring all tests. No provider, instructor or any other individual may arbitrarily alter a student's grade or offer to students any re-examination of the same test previously administered. Retake examinations must contain at least eighty percent (80%) new exam items.

F. Courses must be at least two (2) hours in length, and providers must limit class meetings to a maximum of eight (8) hours in any given day. Students must be allowed one (1) ten-minute break each hour, and for classes that exceed four (4) hours, students must be allowed at least one (1) one-half hour break. No meals may be served during class. Providers must require strict attendance of all classroom hours required by law and must maintain records indicating number of student absences. No partial credit hours are permitted.

G. Providers may offer students failing to meet the minimum-hour requirement make-up sessions as follows:

- (1) a make-up session offered by the provider consisting of the content in the session or hours missed; or
- (2) a video tape of the class session missed viewed by the student and supervised by the instructor, but only if less than twenty percent (20%) of the total classroom hours are missed; or
- (3) attendance of the same class session offered by the provider at a future date.

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H. Course providers must prepare and submit to the Commission, reports verifying completion of a course for each licensee who satisfactorily completes the course. Such reports shall be transmitted electronically. Providers must submit these reports to the Commission in a manner that will assure receipt by the Commission within fourteen (14) calendar days following the course. The verified Course Completion Report shall list: the course identification number assigned by the Commission; the provider's name; the instructor's name; title, location, and dates of course; full legal name, address, phone number, and license number of each student, along with the number of hours in attendance and final grade, if applicable. The Course Completion Report must be verified by an authorized official of the provider.

I. A Certificate of Completion prescribed by the Commission shall be awarded to each course graduate, signed and dated by an authorized official of the provider, and must contain the course identification number assigned by the Commission, the provider's name and address, course title, location, dates, and number of hours of the course: full legal name and license number, if applicable, of the student.

### 105-7. Enrollment Agreement, Policies, and Procedures.

A. An enrollment agreement disclosing the obligations of both parties must be signed by the provider and student prior to the commencement of classes. A copy of the enrollment agreement containing all policies and procedures must be furnished to the student, and receipt must be acknowledged in writing at the time the agreement is executed.

B. When registering electronically, this requirement is met if the licensee affirmatively indicates that he/she has received, reviewed and agrees to the terms of the enrollment agreement. This should be accomplished before the licensee pays for the class.

C. The enrollment agreement must contain, at a minimum, the following:

- (1) name and address of the provider and student, along with student's name, address and real estate license number, if applicable; and
- (2) name of course; and
- (3) tuition and methods of payment, along with terms of any refund policy. If the provider has no policy for refunding fees, it must so state in writing; and
- (4) provider's policy for cancellation of scheduled courses; and
- (5) grade required for passing, methods for testing and final grade determination, if applicable; and
- (6) the total hours of attendance required; and
- (7) scheduled meeting time, dates, and location of course, if applicable; and
- (8) make-up policies for absences and for retaking a failed examination, if applicable; and
- (9) Admission policy.

### 105-8. Other Operating Procedures.

#### A. Teaching Methods.

(1) Courses must be taught by Commission-approved instructors and must be presented in a physical classroom or approved virtual environment. Correspondence courses will not be approved. Nothing in this section shall prohibit the use of video equipment as a teaching supplement.

(2) Distance education courses must adhere to the Commission's standards for distance education.

#### B. Facilities and Equipment.

(1) All classroom facilities must meet the appropriate building, health, and fire codes, must be maintained in a safe and sanitary condition at all times, and are subject to inspection and approval by a representative of the Commission.

(2) Classrooms shall be of sufficient size to accommodate comfortably all students enrolled in a course, shall have adequate light, heat, cooling and ventilation, and shall be free of distractions which would disrupt class sessions.

(3) Classrooms shall contain audio-visual equipment and desks or worktables sufficient to accommodate all students enrolled in a course.

#### C. Advertising.

(1) "Advertising" means any form of public notice, including but not limited to, publications, promotional items, and all other efforts which could normally be expected to be seen or heard by prospective students. Examples may include: emails, social media posts, catalogs, flyers, signs, mailing pieces, radio, television,

audio-visual, newspaper, or any other form of public notice designed to aid in the provider's recruiting and promotional activities. Advertising also includes oral communications.

(2) Each provider must maintain high standards in the conduct of its operations, solicitation of students, and in its advertising and promotional material. The use of any unfair or deceptive practice or the making or causing to be made of any false, misleading, or deceptive statement in any advertising or promotional material which has the tendency or capacity to mislead or deceive students, prospective students, or the public shall be cause for disciplinary action.

(3) No provider or instructor shall allow anyone to use the classroom to recruit new affiliates for any company, sell promotional materials, or solicit business during an instruction period. Providers and instructors must promptly report to the Commission any efforts in violation of this paragraph.

(4) The name of the provider and course approval number must be disclosed in every advertisement when using a specific course title in an advertisement.

(5) A provider may not advertise or imply that it is recommended or endorsed by the South Carolina Real Estate Commission.

(6) The provider must be able to substantiate from its own records any advertised statistics or claims. Passage rates of students taking examinations must not be used in any advertising unless total numbers of students and other pertinent information is disclosed. School reports of the South Carolina Real Estate Commission regarding passage rates for first-time examiners may not be referenced in advertising.

(7) A provider must not use abbreviations which could tend to mislead or confuse or otherwise create misunderstanding with students or the public.

(8) A provider must not falsely represent, either directly or by implication, that students successfully completing a course of instruction may transfer credit to an accredited institution of higher education or that a course has been approved by a particular industry; or represent that its successful completion will insure passage of the state licensing examinations or obtaining a real estate license.

D. Changes.

Proposed changes to course name, content, length, location and/or texts must be submitted to and approved by the Commission prior to implementation.

105-9. Auditing and Record Keeping.

A. Providers must keep copies of all enrollment agreements, advertising, rosters, and attendance records for a minimum of five (5) years and must be made available to a representative of the Commission upon request.

B. Providers must permit periodic inspections and auditing by a representative of the Commission for the purposes of evaluating facilities, course content, instructor performance, or any other relevant aspect of the administration and conduct of such course.

105-10. Instructors.

A. Approved qualifying courses must be taught by broker qualified, Commission-approved instructors. Instructors teaching courses which are part of a degree program offered by an accredited college or university and instructors teaching courses for a federal or state agency shall be deemed approved by the Commission.

B. Prior to teaching for any approved provider, applicants for instructor approval must submit an application form along with supporting documentation as proof of knowledge of the subject matter and the ability to teach effectively.

(1) As proof of knowledge of the subject matter to be taught, the instructor must provide documentation of:  
 (a) an active real estate broker license; or  
 (b) a college degree in an academic area directly related to the course or the specific subject matter to be taught; or

(c) other past experience or education acceptable to the Commission in the subject area to be taught, and

(2) As proof of the ability to teach effectively, the instructor must provide documentation of:

(a) a current teaching certificate issued by any state department of education (or an equivalent agency);

or

(b) a four-year undergraduate degree in education; or

(c) previous adult-education experience in schools, seminars, or in an equivalent setting for three (3) years, within the past five (5) years; or

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(d) serving as a trainee or assistant instructor under the direct supervision of a Commission-approved instructor for at least sixty (60) hours; or

(e) past experience and knowledge of South Carolina real estate law acceptable to the Commission in education.

(3) In addition, for continuing education courses, the Commission may require documentation of:

(a) three (3) years of work experience, within the past five (5) years, directly related to the subject matter to be taught; or

(b) three (3) years of experience within the past five (5) years teaching the subject matter to be taught.

C. Each instructor may be approved by the Commission to teach Unit I, Unit II, Unit III, Property Management, and/or other continuing education subjects.

D. An instructor may teach approved courses at locations throughout the state of South Carolina. The course provider must notify the Commission of course offerings in advance and record the instructor's name on the provider's completion report.

E. If the application is disapproved, the reason(s) for disapproval will be detailed and the instructor will be given thirty (30) days to cure any deficiencies found. If deficiencies are cured, the application will be approved.

F. Upon instructor approval, the Commission will issue its Certificate of Approval, to be renewed biennially in even-numbered years. Each instructor must make available, when requested, a copy of the Certificate of Approval issued by the Commission. If the Certificate of Approval is issued in an odd-numbered year, it shall be renewed the following year, and biennially thereafter.

G. Instructors must attend Instructor Development Workshops sponsored by the Commission biennially.

H. Instructors of approved continuing education courses are exempt from their biennial continuing education credit for time spent teaching approved courses.

### 105-11. Renewals.

All provider, course, and instructor approvals expire biennially on August 31 of even-numbered years. Renewal forms will be mailed to all approved providers and instructors, and completed forms must be received in the Commission's office not later than August 15 to insure renewal by August 31. A late fee will be charged for renewals received after August 31.

### 105-12. Provider, Course, and Instructor Fees.

The following fees shall be charged by and paid to the Commission:

A. for each course provider approval, a fee of two hundred dollars (\$200), and for each renewal thereof, a fee of one hundred dollars (\$100); and

B. for each course approval, a fee of one hundred dollars (\$100), and for each renewal thereof, a fee of fifty dollars (\$50); and

C. for each instructor approval, a fee of one hundred dollars (\$100), and for each renewal thereof, a fee of fifty dollars (\$50); and

D. for each late renewal (after August 31st) for provider, course, or instructor, a fee of fifty dollars (\$50). The education year is September 1st of even-numbered years through August 31st.

### 105-13. Fees.

The Commission may charge fees as shown in South Carolina Code of Regulations Chapter 10-37 and on the South Carolina Real Estate Commission website at <http://lr.sc.gov/POL/REC/>.

### **Fiscal Impact Statement:**

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

### **Statement of Rationale:**

The updated regulations will comport with 2016 Act No. 170.

Document No. 4686

**DEPARTMENT OF NATURAL RESOURCES**

## CHAPTER 123

Statutory Authority: 1976 Code Sections 50-11-2200, 50-11-2210 and 50-11-2215

123-203. General Regulations.

123-204. Additional Regulations Applicable to Specific Properties.

**Synopsis:**

These regulations amend Chapter 123-203 and 123-204 that govern the conduct and activities of visitors to Wildlife Management Areas, Heritage Preserves, shooting ranges and other lands owned or leased by the Department of Natural Resources.

A Notice of Drafting was published in the *State Register* on July 22, 2016, Volume 40, Issue No. 7.

**Instructions:**

Amend Regulations 123-203 and 123-204 as follows. Included are specific changes, deletions and additions. Unless specifically listed as a change, all other existing regulations remain intact.

The following is a section-by-section summary of the proposed changes and additions:

123-203. General Regulations

P. Insert new section and new text.

123-204. Additional Regulations Applicable to Specific Properties

N. Insert text as indicated.

N. (1) (b) insert text as indicated

T. (2) strike text and insert new text as indicated

U. (2) strike text and insert new text as indicated

V. (1) strike text and insert new text as indicated

V. (3) strike text as indicated

V. (5) strike text and insert text as indicated

V. (6) strike text

V. (7) Renumber to (6)

V. (8) Renumber to (7). Strike text and insert text as indicated

V. (9) Renumber to (8). Insert new text as indicated

V. (10) Renumber to (9). Strike text and insert new text as indicated.

AA. (1) Strike text.

AA. (2) Renumber to (1).

JJ. Strike text and insert new text as indicated.

KK. Insert new section and new text as indicated.

LL. Insert new section and new text as indicated.

MM. Insert new section and new text as indicated.

123-211. Insert new section and new text as indicated.

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### Text:

#### ARTICLE 5.5

##### REGULATION OF REAL PROPERTY OWNED AND LEASED BY THE DEPARTMENT

###### 123-203. General Regulation.

This section shall apply to all Wildlife Management Areas, Heritage Preserves and other lands owned by the Department.

A. Hunting, fishing, and taking game animals, birds, fish, or other wildlife is allowed on Wildlife Management Areas that have been designated as part of the Wildlife Management Area program. Hunting, fishing, and taking shall be subject to all applicable statutes and regulations, specifically including Reg. 123-40.

B. All firearms must be unloaded and secured in a weapons case except while legally hunting, unless otherwise legally permitted. Target, skeet, trap, plinking, or any other type of shooting with any firearm or weapon is allowed on designated shooting ranges. Except as otherwise specifically authorized by South Carolina statute or this regulation, weapons and firearms are not allowed on any heritage preserve. Possession of a weapon or firearm is allowed on any heritage preserve designated by the Department as a wildlife management area subject to the regulations.

C. Hiking is allowed subject to the following restrictions or conditions:

(1) Hiking is allowed. The Department may post or place signs declaring any area closed to hiking;

(2) The use of all designated hiking trails, except for posted multi-use trails is restricted solely to foot travel and the legitimate activities associated with the pursuit of hiking.

D. Operation of motorized, nonmotorized vehicles, all terrain vehicles, and off road vehicles.

The operation of motorized vehicles is allowed subject to the following restrictions or conditions:

(1) Motorized vehicles, all terrain vehicles, and off road vehicles may be operated only on open maintained roads and parking areas except as otherwise established by posted notice or as approved by the Department. All terrain vehicles are not allowed on any heritage preserve.

(2) Motorized vehicles, all terrain vehicles, and off road vehicles shall not exceed speed limits posted on Department signs.

(3) No person may operate any motorized, all terrain vehicle, off road vehicle or non-motorized vehicle in a reckless or negligent manner. The operation of any vehicle in such a manner as to indicate either a willful or wanton disregard for the safety of persons or property shall be deemed to be operating in a reckless manner.

(4) The operation of motorized vehicles, all terrain vehicles, and off road vehicles must comply with any posting or signs. Obstructing vehicular traffic is not allowed.

(5) All motorized vehicles, all terrain vehicles, and off road vehicles must be equipped with properly working mufflers, brakes, mirrors and spark arresters (if the vehicle was originally factory equipped with spark arresters and/or mirrors).

(6) Charter buses or other vehicles engaged in transporting persons for compensation are only allowed by permit.

(7) The numbers of motorized vehicles, nonmotorized vehicles, horses, or boats allowed on any area at one time may be limited by the Department through a permitting system.

(8) The operation of nonmotorized vehicles are allowed subject to the following restrictions or conditions:

(a) Bicycles may be ridden on roads open to motorized vehicles, established roadbeds and designated bicycle trails unless otherwise posted.

(b) Using roller skates, in-line skates, skateboards, roller skis, coasting vehicles, or similar devices is allowed only in designated areas.

E. Swimming.

Swimming is allowed only in designated areas, which includes any State or federal navigable waterway abutting or flowing through Department land.

F. Camping.

(1) Camping is allowed only within areas designated as campsites by the Department. The Department will designate campsites by placement of signs or by other means such as maps or brochures.



- (2) Camping in one location for more than four nights is prohibited except under permit.
- (3) All camping supplies must be removed from camping sites.
- (4) No organized group of ten or more individuals may camp at a single designated camp site at any time except under permit.

(5) Permanent structures must not be erected.

G. Horse riding.

- (1) Horse riding is allowed, except during any open hunting periods.
- (2) The riding of horses is allowed on roads open to motorized vehicular traffic, unless posted as closed to horseback riding.

(3) Horse riding is allowed on firebreaks or trails if specifically posted as open to horseback riding.

(4) The Department may restrict the number of horses and horse trailers and may require permits on specific areas. Restrictions shall be posted at the offices and/or entrances to Department lands or in published brochures.

(5) The owner of any horse brought onto Department property is responsible for the payment of any expense for the removal of injured or dead horses.

(6) Horses must be attended.

(7) Only pelletized feed may be used, no hay.

(8) Access to a Department property by horseback is limited to a designated public entrance. A public entrance is a day-use parking area. For ride-on users (without vehicles or trailers) only, entrance is allowed where a road open to motorized vehicular traffic or firebreak designated for horseback riding intersects a public or private road.

(9) When not being ridden, horses must be led by halter or reins, confined in a trailer, or tied to a trailer tie or hitching rail. Horses may not be confined using portable corrals or electric fences.

(10) Within a day-use parking area, horses must be kept at a flat walk.

(11) The Department may require a person with an unruly horse, which is causing a disturbance or safety hazard, to remove the horse from Department property.

H. Operation of boats.

(1) Boats may be used on Department land only on a watercourse or water body which has been designated by the Department for the use of boats. The Department may restrict the type, size, or number of boats and motors or the use of motors. Any restrictions shall be posted at the entrances to Department land. This restriction shall not apply to any State or federal navigable waterway.

(2) Motorized boats may only be launched at launch sites designated by the Department.

I. Possession of pets or specialty animals.

(1) Pets may enter Department land and accompany an individual on allowed activities if each pet is under the actual control of the owner or possessor.

(2) Neither dangerous pets nor pets with a propensity toward aggressive behavior are allowed.

(3) The requirements of this subsection do not apply to dogs while being used during and as a part of any of the following activities:

(a) Hunting when use of dogs is authorized by statute or regulation.

(b) The training of dogs to hunt is deemed hunting; training of dogs to hunt on lands and waters may be undertaken only during periods when hunting with dogs is authorized by statute or regulation.

(c) Authorized field trial events.

(d) Special events or activities as authorized by the Department.

(4) Raptors are allowed on Department land in compliance with R.123-170.

J. Consumption of alcohol.

Alcoholic beverages may be consumed by a person of lawful age only at a designated campsite, designated facility, residence or other designated location.

K. Gathering, damaging, or destroying rocks, minerals, fossils, artifacts, geological formations or ecofacts.

(1) The Department may authorize the collection of certain material upon issuance of a permit.

L. Gathering, damaging, or destroying plants, fallen vegetation, animals and fungi.

(1) The Department may authorize the collection of certain material upon issuance of a permit.

(2) Shed antlers at ground surface may be collected.

M. Use of fire, fireworks, or explosives.

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(1) Open fires may only be started at campsites designated by the Department. Gas grills, gas lanterns, and portable charcoal grills may be operated at designated campsites.

(2) No fire may be left unattended. Prior to leaving the site, any fire must be completely extinguished, leaving neither flames nor embers.

(3) No wood, except from dead and down trees or from supplies as may be furnished by the Department shall be used for fuel.

(4) On any land where camp fires are permitted, the Department may prohibit the use of fires for any purpose by posting a notice at entrances to individual parcels of land.

(5) No person may deposit lighted matches, cigars, cigarettes or other burning tobacco where they will cause fire.

### N. Hours of Operation.

(1) The Department may restrict the hours of operation on any Department land by publication in Department brochures and pamphlets or by posting on site specific hours of operation.

(2) Heritage preserves are open for public use from one hour before sunrise to one hour after sunset. On any preserve that is designated as a wildlife management area, the hours of operation shall be the same as are authorized for hunting as stated in R.123-40.

### O. Shooting onto or across WMA land closed to hunting.

(1) Shooting onto or across WMA land closed to hunting is allowed provided the shooter and the game being shot at are physically outside the boundary of the WMA. The airspace above the WMA is considered within the boundary of the WMA.

### P. Emergency closure of Department properties.

(1) The Department may close all or part of any WMA, state lake, shooting range or any other property for a special event, in cases of emergency or catastrophe, or any time human health and/or safety may be at risk.

## 123-204. Additional Regulations Applicable to Specific Properties.

### A. Aiken County Gopher Tortoise Heritage Preserve.

(1) Bicycles may be ridden on hiking trails. Bicyclists may ride in groups no larger than five (5).

### B. Bay Point Heritage Preserve.

(1) No dogs are allowed.

(2) No person may enter any area of the preserve designated as a nesting area for birds.

### C. Bear Branch Heritage Preserve.

Public visitation is by permit only. The preserve is closed to use except by permit.

### D. Bear Island.

(1) Except when closed for scheduled hunts, the area is open from 1/2 hour before sunrise to 1/2 hour after sunset.

(2) The property is closed to all public access from November 1 through February 8, except for scheduled hunts.

(3) All terrain vehicles are prohibited.

(4) Camping is allowed only at designated sites and only during scheduled big game hunts.

(5) The area is closed to general public access during scheduled hunts.

(6) Fishing is allowed in designated areas from April 1 through September 30.

### E. Bird-Key Stono Heritage Preserve.

(1) No dogs are allowed.

(2) No person may enter any area of the preserve designated as a nesting area for birds.

(3) March 15 through October 15 the area is closed to all access including the intertidal zone between low and high tide waterlines.

(4) October 16 through March 14 access is allowed only in the intertidal zone between low and high tide waterlines.

(5) No motorized vehicles, bicycles or horses.

### F. Caper's Island Heritage Preserve.

(1) Overnight Camping on Capers Island is by permit only. Permit may be obtained from the DNR Charleston office. No more than 80 people will be allowed to camp per night. These 80 people may be divided into no more than 20 different groups.

- (2) Permits will be issued on a first come first served basis.
- (3) Campsites will be occupied on a first come first served basis.
- (4) Permits are not required for day use.
- (5) Persons without permits must be off the island by one hour after sunset.
- (6) No trash is to be placed in any fire or buried.
- (7) Department maintenance facilities on the island are not open to the public.
- (8) No crab or fish pots or traps are allowed in impoundments.
- (9) No motorized vehicles, non-motorized vehicles, off road vehicles, or all-terrain vehicles are allowed on Capers Island.
- (10) No fishing is allowed from the impoundment tide gate.

G. Crab Bank Heritage Preserve.

- (1) No dogs are allowed.
- (2) No person may enter any area of the preserve designated as a nesting area for birds.
- (3) March 15 through October 15 the area is closed to all access including the intertidal zone between low and high tide waterlines.
- (4) October 16 through March 14 access is allowed only in the intertidal zone between low and high tide waterlines.
- (5) No motorized vehicles, bicycles or horses.

H. Daws Island Heritage Preserve.

Camping is allowed only by permit issued by the Department. Primitive camping only is allowed. Daws Island camping is limited to two groups of no more than eight people in each group.

I. Deveaux Bank.

- (1) No dogs are allowed.
- (2) No person may enter any area of the preserve designated as a nesting area for birds.
- (3) Closed all year above the high tide line (no seasonal closure) except in the recreation area.
- (4) No motorized vehicles, bicycles or horses.

J. Donnelley WMA.

- (1) Horseback riders must obtain a permit from the Donnelley WMA office prior to riding.
- (2) All terrain vehicles are prohibited.
- (3) Camping is prohibited.

K. Dungannon Plantation Heritage Preserve.

- (1) No person may enter any area of the preserve designated as a nesting area for birds.
- (2) Entrance to the preserve is through a designated parking area. Each person must sign in and out of the preserve at a designated entrance/exit.

L. Gopher Branch Heritage Preserve.

Public visitation is by permit only.

M. Great Pee Dee River Heritage Preserve.

- (1) Primitive camping only is allowed. Camping may occur only along riverbanks and on sandbars, which may be approached only by backpacking or boat.
- (2) Each person entering the preserve other than by boat must sign in and out at a designated entrance/exit.

N. Jim Timmerman Natural Resources Area at Jocassee Gorges.

This subsection shall apply to all Department owned and leased land within the boundaries of the Jim Timmerman Natural Resources Area at Jocassee Gorges (hereinafter referred to as Jocassee Gorges).

(1) Camping.

(a) Backcountry camping by permit will be allowed at any time during the year that the main roads allowing access to the Jocassee Gorges are not opened in connection with big game hunting. Backcountry camping is allowed by permit only at any location within the Jocassee Gorges, except for any area closed for camping by the Department. Backcountry camping is defined as minimal impact camping. No fires are allowed and each permitted camper is responsible for camping in a manner that results in no trace of the camping activity being left after breaking camp. Backcountry campers must apply for camping permits over the Department

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internet site. No camping is permitted within twenty-five (25) feet of a stream, lake, or as posted by the Department.

(b) The Foothills Trail and the Palmetto Trail pass through portions of the Jocassee Gorges. Use of the Foothills Trail and the Palmetto Trail shall be limited to hiking and primitive camping. Camping is allowed at any point along the trails and within one hundred feet of either side of the trails. Camping along the Foothills Trail and the Palmetto Trail is restricted to hikers while engaged in backpacking.

(2) Operation of motorized, non-motorized vehicles, all-terrain vehicles, and off-road vehicles. Motorized and non-motorized vehicle access to the Jocassee Gorges is limited. Highway 178 and Cleo Chapman Road (county road 143) are the only paved roads that access the property. Access by the general public to the Jocassee Gorges by motorized vehicles will follow a seasonal schedule with the exception of portions of Horsepasture and Camp Adger Roads. Road opening and closing schedules written below are given as general information. The Department may open and close any road at any time and for such duration as deemed necessary by the Department to manage the property.

(a) The operation of a motorized vehicle behind any closed gate is prohibited.

(b) Roads open to year-round public access include a section of Horsepasture Road to Jumping Off Rock (from Highway 178 only) and a section of Camp Adger Road.

(c) All roads with Green gates are seasonally open. All roads with red gates are closed to vehicular traffic. This information will be posted at all major entrances.

(d) Motorized vehicles, all terrain vehicles, and off road vehicles may be operated only on open maintained roads and parking areas except as otherwise established by posted notice or as approved by the Department.

(e) Motorized vehicles, all terrain vehicles, and off road vehicles shall not exceed speed limits posted on Department signs. On any land where no speed limit signs are posted the speed limit shall be 15 miles per hour.

(f) Subject to the authority in subsection (d) above, the operation of all terrain vehicles is restricted as follows: Operation of all terrain vehicles is restricted to one hour before sunrise to one hour after sunset each day beginning on Monday and continuing through the following Friday. A person may use an all terrain vehicle while actually engaged in hunting at any time hunting is allowed; provided, however, the operation of an all terrain vehicle is restricted to one hour before sunrise to one hour after sunset with the exception of game retrieval, and an all terrain vehicle may be used only on open roads. All terrain vehicles and off-road vehicles may not be operated on Horsepasture Road or Camp Adger Road during the periods January 16 – March 19 and May 11 – September 14 when the main roads are closed.

(g) All terrain vehicles having three (3) wheels and motorcycles constructed or intended primarily for off road use, such as dirt bikes and motocross bikes, are prohibited within the Jim Timmerman Natural Resources Area at all times.

(h) Bicycles may be ridden on any road or area that is not posted as closed to bicycles except that the Foothills Trail and Palmetto Trail are closed to bicycles.

(3) The use of hang gliders, parachutes, or similar devices is not allowed and may be deemed abuse of Department land.

O. Joiner Bank Heritage Preserve.

(1) No dogs are allowed.

(2) No person may enter any area of the preserve designated as a nesting area for birds.

P. Little Pee Dee Heritage Preserve.

(1) Primitive camping only is allowed. Camping may occur only along riverbanks and on sandbars, which may be approached only by backpacking or boat.

Q. Nipper Creek Heritage Preserve.

Public visitation is by permit only. The preserve is closed to use except by permit.

R. North Santee Bar Heritage Preserve.

(1) No dogs are allowed.

(2) No person may enter any area of the preserve designated as a nesting area for birds.

S. St. Helena Sound Heritage Preserve (Ashe Island, Beet Island, Big Island, Warren Island, and South Williman).

Camping is restricted to primitive camping in designated areas only.

T. St. Helena Sound Heritage Preserve (Otter Island).

- (1) No dogs are allowed.
- (2) Primitive camping only is allowed by permit issued by the Department. Primitive camping is restricted to designated areas and will be allowed only between November 1 and March 31.

U. Samworth WMA.

(1) Managed wetlands will be open for wildlife observation, bird watching, photography or nature study during daylight hours (1/2 hour before sunrise to 1/2 hour after sunset) from February 9 through October 31 each year. Between November 1 and February 8 these activities will be restricted to designated areas on Butler Creek and the Big Pee Dee River. All public use of this type will be by foot travel only after arriving by watercraft.

(2) The mainland nature trail will be open during daylight hours (1/2 hour before sunrise to 1/2 hour after sunset) to foot traffic only.

(3) All terrain vehicles, bicycles, and horses are prohibited.

(4) Temporary primitive camping will be available to organized groups by permit. No camping will be allowed that may conflict with organized hunts.

(5) Dirleton grounds are open to the public from 8:30 a.m. until 5:00 p.m., Monday through Friday.

V. Santee Coastal Reserve.

(1) The Santee Coastal Reserve is open during daylight hours (1/2 hour before sunrise to 1/2 hour after sunset) for limited public use year round except as listed below.

(2) Managed wetlands will be open for wildlife observation, bird watching, photography, or nature study during daylight hours (1/2 hour before sunrise to 1/2 hour after sunset) from February 9 through October 31 each year except during special hunts and events regulated by the Department.

(3) The dikes around the waterfowl impoundments will be closed, except by prior arrangement, during the period of November 1 through February 8 of the next year.

(4) Prior arrangements must be made with the Reserve Manager to use observation blinds for waterfowl.

(5) Upland trails will be available during open periods stated above.

(6) The beaches on Cedar and Murphy Islands will be open year round, seven days a week.

(7) Bicycles may be ridden on upland trails year round and on dikes from February 9 - October 31.

(8) Fishing is permitted from the Santee River dock and the Hog Pen impoundment except during scheduled waterfowl hunts. Fishing will be allowed during daylight hours (1/2 hour before sunrise to 1/2 hour after sunset). Fishing is permitted on Murphy and Cedar Island beaches at any time on a year round basis.

(9) Primitive camping is allowed year round with no registration on the beaches of Murphy and Cedar Islands. Camping on the mainland portion is restricted to the designated campground. Registration is required at the campground self-serve kiosk. Advance registration is required for groups greater than 15 people.

W. Santee-Delta WMA.

(1) Managed wetlands will be open for wildlife observation, bird watching, photography or nature study during daylight hours (1/2 hour before sunrise to 1/2 hour after sunset) from February 9 through October 31 each year except during special hunts and events regulated by the Department. Area closed to all public access from November 1 through February 8 except for special hunts and events regulated by the Department. All public use of this type will be by foot travel only.

(2) All terrain vehicles, bicycles, and horses are prohibited.

(3) Camping is prohibited.

X. Shealy's Pond Heritage Preserve.

Gasoline powered motors on boats are prohibited.

Y. Tillman Sand Ridge Heritage Preserve.

(1) Camping is allowed in designated campsites during designated hunts only.

Z. Tom Yawkey Wildlife Center.

The center is a wildlife sanctuary.

(1) The public may visit the Yawkey Center on a limited basis. Visitation is by pre-scheduled field trip only. Individual trips cannot be scheduled. Group field trip may be arranged by contacting the manager for the center. The public is advised that scheduling of field trips is entirely at the discretion of the manager in order to accommodate the basic responsibilities of the sanctuary.

(2) Camping is allowed only by permit issued by mail no less than two weeks in advance by the Department. Camping is allowed only on the beaches along the ocean front, which are accessible by boat only, between

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September 16 and May 14. Primitive camping only is allowed for a period of no more than four consecutive nights per individual permittee.

AA. Victoria Bluff heritage Preserve.

(1) No campfires or any other use of fire shall be allowed.

BB. Waccamaw River Heritage Preserve.

Primitive camping only is allowed. Camping is allowed only along riverbanks and on sandbars; campers may approach only by backpacking or boat.

CC. Watson Cooper Heritage Preserve.

Camping is restricted to primitive camping. No live plants may be cut or cleared to improve or expand a campsite. No campsites or campfires within 25 feet of a stream or creek.

DD. Webb WMA.

(1) Webb WMA is closed to the general public from one hour after official sunset to one hour before official sunrise.

(2) Overnight visitors to the Webb Center are not restricted in hours of access.

(3) No camping without a permit except for deer, turkey, and hog hunters on nights before a designated hunt.

(4) Bicycles may be ridden on any area that is not marked or posted as restricted to bicycles. No bicycle may be operated in any manner or place that will damage or degrade any feature or habitat. During scheduled big game hunts, bicycles and all terrain vehicles are prohibited except as used by legal hunters and anglers.

EE. Laurel Fork Heritage Preserve.

(1) All terrain vehicles may be ridden on the portions of Cane Break and Horsepasture roads on the Preserve subject to the same rules as the Jim Timmerman Natural Resources Area at Jocassee Gorges.

FF. Botany Bay Plantation WMA.

(1) No camping is allowed.

(2) All terrain vehicles are prohibited except those permitted by the Department for special management activities.

(3) The Fig Island shell rings are closed to all public access except organized scientific, management or educational activities permitted by the the Department.

(4) Access to the beach is by foot, bicycle or boat; no horses allowed on the beach. No dogs allowed on the beach. No collection, removal or possession of shells, fossils, driftwood or cultural artifacts is permitted.

(5) Sea Cloud Landing on Ocella Creek and all other designated access points are restricted to non-trailerred watercraft.

(6) All hunters, fishermen and visitors must obtain and complete a day use pass upon entering the area and follow instructions on the pass.

(7) Botany Bay Plantation WMA is closed to public access 1/2 hour after sunset until 1/2 hour before sunrise except for special events regulated by the Department.

(8) No person may gather, collect, deface, remove, damage, disturb, destroy, or otherwise injure in any manner whatsoever the plants, animals (except lawful hunting), fungi, rocks, minerals, fossils, artifacts, or ecofacts including but not limited to any tree, flower, shrub, fern, moss, charcoal, plant remains, or animal remains. The Department may authorize the collection of certain material upon issuance of a permit as provided in 123-206.

(9) Shorebased fishing, shrimping, and crabbing, is allowed only on the front beach and in designated areas only.

(10) The Department reserves the right to close specific areas as needed for management purposes.

(11) Alcoholic beverages are prohibited on the area.

GG. McBee WMA.

(1) All terrain vehicles are prohibited.

HH. Campbells Crossroads and Angelus Tract.

(1) All terrain vehicles are prohibited.

II. Pee Dee Station WMA.

(1) All terrain vehicles are prohibited.

JJ. Daily use cards are required for all users of Hamilton Ridge WMA, Palachucola WMA, Webb WMA, Tillman Sand Ridge Heritage Preserve, Bonneau Ferry WMA, Bear Island WMA, Donnelley WMA, Great Pee

Dee River Heritage Preserve, Belfast WMA, Congaree Bluffs Heritage Preserve, Marsh WMA, Woodbury WMA, Worth Mountain WMA, Liberty Hill WMA and Santee Cooper WMA. Cards must be in possession while on the property and completed cards must be returned daily upon leaving the property.

KK. Liberty Hill WMA

- (1) All-terrain vehicles are prohibited.
- (2) The area is closed to public access 1/2 hour after sunset until 1/2 hour before sunrise except for hunts and special events regulated by the Department.

LL. Wateree River HP WMA

- (1) All-terrain vehicles are prohibited.
- (2) The waterfowl impoundments are closed to all public access from November 1 through March 1, except for scheduled hunts.
- (3) The area is closed to public access 1/2 hour after sunset until 1/2 hour before sunrise except for special events regulated by the Department.
- (4) All users, including hunters and anglers must obtain and possess a day use pass upon entering the area and follow instructions on the pass. The completed form must be deposited in the designated container before leaving the area.
- (5) Special events may be permitted by the Department.
- (6) Horseback riding is prohibited except by special permit.

MM. Lewis Ocean Bay HP WMA

- (1) Horseback riding is also allowed during the period January 2 through March 1, subject to the restrictions in Regulation 123-203, Paragraph G, sections (2) through (11).

123-211. Terms and Conditions for the Public's Use of Department Shooting Ranges.

A. The Department may construct shooting ranges on property it owns or leases for the purpose of providing public shooting opportunity. The following rules apply to Department firearm and archery ranges:

- (1) Ranges may only be used during open days and hours of operation. Open days and hours of operation shall be designated on signs and at least one of such signs will be posted at the entrance to each Department range.
- (2) Where suitable, the Department may offer clay target shooting opportunities for the public. The Department may charge up to \$5.00 per 25 clay targets on shotgun ranges to recoup the cost of clay targets.
- (3) Approved eye and ear protection must be used at all times by shooters and spectators.
- (4) Visitors may not be under the influence of or in possession of alcoholic beverages, drugs, or other controlled substances. No alcoholic beverages, drugs, or any other controlled substances are allowed.
- (5) All firearms entering or leaving the range must be unloaded and properly cased until on the firing line. All firearms must be unloaded and properly cased before leaving the firing line.
- (6) Loading and unloading of the firearm may only be completed at the firing line with the muzzle pointed down range.
- (7) All firearms must be unloaded and actions open while targets are being hung or checked.
- (8) Persons under the age of 16 must be accompanied by an adult (age 21 or older) who is responsible for their actions. Persons under the age of 16 are not allowed to be on the firing line at any pistol range contained within a Department range facility. In addition, persons under the age of 21 in possession of a pistol on a Department range must be accompanied by an adult age 21 or older.
- (9) Only paper or cardboard targets may be used.
- (10) Incendiary or explosive targets are prohibited.
- (11) All targets must be located so that a bullet will strike between the base of and halfway up the backstop/berm, so that no bullet strikes the ground in front of the backstop/berm.
- (12) All visitors must clean up their areas. All targets, litter, and spent ammunition cases must be removed by the shooter before leaving.
- (13) No shooter may fire from points other than designated firing points. Shooters may shoot targets in their lane only.
- (14) Food, drinks, and tobacco products are prohibited on the firing line at all times.
- (15) Climbing on berms or benches is prohibited.

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(16) Open toed shoes are prohibited on the firing line.

(17) No firearm of a .50 caliber or greater may be used. Muzzle loaders above .50 caliber are allowed.

(18) The following ammunition types are prohibited: tracer, incendiary, explosive, armor piercing, or penetrator rounds.

(19) The possession of a fully automatic weapon is prohibited.

(20) Arrows with broadheads are prohibited on Department archery ranges.

(21) Any activity that would be considered to present a safety hazard is prohibited.

### **Fiscal Impact Statement:**

These amendments of Regulation 123-203 and 123-204 will result in increased public recreational opportunities on public properties throughout the state. Local economies should benefit from sales of hunting supplies, food and overnight accommodations, and sales taxes on these items will also directly benefit government.

### **Statement of Rationale:**

Rationale for the formulation of these regulations is based on over 70 years of experience by SCDNR in establishing public hunting and recreational use areas. New areas are evaluated based on location, size, natural resource values, sensitive elements, access and recreation use potential. Regulations for the use of shooting ranges is necessary to insure safety of users

Document No. 4702

### **DEPARTMENT OF REVENUE**

#### CHAPTER 117

Statutory Authority: 1976 Code Sections 12-4-320 and 12-21-735

### **Synopsis:**

The South Carolina Department of Revenue is considering adding SC Regulation 117-1600 to implement the imposition of the cigarette tax via tax stamps as set out in Act No. 145 of 2016.

This regulation would contain provisions concerning reporting requirements under Chapters 47 and 48 of Title 11 along with provisions regarding affixing tax stamps, purchasing tax stamps, features of tax stamps, exemptions and refunds, display, storage, transfer, and transport of cigarettes. Tax stamps will be required as of January 1, 2019 in accordance with Act No. 145 of 2016.

The Notice of Drafting was published in the *State Register* on August 26, 2016.

### **Instructions:**

Add SC Regulation 117-1600 to implement the imposition of the cigarette tax via tax stamps as set out in Act No. 145 of 2016.

### **Text:**

#### **117-1600. Cigarette Taxes.**

Chapter 21 of Title 12 imposes an excise tax on cigarettes. Chapters 47 and 48 of Title 11 impose certain reporting requirements on cigarette distributors. The following subsections address various aspects of the taxes imposed on cigarettes as well as reporting requirements imposed on distributors under Chapters 47 and 48 of Title 11.



**117-1600.1. Reporting Requirements.**

All distributors shall make a report to the Department of Revenue on a monthly basis with respect to sales of cigarettes on a form prescribed by the Department. The report shall be due on or before the 20th day of the month following the month in which the sales took place. This report becomes delinquent if it is postmarked after the 20th day (report due on or before the 20th) following the close of the period. This report is required under Section 11-48-50(A) which provides that “distributors also shall provide this information and documentation to the Department of Revenue and any other documentation requested by the Department of Revenue.” Upon filing the report required by this regulation with the Department, the report shall be considered filed with the Attorney General’s Office. The report shall include, but is not limited to, the following information for 20 count and 25 count cigarette packs, cigarette stamps, and non-participating manufacturer cigarettes, respectively:

**Cigarettes**

Each distributor shall file a cigarette report as part of the monthly report which includes, but is not limited to, the following information:

- (1) Beginning inventory;
- (2) Purchases during the month (listed by name of manufacturer, the total number of 20 count packs purchased from each manufacturer, the total number of 25 count packs purchased from each manufacturer, the total number of 20 count packs received from all sources, and the total number of 25 count packs received from all sources);
- (3) Total of beginning inventory and purchases during month;
- (4) South Carolina tax exempt sales (listed by state, name of manufacturer, the total number of 20 count packs purchased from each manufacturer, the total number of 25 count packs purchased from each manufacturer, the total number of all 20 count packs invoiced exempt, and the total number of all 25 count packs invoiced exempt);
- (5) Ending inventory;

**Cigarette Stamps**

Each distributor shall file a cigarette stamp report as part of the monthly report which includes, but is not limited to, the following information:

- (1) Beginning inventory of taxable and tax exempt stamps;
- (2) Taxable and tax exempt stamps received during the month; and
- (3) Ending inventory of taxable and tax exempt stamps.

**Non-participating Manufacturer Cigarettes**

All distributors must also file a report of tax paid cigarettes from non-participating manufacturers as part of the monthly report, even if there were no purchases made from non-participating manufacturers during the reporting period. This report shall include, but is not limited to, the file number of the distributor, the period end date, and the following information for each non-participating manufacturer:

- (1) Name and address of each non-participating manufacturer;
- (2) Full brand name of the product sold;
- (3) Name, address and file number of the person from whom each pack of cigarettes was purchased;
- (4) Number of packs of cigarettes sold in South Carolina;
- (5) Number of cigarettes per pack (pack size of cigarettes sold by distributor and produced by non-participating manufacturers); and
- (6) Number of packs of cigarettes sold in South Carolina *times* the number of cigarettes per pack.

**Other Information and Report Provisions**

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All distributors shall provide any other information deemed necessary by the Department of Revenue to enforce Chapters 47 and 48 of Title 11 as well as the cigarette provisions of Chapter 21 of Title 12. The Department, at its discretion, may combine the report required under this regulation with the tax return for taxes imposed on other tobacco products under Chapter 21 of Title 12.

### 117-1600.2. Stamps Required on Cigarettes.

#### Tax Stamps

(a) Each distributor of cigarettes taxable under Article 5 of Chapter 21 of Title 12 who first receives untaxed cigarettes for sale or distribution in South Carolina is subject to the tax imposed in S.C. Code Section 12-21-620. A licensed South Carolina distributor may not sell, distribute or ship unstamped cigarettes to other South Carolina distributors located in South Carolina. Payment of the tax is evidenced by a cigarette tax stamp affixed to each individual package of cigarettes by distributors before being sold, distributed, or shipped to another person; however, each individual package of cigarettes must be stamped in accordance with Code Section 12-21-735 and within any time period that may be required under the law so as to not be considered contraband.

A distributor may affix stamps only to packages of cigarettes obtained directly from a manufacturer or importer with a valid permit issued pursuant to 26 U.S.C. Section 5713. If cigarettes are manufactured in this State and sold directly to consumers in this State by a manufacturer or importer, the cigarette packages must be stamped by a licensed distributor before being sold.

Every distributor who first receives within this State manufactured cigarettes on which the required South Carolina cigarette tax stamp has not been affixed shall purchase all necessary stamps directly from the Department of Revenue, or the person designated to receive payment on behalf of the Department, and all such distributors are prohibited from selling or otherwise disposing of South Carolina cigarette tax stamps to any other person, firm, corporation, club or association.

Orders for stamps shall be sent directly to the Department of Revenue, or the person distributing cigarette stamps on behalf of the Department, on order forms prescribed for such use and provided by the Department. The Department of Revenue may, at its discretion, allow or require orders for cigarette stamps to be submitted by paper form or electronically.

The Department also has the discretion to authorize the sale of cigarette tax stamps on thirty-day credit periods. If authorized by the Department, distributors may purchase cigarette tax stamps on thirty-day credit periods, provided a bond has been executed with a solvent surety company qualified to do business in South Carolina in an amount equal to 110% of the distributor's estimated tax liability for thirty days, but not less than \$2,000. For credit purchases, payment for each calendar month's liability is due on or before the 20<sup>th</sup> day of the following month, including Sundays and holidays. For example, if a credit purchase is made during May, full payment for that credit purchase is due on or before the 20<sup>th</sup> day of June.

In the event of default in the bonding or payment provisions, the Department has discretion to revoke a distributor's privilege to purchase stamps. Failure to timely pay will also subject a distributor to all applicable penalties, interest, and possible revocation of the distributor's license.

(b) Stamps may only be affixed to packages of cigarettes that are listed on the South Carolina Tobacco Directory published by the Office of the Attorney General pursuant to Section 11-48-30.

(c) No distributor, whose place of business is located without the State of South Carolina and who is engaged in the sale of cigarettes, shall be permitted to purchase South Carolina cigarette tax stamps unless and until such distributor agrees in writing to furnish the South Carolina Department of Revenue any information it may deem necessary concerning the amount of such sales and to whom such sales have been made, and to open for

inspection by the Department, its agents or employees any books, records, papers, or memoranda, bearing upon the amount of tax payable to the Department on account of such sales to South Carolina residents or merchants.

(d) No distributor who is engaged in the sale of cigarettes shall be permitted to purchase South Carolina cigarette tax stamps unless and until such distributor is current in filing any and all reports and other documentation required by this regulation.

#### Exempt Stamps

A distributor that receives or possesses cigarettes intended for sale or distribution into or within South Carolina which are exempt from the tobacco stamp tax under Code Section 12-21-100 shall affix stamps to each individual package of cigarettes that indicate the package of cigarettes is exempt from tax. Orders for exempt stamps shall be sent directly to the Department of Revenue, or the person distributing cigarette stamps on behalf of the Department, on order forms prescribed for such use and provided by the Department.

#### Stamp Requirements

The cigarette tax stamps must:

- (1) Be of a type that when affixed on each individual package the stamps cannot be removed without being mutilated or destroyed;
- (2) Contain tamper-evident features as determined by the Department of Revenue to make it difficult to remove or tamper with the stamp as well as anti-counterfeit features as determined by the Department of Revenue;
- (3) Contain a unique serial number or other mark which permits identification of the distributor that affixed the stamp to the particular package of cigarettes; and
- (4) Note whether the taxes prescribed by Chapter 21 of Title 12 were paid or whether the package of cigarettes was exempt from the taxes.

#### **117-1600.3. Exemptions and Refunds.**

The only refunds which will be made with respect to cigarette stamp taxes will be for the following:

- (1) Cigarettes shipped out of the geographic limits of the State of South Carolina in accordance with the provisions of Section 12-21-90;
- (2) Damaged cigarettes in accordance with the provisions of Section 12-21-110 and any applicable regulations of the South Carolina Department of Revenue;
- (3) Damaged tax stamps;
- (4) Cigarettes returned as unsellable;
- (5) Cigarettes unrecoverable as a result of bad debt; and
- (6) Any other circumstance authorized by the General Assembly.

For purposes of determining the refund for cigarettes unrecoverable as a result of a bad debt, a bad debt is an amount that is charged off as a bad debt for state income tax purposes.

In the event any cigarettes to which tax stamps have been affixed are delivered to the Federal Government or any instrumentality thereof, the value of such tax stamps will not be refunded by the Department of Revenue.

All refunds must be properly documented in order for the Department of Revenue to issue refunds. Proper documentation for refunds includes, but is not limited to, bills of lading, shipment receipts, documentation for shipments of cigarettes returned to a manufacturer, and any other documentation as determined by the Department of Revenue. The Department will develop forms and processes for the purpose of authorizing the refunds listed above.

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### 117-1600.4. Cigarettes Displayed in Vending Machines.

Cigarettes displayed for sale in vending machines, where the design of such machine permits such arrangement, shall be so arranged that the cigarette tax stamp required to be affixed to each individual package is at all times in plain view and can be easily seen by duly authorized representatives of the South Carolina Department of Revenue. In any case where the design or manufacture of any such machine is such that the contents thereof are not readily visible, the owner or person in control of such machine shall leave with some responsible person at the location of such machine, a key or other relevant means to access the machine so that the contents thereof may be inspected upon demand by duly authorized representatives of the Department of Revenue.

### 117-1600.5. Stamping and Storage of Cigarettes in South Carolina by a Distributor.

#### (A) Stamping Methods

Distributors generally stamp and store cigarettes in one of two methods – a “Stamp-to-Order” method and an “Advanced Stamping” method. These methods can be briefly described as follows:

**Stamp-to-Order Method:** Under this method, cigarettes are stamped only as orders are received. Once the cigarettes are stamped, distributors typically load the order onto a truck or place the order in a staging area for loading onto a truck either later that day or the next day. The stamp-to-order method is only permissible in South Carolina if the law does not require that cigarettes be stamped within a specified time period in order not to be considered contraband.

**Advanced Stamping Method:** Under this method, cigarettes are stamped before orders are received. If the law requires that cigarettes be stamped within a specified time period in order not to be considered contraband, then distributors must stamp all cigarettes within the time period established by law so as not to be considered contraband.

#### (B) Storage Requirements

The storage requirements established in this section only apply to warehouses located in South Carolina. Each warehouse in South Carolina which, in addition to selling South Carolina tax paid cigarettes, sells cigarettes in another state or cigarettes which are tax exempt in South Carolina, must obtain approval of its storage method from the Department in advance of implementation. South Carolina warehouses which only sell South Carolina tax paid cigarettes are not required to obtain approval of their storage methods.

#### Stamp-to-Order

If a distributor is permitted under this regulation and approved by the Department to use the stamp-to-order method, then the distributor is not required to maintain separate compartments or areas for South Carolina tax paid cigarettes, cigarettes to be sold in another state, and cigarettes to be sold tax exempt in South Carolina. However, the distributor’s staging areas must be clearly marked and separated to avoid commingling of South Carolina tax paid cigarettes with cigarettes to be sold in another state or cigarettes to be sold tax exempt in South Carolina. The Department must approve the distributor’s staging areas in advance of implementation. The Department will provide a copy of the written approval to the distributor to maintain for the distributor’s records. If the distributor at a later date redesigns its warehouse or system whereby the Department-approved staging areas are changed, such change must be approved by the Department in advance of implementation.

#### Advanced Stamping

If a distributor is approved by the Department to use the advanced stamping method, then the distributor is required to maintain separate compartments or areas for cigarettes. Distributors who follow the advanced stamping method must, at a minimum, maintain one separate area for South Carolina tax paid cigarettes and one

separate area for cigarettes to be sold in another state and/or cigarettes to be sold tax exempt in South Carolina. Alternatively, distributors may choose to maintain a separate area for each respective state and a separate area for cigarettes to be sold tax exempt in South Carolina.

These areas may be separated by creating a separate room(s), compartment(s), by using a bin(s), or other manner of storage clearly separating South Carolina tax paid cigarettes from cigarettes to be sold in another state and/or cigarettes to be sold tax exempt in South Carolina. Distributors must clearly mark the separate areas with signs warning employees regarding which cigarettes are South Carolina tax paid cigarettes, which cigarettes are to be sold in another state, and which cigarettes are to be sold tax exempt in South Carolina.

Any distributor operating a warehouse where cigarettes are stamped in advance must obtain approval from the Department for its separate room(s), compartment(s), bin(s), or other manner of storage in advance of implementation. The Department will provide a copy of the written approval to the distributor to maintain for the distributor's records. If the distributor at a later date redesigns its warehouse or system whereby the Department-approved separate room(s), compartment(s), bin(s), or other manner of storage is changed, such change must be approved by the Department in advance of implementation.

#### (C) Other Stamping and Storage Methods

There may be other stamping and storage methods than stamp-to-order and advanced stamping. All other stamping and storage methods must be approved by the Department on a case-by-case basis. Written approval for another stamping and storage method must be obtained from the Department in advance of implementation. The Department will provide forms for distributors to submit requests for approval of stamping and storage methods, and approval will be determined on a warehouse-by-warehouse basis. The Department will provide a copy of the written approval to the distributor to maintain for the distributor's records. If the distributor at a later date redesigns its warehouse or system whereby the Department-approved stamping and storage method is changed, such change must be approved by the Department in advance of implementation.

The provisions of this subsection do not apply to distributors who only sell South Carolina tax paid cigarettes and who do not sell cigarettes in another state or cigarettes which are tax exempt in South Carolina.

#### **117-1600.6. Samples.**

Cigarettes shipped into South Carolina by manufacturers to representatives, who are licensed in accordance with Code Section 12-21-660, for promotional use shall be accompanied by an invoice stating the name of each brand, the number of packages of each brand, and the number of cigarettes in each package for each brand included in the shipment. Each package of cigarettes shipped into South Carolina for promotional use must bear either the cigarette tax stamp or the tax exempt stamp required by Code Section 12-21-735, and each such package is subject to South Carolina state and local use tax.

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

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

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

The purpose of adding SC Regulation 117-1600 is to implement the imposition of the cigarette tax via tax stamps as set out in Act No. 145 of 2016.

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Document No. 4731

### DEPARTMENT OF REVENUE

#### CHAPTER 117

Statutory Authority: 1976 Code Section 12-4-320

117-305.5. Exemption Meals Sold to School Children.

#### **Synopsis:**

The South Carolina Department of Revenue is considering amending SC Regulation 117-305.5 to comply with Code Section 12-36-2120(10). Code Section 12-36-2120(10)(a) provides a sales tax exemption for sales of meals to school children and sales of foodstuffs to schools which are used in furnishing meals to school children, if the sales or use are within school buildings and are not for profit. SC Regulation 117-305.5 discusses sales of meals under Code Section 12-36-2120(10)(a), but it does not address sales of foodstuffs.

The Notice of Drafting was published in the *State Register* on September 23, 2016.

#### **Instructions:**

Amend SC Regulation 117-305.5 to comply with Code Section 12-36-2120(10). SC Regulation 117-305.5 discusses sales of meals under Code Section 12-36-2120(10)(a), but it does not address sales of foodstuffs.

Print regulation as shown below.

#### **Text:**

117-305.5. Exemption Meals Sold to School Children.

Meals sold within school buildings, not for profit, to school children are exempted from the sales tax by Section 12-36-2120(10). Further, foodstuffs sold to schools which are used in furnishing meals to school children are also exempted from the sales and use tax by Section 12-36-2120(10). This exemption is construed to include only sales of meals to pupils of kindergartens, grammar and high schools, either public or private, and sales of foodstuffs to schools which are used in furnishing meals for pupils of kindergartens, grammar and high schools, either public or private, where it can be shown that the sale or use of the meals or foodstuffs occurs within the school building and there is not a profit from such sale or use. Schools operating school lunch programs are required to obtain a retail license and remit the tax on all sales of meals to persons other than school children.

Meals sold by any public or private educational institution or their agent, other than those exempted by Section 12-36-2120(10), described above, are subject to the sales tax when a separate charge per meal is made to the consumer. This includes cash sales, sales at special events and meals sold by commissaries at such institutions. Tax on these sales must be remitted by the institution to the department based on gross proceeds.

Educational institutions operating boarding facilities where meals and beverages are furnished without a separate charge being made or where a lump sum charge is made by the month or by the term are deemed to be the users or consumers of the prepared meals if same are purchased or acquired, or the users or consumers of the unprepared food products if such educational institutions or their agents purchase such products and prepare the meal. The seller of such prepared meals shall be required to report and remit the tax due on the gross proceeds of such prepared meals to the educational institution. The seller of unprepared food products to an educational institution or its agent purchasing such products and preparing the meals shall be required to report and remit the tax due on the gross proceeds of such raw foodstuffs.

Sales to consumers of prepared meals, foodstuffs or beverages on educational institution premises by an entity other than the educational institution or its agent, are sales at retail and the seller is required to obtain a retail license for each location, and report and remit the tax due on the gross proceeds of such sales.

**Fiscal Impact Statement:**

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

**Statement of Rationale:**

The purpose of this amendment to SC Regulation 117-305.5 is to clarify that there is a sales tax exemption provided by Code Section 12-36-2120(10) for sales of foodstuffs to schools which are used in furnishing meals to school children, if the sales or use are within school buildings and are not for profit.

Document No. 4664  
**DEPARTMENT OF REVENUE**  
 CHAPTER 117  
 Statutory Authority: 1976 Code Section 12-4-320

117-307. Hotels, Motels, and Similar Facilities.

**Synopsis:**

The South Carolina Department of Revenue is considering amending SC Regulation 117-307 to add a new subsection, 117-307.7, to address the application of the sales and use tax to hurricane rental insurance charges. The proposal addresses a change in policy due to the amendment of Code Section 12-36-920 by Act No. 172 of 2014. The proposal will summarize the treatment of both optional and mandatory hurricane rental insurance charges under Code Section 12-36-920.

The Notice of Drafting was published in the *State Register* on July 22, 2016.

**Instructions:**

Amend SC Regulation 117-307 to add a new subsection, 117-307.7, to address the application of the sales and use tax to hurricane rental insurance charges.

**Text:**

117-307.7. The Application of Tax to Hurricane Rental Insurance Charges Imposed by Hotels, Motels, and Other Facilities.

An optional charge for hurricane rental insurance is not subject to either the 7% sales tax on accommodations under Code Section 12-36-920(A) or the 6% sales tax as an “additional guest charge” under Code Section 12-36-920(B). However, if the charge for hurricane rental insurance is mandatory, then the charge is subject to the 7% sales tax as a part of the charge for furnishing the sleeping accommodations.

Note: If a mandatory evacuation order or hurricane causes the complete cancellation of a person’s vacation because law enforcement will not allow anyone to enter the area during the entire time originally reserved for the vacation, or a hurricane destroys the rental unit and the vacationer cannot take occupancy of the unit or any replacement unit during the entire time originally reserved for the vacation, then the sleeping accommodations

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were not “furnished” and the charges for the sleeping accommodations are not subject to the tax. In addition, charges for the optional or mandatory hurricane rental insurance are not subject to the tax.

### **Fiscal Impact Statement:**

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

### **Statement of Rationale:**

The purpose of this amendment to SC Regulation 117-307 is to address the application of the sales and use tax to hurricane rental insurance charges in light of recent changes to Code Section 12-36-920 enacted pursuant to Act No. 172 of 2014.

Document No. 4649  
**SECRETARY OF STATE**  
CHAPTER 113

Statutory Authority: 1976 Code Sections 35-1-101 et seq.

113-1 through 113-26. Securities Division.

### **Synopsis:**

The General Assembly passed the South Carolina Uniform Securities Act of 2005 (Section 35-1-101, et al) that became effective January 1, 2006. The Act established the Attorney General of South Carolina as Administrator and Securities Commissioner. The Act removed Securities from the Secretary of State’s Office and transferred those duties and responsibilities to the Attorney General’s Office.

The proposed regulation will repeal the regulations promulgated by the Secretary of State concerning its duties and responsibilities with regards to securities in the predecessor chapter to the Securities Act of 2005, allowing the Attorney General to promulgate regulations regarding Securities as the Securities Commissioner under the Act. The regulations to be deleted are found in Chapter 113, Article 1 (Regulations 113-1 through 113-26) and were initially printed in State Register Volume 17, Issue No. 5, Part 3, eff. May 28, 1993.

The Notice of Drafting was published in the State Register on March 25, 2016.

### **Instructions:**

Remove the text of Chapter 113, Article 1 of the South Carolina Code of Regulations, which is titled “SECURITIES DIVISION” and add “REPEALED” following “SECURITIES DIVISION.” The regulations to be deleted are found in Chapter 113, Article 1 (Regulations 113-1 through 113-26) and were initially printed in State Register Volume 17, Issue No. 5, Part 3, eff. May 28, 1993.

### **Text:**

#### CHAPTER 113

#### SECRETARY OF STATE

(Statutory Authority: 1976 Code §§ 35-1-50, 35-1-60, 35-1-70, 35-1-150, 35-1-170, 35-1-310, 35-1-330, 35-1-410, 35-1-510, 35-1-520, 35-1-530, 35-1-590, 35-1-600 to 35-1-620, 35-1-950, 35-1-970, 35-1-990, 35-1-1010, and 35-1-1240)



## ARTICLE 1

## SECURITIES DIVISION [REPEALED]

**Fiscal Impact Statement:**

The Office of the Secretary of State anticipates that there will be no costs incurred by the State and its political subdivisions in complying with the proposed repeal of regulations.

**Statement of Rationale:**

Since the time when the Secretary of State published regulations regarding securities in the State Register, the General Assembly passed the South Carolina Uniform Securities Act of 2005 (Section 35-1-101, et al) that became effective January 1, 2006. The Act established the Attorney General of South Carolina as Administrator and Securities Commissioner. The Act removed Securities from the Secretary of State's Office and transferred those duties and responsibilities to the Attorney General's Office, rendering the existing regulations inapplicable.

Document No. 4685

**DEPARTMENT OF TRANSPORTATION****CHAPTER 63**

Statutory Authority: 1976 Code Section 57-3-110(8)

63-30. Commission Approval of Actions.

**Synopsis:**

Section 57-1-370(N) of the Code of Laws, 1976, as amended, was repealed by Act 275 of 2016. Regulation 63-30 sets forth the standards and process for the SCDOT Commission's approval required by the former Section 57-1-370(N). Regulation 63-30 is no longer required or needed due to the repeal of Section 57-1-370(N). Therefore, SCDOT proposes to repeal Regulation 63-30 in its entirety. This change was approved by the SCDOT Commission on December 1, 2016.

A Notice of Drafting for the proposed changes to Regulation 63-30 was published in the *State Register* on September 23, 2016.

**Instructions:**

Delete Regulation 63-30 in its entirety as shown below.

**Text:**

63-30. Repealed.

**Fiscal Impact Statement:**

SCDOT does not anticipate additional costs to the State or its political subdivisions as a result of the proposed repeal of Regulation 63-30.

**Statement of Rationale:**

Section 57-1-370(N) of the Code of Laws, 1976, as amended, was repealed by Act 275 of 2016. Regulation 63-30 sets forth the standards and process for the SCDOT Commission's approval required by the former Section

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57-1-370(N). Regulation 63-30 is no longer required or needed due to the repeal of Section 57-1-370(N). Regulation 63-30 should be repealed.

Document No. 4684  
**DEPARTMENT OF TRANSPORTATION**  
CHAPTER 63  
Statutory Authority: 1976 Code Section 57-3-110(8)

63-100. Secretary of Transportation Approval of Actions.

### **Synopsis:**

Act 114 of 2007 restructured governance of South Carolina Department of Transportation (SCDOT). Sections 57-1-460 and 470 of the Code of Laws, 1976, as amended, enacted pursuant to Act 114, give the SCDOT Commission oversight of the approval of requests for routine operations and maintenance and emergency repairs. Regulation 63-100 sets forth the procedures and standards for Commission oversight of these operational approvals.

Act 275 of 2016 further restructured the governance of SCDOT. Act 275 repealed many of the provisions of Act 114 of 2007 that had given the SCDOT Commission oversight of operational matters. For example, Act 275 repealed Section 57-1-370(N), which required the Commission to approve all requests for resurfacing, new signals, curb cuts, bike lanes and construction projects under ten million dollars. It appears that the failure of Act 275 to repeal Sections 57-1-460 and 470 was an oversight. SCDOT anticipates that the General Assembly during its 2017 session will repeal Sections 57-1-460 and 470 of the Code of Laws, 1976, as amended. Such repeal will make Regulation 63-100 unnecessary. Therefore, SCDOT is proposing that Regulation 63-100 be repealed, contingent upon General Assembly's action making the regulation unnecessary. The SCDOT Commission approved this change on December 1, 2016.

A Notice of Drafting for proposed changes to Regulation 63-100 was published in the *State Register* on September 23, 2016.

### **Instructions:**

Delete Regulation 63-100 in its entirety as shown below.

### **Text:**

63-100. Repealed.

### **Fiscal Impact Statement:**

SCDOT does not anticipate additional costs to the State or its political subdivisions as a result of the proposed repeal of Regulations 63-100.

### **Statement of Rationale:**

Regulation 63-100 will be unnecessary if the General Assembly, as it is expected to do, takes action in its to remove Commission oversight of approvals of routine operations and maintenance and emergency repairs pursuant to Sections 57-1-460 and 470 of the Code of Laws of South Carolina, 1976, as amended.

Document No. 4683  
**DEPARTMENT OF TRANSPORTATION**  
 CHAPTER 63  
 Statutory Authority: 1976 Code Section 57-3-110(8)

63-10. Transportation Project Prioritization.

**Synopsis:**

South Carolina Department of Transportation (SCDOT) proposes to amend Regulation 63-10 regarding Transportation Project Prioritization to add new definitions; change the name of the “State Comprehensive Plan” to the “Statewide Multimodal Transportation Long Range Plan” (“Multimodal Plan”); clarify that there are multiple project ranking lists in each program category, not one statewide ranking list; delete State Infrastructure Bank projects as projects not subject to the project prioritization process; clarify how SCDOT considers the 57-1-370(B)(8) criteria in its project development process. These amendments were approved by the SCDOT Commission on December 1, 2016.

A Notice of Drafting for the proposed amendments to Regulation 63-10 was published in the *State Register* on September 23, 2016.

**Instructions:**

Print Chapter Title and Regulation 63-10 as shown below.

**Text:**

CHAPTER 63  
 DEPARTMENT OF TRANSPORTATION  
 ARTICLE 1  
 PROJECT PRIORITIZATION

63-10. Transportation Project Prioritization.

A. Definition of Terms.

1. “Commission” means the governing board of the Department of Transportation.
2. “Council of Government (“COG”)” means the entity organized pursuant to S.C. Code Section 6-7-110 and designated to carry on the continuing, comprehensive, cooperative transportation planning process for a rural area.
3. “Department” or “SCDOT” means the South Carolina Department of Transportation.
4. “Metropolitan Planning Organization (“MPO”)” means the entity designated to carry on the continuing, comprehensive, cooperative transportation planning process for an urbanized area in accordance with 23 USCA 134 and applicable regulations.
5. “Project priority lists” means priority ranking of projects within program categories proposed for inclusion in the State Transportation Improvement Program (“STIP”) or State Program. The priority lists shall be established by the Commission based upon engineering recommendations and advice, application of the relevant criteria set out in S.C. Code Section 57-1-370 (B)(8), and any other criteria that supports the purpose and need for the projects in each program category.
6. “Secretary” means the Secretary of Transportation of the Department.
7. “State Highway Engineer” means the deputy director of the division of engineering of the Department.
8. “State Highway System” means the system of roads that the Department is responsible for maintaining pursuant to Section 57-5-10 of the S. C. Code of Laws, 1976, as amended.
9. “Statewide Multimodal Transportation Long Range Plan” (“Multimodal Plan”) is a long-range statewide transportation plan with a minimum 20-year forecast period at the time of adoption that provides for the

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development and implementation of the multimodal transportation system for the State as required by Section 57-1-370(A). It shall be consistent with federal planning requirements. It includes by reference all applicable plans, policies or reports relevant to the development of the plan. Projects from the Multimodal Plan may be ultimately included in the STIP or State Program.

10. "Statewide Transportation Improvement Program ("STIP")" means a prioritized program of federally funded transportation projects or phases of projects and other regionally significant projects. The STIP must cover a period of at least four years and must be updated at least once every four years. The STIP must be consistent with the Multimodal Plan and MPO Transportation Improvement Programs ("TIPs"). All federally funded projects and/or categories of projects are required to be included in the STIP in order to be eligible for federal funds pursuant to Title 23 and Title 49, Chapter 53 of the United States Code.

11. "State Program" includes the state non-federal aid improvement program and maintenance activities funded wholly by state funds administered by the Department without federal funding participation.

12. Transportation Asset Management Plan ("TAMP") is a performance and risk based decision making tool designed to assist the Department in analyzing long-term system performance and condition to guide investment decisions. The TAMP is based on a 10-year horizon. It includes objectives and performance measures for preservation and improvement of the State Highway System. It is used to establish fiscally constrained performance goals for transportation infrastructure assets such as pavements and bridges.

B. The Statewide Multimodal Transportation Long Range Plan ("Multimodal Plan").

1. The Multimodal Plan will be updated approximately every five years, or more frequently if deemed appropriate by the Commission. The plan will be developed in accordance with all applicable federal guidelines and regulations, including a minimum 20-year forecast period estimating future transportation needs and projected costs. It will include goals and objectives for long-term strategies for addressing transportation needs across the State.

2. The Multimodal Plan will be subdivided into at least the following categories:

- a. bridges;
- b. interstates;
- c. pavements;
- d. mass transit;
- e. statewide significant corridors;
- f. passenger and high speed rail;
- g. rail corridor preservation;
- h. non-motorized transportation modes;
- i. State Strategic Highway Safety Plan;
- j. MPO long-range plans;
- k. COG long-range plans; and
- l. statewide plan for 20-year routine maintenance needs.

3. The Multimodal Plan will include a public involvement plan providing for multiple opportunities for input by an advisory task force or committee, COG or MPO, transportation user groups and the general public. A copy of the draft plan will be made available to the public for review and comment at each engineering district office and COG office.

4. The Secretary of Transportation will present the Multimodal Plan to the Commission for approval along with all comments received. After approval by the Commission, the final Multimodal Plan will be published on the SCDOT website. The Multimodal Plan may be revised from time to time as permitted by federal law or regulation.

C. Project Priority Lists.

1. The Commission shall establish project priority lists for each program category proposed to be included in the STIP and the State non-federal aid program. The Secretary shall present a recommendation for Commission approval using a detailed analysis and evaluation applying the specific criteria applicable to each program category. Local option sales tax projects and projects funded solely by C-Funds are excluded from the project prioritization process established by S.C. Code Section 57-1-370(B)(8).

2. The project priority lists provide information to the Commission and the public. The order in which projects appear in the priority lists is the order in which those projects will be placed in the STIP unless the Commission provides a written justification based upon circumstances that warrant a deviation from the

established order on the lists. The circumstances upon which the Commission may deviate from the lists are significant financial or engineering considerations, delayed permitting, force majeure, pending legal actions directly related to the proposed project that is bypassed, federal law or regulation, or economic growth.

3. The State Highway Engineer shall develop a ranking process for applying uniform and objective criteria applicable to each program category. The ranking processes will be described in engineering directives issued by the State Highway Engineer. The ranking processes shall list the criteria to be considered in each program category, and include a methodology for applying the criteria and the weight to be accorded each criterion where applicable. The criteria shall include any criteria listed in S.C. Code Section 57-1-370 (B)(8) which is relevant to the program category and any other criteria relevant to the program category.

4. In program categories where evaluating environmental impacts is an approved criterion for prioritization, environmental impacts to be evaluated should consider the potential adverse effects of the project on natural resources.

5. Alternative transportation solutions will be considered as a part of the environmental review process rather than during the project prioritization process.

6. Local land use plans will be considered as part of the long range planning process rather than during the project prioritization process.

7. In program categories where evaluating potential for economic development is an approved criterion for prioritization, the evaluation of potential economic development will include a consultation with the Department of Commerce as well as the use of transportation economic development models.

8. Financial viability, including a life cycle analysis of estimated maintenance and repair costs over the expected life of the project, will be considered in the development of the TAMP rather than during the project prioritization process.

#### D. Statewide Transportation Improvement Program.

1. A draft of a new STIP or any revision to the STIP to adjust category or project information relating to cost, schedule, scope, and priority will be prepared under the direction of the Secretary of Transportation and presented to the Commission for consideration and approval. The draft STIP will include fiscally constrained project cost and schedule information for the reporting period and will be based on estimated federal-aid funding levels by program. The draft STIP will be made available to the public for review and comment at each SCDOT district office and at the COG offices.

2. The draft STIP will be presented to the Commission for review along with any relevant project priority rankings, the recommendations of local transportation technical committees, and all public comments received. The Secretary may make recommendations to the Commission regarding any funding changes to the annual allocation plan resulting from federal legislation.

3. The STIP adopted and approved by the Commission will reflect Commission decisions on the overall funding distribution for the federal-aid programs during the years covered by the STIP. After approval by the Commission the STIP will be submitted to the Federal Highway Administration and the Federal Transit Administration for final approval and published in the SCDOT website.

#### E. State Program.

1. A draft of a new State Program or any revision to the State Program to adjust category or project information relating to cost, schedule, scope, and priority will be prepared under the direction of the Secretary and presented to the Commission for consideration and approval. The draft State Program will include fiscally constrained project cost and schedule information for the reporting period and will be based on estimated funding levels by program. The draft State Program will be made available to the public for review and comment at each SCDOT district office and at the COG offices.

2. The draft State Program will be presented to the Commission for review along with any relevant project priority rankings, and all public comments received. The Secretary may make recommendations to the Commission regarding any funding changes to the annual allocation plan. The State Program adopted and approved by the Commission will reflect Commission decisions on the overall funding distribution for the program during the years covered by the State Program.

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### **Fiscal Impact Statement:**

SCDOT does not anticipate additional costs to the State or its political subdivisions to comply with the proposed amendments to the regulations.

### **Statement of Rationale:**

Section 57-1-370(B)(8) of the Code of Laws, 1976, as amended, requires the SCDOT Commission to prioritize transportation projects using certain statutory criteria. Section 5 of Act 114 of 2007, formerly codified as Section 57-1-370(H), required SCDOT to promulgate regulations to set forth procedures for prioritization. The purpose of the proposed amendments is to clarify and update the processes and procedures described in the current regulations. There are no scientific or technical studies necessary for these amendments.