SOUTH CAROLINA STATE REGISTER DISCLAIMER

SOUTH CAROLINA STATE REGISTER

PUBLISHED BY
THE LEGISLATIVE COUNCIL
of the
GENERAL ASSEMBLY

ASHLEY HARWELL-BEACH, DIRECTOR
DEIRDRE BREVARD SMITH, EDITOR

P.O. BOX 11489
COLUMBIA, SC 29211
TELEPHONE (803) 212-4500

Published February 25, 2022
Volume 46 Issue No. 2
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.

2022 PUBLICATION SCHEDULE

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

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

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

REPRODUCING OFFICIAL DOCUMENTS

Documents appearing in the *State Register* are prepared and printed at public expense. Media services are encouraged to give wide publicity to documents printed in the *State Register*.

PUBLIC INSPECTION OF DOCUMENTS

Documents filed with the Office of the State Register are available for public inspection during normal office hours, 8:30 A.M. to 5:00 P.M., Monday through Friday. The Office of the State Register is in the Legislative Council, Fourth Floor, Rembert C. Dennis Building, 1000 Assembly Street, in Columbia. Telephone inquiries concerning material in the *State Register* or the *South Carolina Code of Regulations* may be made by calling (803) 212-4500.

ADOPTION, AMENDMENT AND REPEAL OF REGULATIONS

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

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

EMERGENCY REGULATIONS

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

REGULATIONS PROMULGATED TO COMPLY WITH FEDERAL LAW

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

EFFECTIVE DATE OF REGULATIONS

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

SUBSCRIPTIONS

The *South Carolina State Register* is available electronically through the South Carolina Legislature Online website at www.scstatehouse.gov, or in a printed format. Subscriptions run concurrent with the State of South Carolina's fiscal year (July through June). The annual subscription fee for the printed format is $90.00 plus applicable sales tax. Payment must be made by check payable to the Legislative Council. To subscribe, complete the form below and mail with payment.

X----------X----------X

South Carolina State Register
Subscription Order Form

Name	Title
Firm	
Mailing Address	
Billing Address (if different from mailing address)	
Contact Person(s)	E-mail Address
Phone Number	Fax Number
Number of subscriptions: (Cost is $90.00 plus applicable sales tax per subscription. Checks payable to: Legislative Council)	
	Printed

Mail this form to:
South Carolina State Register
Deirdre Brevard Smith, Editor
P.O. Box 11489
Columbia, SC 29211
Telephone: (803) 212-4500
Fax: (803) 212-4501

REGULATIONS SUBMITTED TO GENERAL ASSEMBLY

EXECUTIVE ORDERS

NOTICES

DRAFTING NOTICES

TABLE OF CONTENTS

FINAL REGULATIONS

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

DOC. NO.	RAT. NO.	FINAL ISSUE	SUBJECT	EXP. DATE	AGENCY	HOUSE COMMITTEE	SENATE COMMITTEE
4952		SR46-2	Procedure to Employ, through Contract or Otherwise, Qualified, Independent Third-Party Consultants or Experts	01/21/2022	Public Service Commission	Regs and Admin Procedures	Judiciary
5028		SR46-2	Term and Universal Life Insurance Reserve Financing	01/31/2022	Department of Insurance	Regs and Admin Procedures	Banking and Insurance
5029		SR46-2	Credit for Reinsurance	01/31/2022	Department of Insurance	Regs and Admin Procedures	Banking and Insurance
4977			Standards for Licensing Day Care Facilities for Adults	02/21/2022	Department of Health and Envir Control	Regs and Admin Procedures	Medical Affairs
5033			Raw Milk for Human Consumption; and Pasteurized Milk and Milk Products	03/14/2022	Department of Health and Envir Control	Regs and Admin Procedures	Ag and Nat Resources
5032			Seed Certification	03/16/2022	Clemson University	Regs and Admin Procedures	Ag and Nat Resources
5034			Emergency Temporary Work Permits	03/28/2022	LLR-Board of Cosmetology	Regs and Admin Procedures	Labor, Commerce and Industry
5037			Licensing Provisions; and Continuing Education	05/08/2022	LLR-Board of Funeral Service	Regs and Admin Procedures	Labor, Commerce and Industry
5043			Price Changes for Forest Tree Seedlings	05/11/2022	Commission of Forestry	Regs and Admin Procedures	Fish, Game and Forestry
5044			General Regulations on South Carolina Forestry Commission Lands	05/11/2022	Commission of Forestry	Regs and Admin Procedures	Fish, Game and Forestry
5045			Hunting and Fishing Regulations on State Forest Lands Established as Wildlife Management Areas	05/11/2022	Commission of Forestry	Regs and Admin Procedures	Fish, Game and Forestry
5046			Allocation of Forest Tree Seedlings in Short Supply	05/11/2022	Commission of Forestry	Regs and Admin Procedures	Fish, Game and Forestry
5057			Standards for Licensing Home Health Agencies	05/11/2022	Department of Health and Envir Control	Regs and Admin Procedures	Medical Affairs
5058			Hazardous Waste Management Regulations	05/11/2022	Department of Health and Envir Control	Regs and Admin Procedures	Medical Affairs
5038			Appeal Procedures	05/11/2022	Department of Disabilities and Spec Needs	Regs and Admin Procedures	Medical Affairs
5039			Research Involving Persons Eligible for Services	05/11/2022	Department of Disabilities and Spec Needs	Regs and Admin Procedures	Medical Affairs
5040			Eligibility Determination	05/11/2022	Department of Disabilities and Spec Needs	Regs and Admin Procedures	Medical Affairs
5041			Recreational Camps for Persons with Intellectual Disability	05/11/2022	Department of Disabilities and Spec Needs	Regs and Admin Procedures	Medical Affairs
5047			Accreditation Criteria	05/11/2022	State Board of Education	Regs and Admin Procedures	Education
5071			Field Trial Regulations	05/11/2022	Department of Natural Resources	Regs and Admin Procedures	Fish, Game and Forestry
5072			Wildlife Management Area Regulations	05/11/2022	Department of Natural Resources	Regs and Admin Procedures	Fish, Game and Forestry
5070			Additional Regulations Applicable to Specific Properties	05/11/2022	Department of Natural Resources	Regs and Admin Procedures	Fish, Game and Forestry
5065			Suitability in Annuity Transactions	05/11/2022	Department of Insurance	Regs and Admin Procedures	Banking and Insurance
5051			Determination of Rates of Tuition and Fees	05/11/2022	Commission on Higher Education	Regs and Admin Procedures	Education
5052			LIFE Scholarship Program and LIFE Scholarship Enhancement	05/11/2022	Commission on Higher Education	Regs and Admin Procedures	Education
5053			Palmetto Fellows Scholarship Program	05/11/2022	Commission on Higher Education	Regs and Admin Procedures	Education
5054			South Carolina Need-based Grants Program	05/11/2022	Commission on Higher Education	Regs and Admin Procedures	Education
5066			Term and Conditions for the Public's Use of State Lakes and Ponds Owned or Leased by the Department of Natural Resources	05/11/2022	Department of Natural Resources	Regs and Admin Procedures	Fish, Game and Forestry
5060			Contested Case Hearing	05/11/2022	South Carolina Criminal Justice Academy	Regs and Admin Procedures	Judiciary
5061			Denial of Certification for Misconduct	05/11/2022	South Carolina Criminal Justice Academy	Regs and Admin Procedures	Judiciary
5062			Final Decision by Law Enforcement Training Council	05/11/2022	South Carolina Criminal Justice Academy	Regs and Admin Procedures	Judiciary
5063			Request for Contested Case Hearing	05/11/2022	South Carolina Criminal Justice Academy	Regs and Admin Procedures	Judiciary
5064			Withdrawal of Certification of Law Enforcement Officers	05/11/2022	South Carolina Criminal Justice Academy	Regs and Admin Procedures	Judiciary
5077			Vehicles Required to Stop at Railroad Crossings	05/11/2022	Department of Public Safety	Regs and Admin Procedures	Judiciary
5078			Safety Rules and Regulations	05/11/2022	Department of Public Safety	Regs and Admin Procedures	Judiciary
5067			Use of Warning Tickets	05/11/2022	Department of Natural Resources	Regs and Admin Procedures	Fish, Game and Forestry
5079			Rule and Regulation Adopting Certain Federal Rules and Regulations	05/11/2022	Department of Natural Resources	Regs and Admin Procedures	Fish, Game and Forestry
5080			Display of Decals Bearing Title Number	05/11/2022	Department of Natural Resources	Regs and Admin Procedures	Fish, Game and Forestry

5082	Architectural Examiners	05/11/2022	LLR-Board of Architectural Examiners	Regs and Admin Procedures	Labor, Commerce and Industry
5083	Code of Ethics	05/11/2022	LLR-State Athletic Commission	Regs and Admin Procedures	Labor, Commerce and Industry
5073	Barber Examiners; Mobile Barbers; and Sanitary Rules Governing Barbers, Barbershops and Barber Colleges	05/11/2022	LLR-Board of Barber Examiners	Regs and Admin Procedures	Labor, Commerce and Industry
5084	International Building Code	05/11/2022	LLR-Building Codes Council	Regs and Admin Procedures	Labor, Commerce and Industry
5085	International Fire Code	05/11/2022	LLR-Building Codes Council	Regs and Admin Procedures	Labor, Commerce and Industry
5086	International Fuel Gas Code	05/11/2022	LLR-Building Codes Council	Regs and Admin Procedures	Labor, Commerce and Industry
5088	National Electrical Code	05/11/2022	LLR-Building Codes Council	Regs and Admin Procedures	Labor, Commerce and Industry
5074	International Residential Code	05/11/2022	LLR-Building Codes Council	Regs and Admin Procedures	Labor, Commerce and Industry
5087	International Mechanical Code	05/11/2022	LLR-Building Codes Council	Regs and Admin Procedures	Labor, Commerce and Industry
5081	Fee Schedule for Board of Barber Examiners	05/11/2022	LLR	Regs and Admin Procedures	Labor, Commerce and Industry
5089	License Renewal; Retail Dealer Sales Transactions; Installers; Repairers; and Contractors	05/11/2022	LLR-Manufactured Housing Board	Regs and Admin Procedures	Labor, Commerce and Industry
5076	Engineers and Land Surveyors	05/11/2022	LLR-Board of Registration for Prof Engineers and Land Surveyors	Regs and Admin Procedures	Labor, Commerce and Industry
5075	Counselors, Therapists, and Specialists	05/11/2022	LLR-Board of Examiners for Licensure of Prof Counselors, Marriage and Family Therapists, Addiction Counselors, and Psycho-Educational Specialists	Regs and Admin Procedures	Labor, Commerce and Industry
5050	Occupational Safety and Health Review Board	05/11/2022	LLR-Office of Occupational Safety and Health	Regs and Admin Procedures	Labor, Commerce and Industry
5049	Criteria for Physician Supervision of Nurses in Extended Role	05/11/2022	LLR-Board of Medical Examiners	Regs and Admin Procedures	Medical Affairs
5090	Emergency Licensure	05/11/2022	LLR-Board of Medical Examiners	Regs and Admin Procedures	Labor, Commerce and Industry
5098	International Plumbing Code	05/11/2022	LLR-Building Codes Council	Regs and Admin Procedures	Labor, Commerce and Industry
5099	Optometrists' Offices	05/11/2022	LLR-Board of Examiners in Optometry	Regs and Admin Procedures	Medical Affairs
5100	Real Estate Appraisers Board	05/11/2022	LLR-Real Estate Appraisers Board	Regs and Admin Procedures	Labor, Commerce and Industry
5101	Licensing Provisions	05/11/2022	LLR-Board of Examiners in Speech-Language Pathology and Audiology	Regs and Admin Procedures	Medical Affairs
5093	Separation Notices	05/11/2022	Department of Empl and Workforce	Regs and Admin Procedures	Labor, Commerce and Industry
5095	Channel Nets	05/11/2022	Department of Natural Resources	Regs and Admin Procedures	Fish, Game and Forestry
5096	Commercial Permit Duration	05/11/2022	Department of Natural Resources	Regs and Admin Procedures	Fish, Game and Forestry
5097	Gill Nets	05/11/2022	Department of Natural Resources	Regs and Admin Procedures	Fish, Game and Forestry
5055	Emergency Medical Services	05/11/2022	Department of Health and Envir Control	Regs and Admin Procedures	Medical Affairs
Committee Request Withdrawal					
4993	South Carolina Jobs-Economic Development Authority	Tolled	SC Jobs-Economic Development Auth	Regs and Admin Procedures	Labor, Commerce and Industry

Executive Order No. 2022-05

WHEREAS, on January 14, 2022, the undersigned issued Executive Order No. 2022-04, declaring a State of Emergency and waiving or suspending certain transportation-related regulations to facilitate emergency preparations and response operations in connection with a severe winter storm that was forecasted to impact the southeastern region of the United States beginning on January 15, 2022, and which subsequently produced significant snowfall, freezing rain, and other hazardous conditions and disrupted essential utility services and other critical systems in certain areas of the State of South Carolina; and

WHEREAS, due to the aforementioned hazardous weather conditions and resulting impacts, and in accordance with county government closures and the normal state procedure associated with the same, state government offices in one or more counties throughout the State were closed or operated on an abbreviated schedule to ensure the safety of state employees and the general public; and

WHEREAS, section 8-11-57 of the South Carolina Code of Laws, as amended, provides, in pertinent part, that "whenever the Governor declares a state of emergency or orders all or some state offices closed due to hazardous weather conditions he may authorize up to five days leave with pay for affected state employees who are absent from work due to the state of emergency or the hazardous weather conditions."

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

Section 1. Authorization of Leave with Pay Due to Severe Winter Weather

A. I hereby authorize leave with pay for affected state employees, as set forth below, who were absent from work during the State of Emergency and due to the aforementioned hazardous weather conditions, and in accordance with the directive for state government offices to follow county government closures for hazardous weather conditions, in the following counties on January 18, 2022:

Closed: Anderson County, Cherokee County, Greenville County

Abbreviated Schedule: Chester County (delayed by two hours), Lancaster County (opened at 10:00 a.m.), Laurens County (delayed by two hours), Oconee County (opened at 12:00 p.m.), Pickens County (opened at 11:00 a.m.), Spartanburg County (opened at 12:00 p.m.), Union County (opened at 12:00 p.m.), York County (opened at 10:00 a.m.)

B. In the event that county government offices in a county not listed above were closed or operated on an abbreviated schedule during the State of Emergency and due to the aforementioned hazardous weather conditions, I hereby authorize the Department of Administration to grant leave with pay for affected state employees who were absent from work as a result of the corresponding closure of state government offices and to administratively add any such county to the list of covered closures without the need for further Orders.

Section 2. General Provisions

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

B. This Order shall be implemented consistent with and to the maximum extent provided by applicable law and shall be subject to the availability of appropriations. This Order shall not be interpreted, applied, implemented, or construed in a manner so as to impair, impede, or otherwise affect the authority granted by law to an executive agency or department, or the officials or head thereof, including the undersigned.

C. This Order is effective immediately.

GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA, THIS 19th DAY OF JANUARY, 2022.

HENRY MCMASTER
Governor

Executive Order No. 2022-06

WHEREAS, on January 14, 2022, the undersigned issued Executive Order No. 2022-04, declaring a State of Emergency and waiving or suspending certain transportation-related regulations to facilitate emergency preparations and response operations in connection with a severe winter storm that was forecasted to impact, and did impact, the State of South Carolina and the southeastern region of the United States beginning on January 15, 2022; and

WHEREAS, based on the latest forecast models, the National Weather Service has advised that another severe winter storm may impact the State of South Carolina beginning on January 20, 2022, and has indicated that the anticipated weather event may produce snowfall, freezing rain, accumulations of snow and ice, and other hazardous conditions in certain areas of the State; and

WHEREAS, according to preliminary forecasts, the aforementioned storm system threatens to cause significant damage to public and private property and disrupt essential utility services and other critical systems throughout the State of South Carolina; and

WHEREAS, the undersigned has been advised that the forecasted severe weather event and anticipated impacts represent a significant threat to the State of South Carolina, which requires that the State proactively prepare for the same and take timely precautions to protect and preserve property, critical infrastructure, communities, and the general safety and welfare of the people of this State; and

WHEREAS, in light of the foregoing circumstances, the undersigned has determined that it is necessary and appropriate to take additional proactive action to expedite ongoing preparations and to facilitate future emergency management, response, recovery, and relief efforts in connection with the forecasted severe weather event and the anticipated impacts associated with the same; and

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

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

WHEREAS, in accordance with section 56-5-70(A) of the South Carolina Code of Laws, as amended, during a declared emergency and in the course of responding to the emergency, requirements relating to registration, permitting, length, width, weight, and load are suspended for commercial and utility vehicles travelling on non-interstate routes for up to one hundred twenty (120) days, provided that such vehicles do not exceed a gross weight of ninety thousand (90,000) pounds and do not exceed a width of twelve (12) feet, and

requirements relating to time of service suspensions for commercial and utility vehicles travelling on interstate and non-interstate routes are suspended for up to thirty (30) days, unless extended for additional periods pursuant to the Federal Motor Carrier Safety Regulations; and

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

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

WHEREAS, the undersigned has determined that the prompt restoration of utility services and the uninterrupted transportation of essential goods, equipment, and products to or from the impacted areas are critical to the safety and welfare of the people of South Carolina and neighboring States, such that it is necessary and appropriate for the State of South Carolina to expedite ongoing preparations and support further emergency management, response, recovery, and relief efforts by facilitating the operation of critical transportation services; and

WHEREAS, for the aforementioned and other reasons, and in recognition and furtherance of the undersigned's responsibility to provide for and ensure the health, safety, security, and welfare of the people of the State of South Carolina, the undersigned has determined that the forecasted severe weather event and anticipated impacts constitute an emergency for the State of South Carolina and that extraordinary measures are necessary to cope with the same.

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

Section 1. Emergency Measures

A. I hereby memorialize and confirm my prior activation of the South Carolina Emergency Operations Plan ("Plan") and direct that the Plan be further placed into effect and that all prudent preparations be taken at the individual, local, and state levels to prepare for and respond to the forecasted severe weather event and the impacts associated with the same. I further direct the utilization of all available resources of state government as reasonably necessary to address the current State of Emergency.

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

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

D. I hereby authorize and direct any agency within the undersigned's Cabinet or any other department within the Executive Branch, as defined by section 1-30-10 of the South Carolina Code of Laws, as amended, through its respective director or secretary, to waive or "suspend provisions of existing regulations prescribing procedures for conduct of state business if strict compliance with the provisions thereof would in any way prevent, hinder, or delay necessary action in coping with the emergency," in accordance with section 25-1-440 of the South Carolina Code of Laws and other applicable law.

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

Section 2. Transportation Waivers

A. I hereby determine and declare that the existing and anticipated threats and circumstances described herein associated with the forecasted severe winter storm and the impacts related to the same constitute an emergency pursuant to 49 C.F.R. § 390.23 for purposes of suspending certain rules and regulations, as set forth below, for commercial vehicles and operators of commercial vehicles in accordance with 49 C.F.R. § 390.23 and section 56-5-70 of the South Carolina Code of Laws.

B. I hereby authorize and direct the South Carolina Department of Transportation ("DOT") and the South Carolina Department of Public Safety ("DPS"), including the State Transport Police, as needed, to waive or suspend application and enforcement of the requisite state and federal rules and regulations pertaining to registration, permitting, length, width, weight, load, and hours of service for commercial vehicles and operators of commercial vehicles operating in accordance with the provisions of the FMCSA's November 29, 2021 Extension of the Modified Emergency Declaration No. 2020-002 Under 49 C.F.R. § 390.25, or any future amendments or supplements thereto; providing direct assistance as defined by 49 C.F.R. § 390.5 to the declared emergency in this State or any declared emergency in the State of Georgia or the State of North Carolina in connection with the severe weather event or providing direct assistance to supplement state and local efforts and capabilities related to the same, to include commercial vehicles and operators of commercial vehicles transporting equipment, materials, or persons necessary for the restoration of utility services or debris removal and those transporting essential goods and products, such as food, water, medicine, medical supplies and equipment, fuels and petroleum products (to include fuel oil, diesel oil, gasoline, kerosene, propane, and liquid petroleum), livestock, poultry, feed for livestock and poultry, and crops and other agricultural products ready to be harvested (to include timber and wood chips). I further authorize and direct DOT and DPS to issue, provide, or promulgate any necessary and appropriate clarification, guidance, rules, regulations, or restrictions regarding the application of this Section.

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

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

1. Weight, height, length, and width for any such vehicle with five (5) weight bearing axles on highways or roadways maintained by the State of South Carolina shall not exceed, for continuous travel on all non-interstates, United States, and South Carolina designated routes, maximum dimensions of twelve (12) feet in width, thirteen (13) feet six (6) inches in height, and ninety thousand (90,000) pounds in gross weight.

2. Posted bridges may not be crossed.

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

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

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

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

F. I hereby authorize and direct DPS, including the South Carolina Highway Patrol, as needed, to waive or suspend, in whole or in part, operation of the requisite rules and regulations, to include Regulation 38–600 of the South Carolina Code of Regulations, pertaining to the use of the South Carolina Highway Patrol Wrecker Rotation List.

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

Section 3. General Provisions

A. I hereby rescind Executive Order No. 2022-04 and terminate the State of Emergency declared therein. The provisions of this Order, or any subsequent Orders issued in connection with the State of Emergency declared herein, shall not be construed to modify, amend, or otherwise alter the provisions of Executive Order No. 2021-44, or any prior Orders addressed therein or any future issued in connection therewith, which shall remain in full force and effect in accordance with their respective terms unless and until otherwise modified, amended, or rescinded by subsequent Order.

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

C. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this Order is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this Order, as the undersigned would have issued this Order, and each

and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

D. This Order shall be implemented consistent with and to the maximum extent provided by applicable law and shall be subject to the availability of appropriations. This Order shall not be interpreted, applied, implemented, or construed in a manner so as to impair, impede, or otherwise affect the authority granted by law to an executive agency or department, or the officials or head thereof, including the undersigned.

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

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

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

GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA, THIS 19th DAY OF JANUARY, 2022.

HENRY MCMASTER
Governor

Executive Order No. 2022-07

WHEREAS, on January 19, 2022, the undersigned issued Executive Order No. 2022-06, declaring a State of Emergency and waiving or suspending certain transportation-related regulations to facilitate emergency preparations and response operations in connection with a second severe winter storm that was forecasted to impact the southeastern region of the United States beginning on January 20, 2022, and which subsequently produced significant snowfall, freezing rain, and other hazardous conditions and disrupted essential utility services and other critical systems in certain areas of the State of South Carolina; and

WHEREAS, due to the aforementioned hazardous weather conditions and resulting impacts, and in accordance with county government closures and the normal state procedure associated with the same, state government offices in one or more counties throughout the State were closed or operated on an abbreviated schedule to ensure the safety of state employees and the general public; and

WHEREAS, section 8-11-57 of the South Carolina Code of Laws, as amended, provides, in pertinent part, that "whenever the Governor declares a state of emergency or orders all or some state offices closed due to hazardous weather conditions he may authorize up to five days leave with pay for affected state employees who are absent from work due to the state of emergency or the hazardous weather conditions."

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

Section 1. Authorization of Leave with Pay Due to Second Severe Winter Storm

A. I hereby authorize leave with pay for affected state employees, as set forth below, who were absent from work during the State of Emergency and due to the aforementioned hazardous weather conditions, and in accordance with the directive for state government offices to follow county government closures for hazardous weather conditions, in the following counties and on the following dates:

January 21, 2022:

Closed: Clarendon County, Darlington County, Dillion County, Fairfield County, Florence County, Horry County, Kershaw County, Lee County, Marion County, Marlboro County, Orangeburg County, Richland County, Saluda County, Sumter County, Williamsburg County

Abbreviated Schedule: Allendale County (closed at 1:00 p.m.), Barnwell County (closed at 1:00 p.m.), Beaufort County (closed at 12:00 p.m.), Berkeley County (closed at 3:00 p.m.), Calhoun County (closed at 3:00 p.m.), Charleston County (closed at 2:00 p.m.), Colleton County (closed at 1:00 p.m.), Dorchester County (closed at 3:00 p.m.), Georgetown County (closed at 12:00 p.m.), Hampton County (closed at 1:00 p.m.), Jasper County (closed at 12:00 p.m.), Lancaster County (closed at 3:00 p.m.), Lexington County (closed at 3:00 p.m.), McCormick County (closed at 4:00 p.m.), Newberry County (closed at 2:00 p.m.)

January 22, 2022:

Abbreviated Schedule: Berkeley County (opened at 11:00 a.m.)

B. In the event that county government offices in a county not listed above were closed or operated on an abbreviated schedule during the State of Emergency and due to the aforementioned hazardous weather conditions, I hereby authorize the Department of Administration to grant leave with pay for affected state employees who were absent from work as a result of the corresponding closure of state government offices and to administratively add any such county to the list of covered closures without the need for further Orders.

Section 2. General Provisions

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

B. This Order shall be implemented consistent with and to the maximum extent provided by applicable law and shall be subject to the availability of appropriations. This Order shall not be interpreted, applied, implemented, or construed in a manner so as to impair, impede, or otherwise affect the authority granted by law to an executive agency or department, or the officials or head thereof, including the undersigned.

C. This Order is effective immediately.

GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA, THIS 25th DAY OF JANUARY, 2022.

HENRY MCMASTER
Governor

Executive Order No. 2022-08

WHEREAS, the United States continues to experience significant supply chain disruptions, which are adversely impacting the movement and availability of critical consumer goods and industrial materials in South Carolina and other States; and

WHEREAS, particularly as Americans face increasing prices for gasoline and essential fuels, as well as historic inflation, ongoing supply chain disruptions continue to impose additional burdens on businesses, individuals, and families; and

WHEREAS, although the State of South Carolina, which boasts robust and reliable transportation infrastructure, including the Port of Charleston and productive inland ports, remains uniquely prepared and positioned to mitigate interruptions in the national and international supply chains, the United States continues to experience significant supply chain disruptions; and

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

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

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

WHEREAS, on November 19, 2021, the Governor of the State of Georgia declared that emergency conditions existed in his State due to, *inter alia*, the continued negative impacts of COVID-19 and the need to facilitate economic recovery and, in doing so, the Governor of the State of Georgia temporarily waived or suspended certain motor vehicle and transportation-related rules and regulations in connection with the same; and

WHEREAS, on November 23, 2021, the undersigned issued Executive Order No. 2021-40, waiving or suspending certain rules and regulations for commercial vehicles and operators of commercial vehicles in connection with the cited supply chain disruptions and the declared emergency in the State of Georgia pursuant to 49 C.F.R. § 390.23 and section 56-5-70 of the South Carolina Code of Laws; and

WHEREAS, on December 17, 2021, the Governor of the State of Georgia renewed his declaration that emergency conditions existed in his State and extended the waiver or suspension of certain motor vehicle and transportation-related rules and regulations in connection with the same; and

WHEREAS, on December 23, 2021, the undersigned issued Executive Order No. 2021-44, waiving or suspending certain rules and regulations for commercial vehicles and operators of commercial vehicles, for the reasons set forth therein, in accordance with 49 C.F.R. § 390.23 and section 56-5-70 of the South Carolina Code of Laws; and

WHEREAS, on January 18, 2022, the Governor of the State of Georgia again renewed his emergency declaration related to Georgia's continued economic recovery, including his waiver or suspension of certain motor vehicle and transportation-related rules and regulations; and

WHEREAS, for the aforementioned and other reasons and in accordance with the cited authorities, the undersigned has determined that the circumstances described herein in connection with existing, ongoing, and anticipated supply chain disruptions and any actual, potential, or perceived interruptions in the availability, transportation, or delivery of critical consumer goods and industrial materials in the State of South Carolina constitute an emergency for purposes of 49 C.F.R. § 390.23 and section 56-5-70 of the South Carolina Code of Laws such that it is necessary and prudent to provide additional relief to assist in facilitating, supporting, and strengthening South Carolina's transportation industries and infrastructure so as to avoid, mitigate, or minimize further national and international supply chain interruptions.

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

Section 1. Transportation Waivers to Address Ongoing Supply Chain Disruptions

A. I hereby determine and declare that the existing, ongoing, and anticipated threats and circumstances described herein associated with supply chain disruptions and the impacts related to the same constitute an emergency pursuant to 49 C.F.R. § 390.23 for purposes of suspending certain rules and regulations, as set forth below, for commercial vehicles and operators of commercial vehicles in accordance with 49 C.F.R. § 390.23 and section 56-5-70 of the South Carolina Code of Laws.

B. I hereby authorize and direct the South Carolina Department of Transportation ("DOT") and the South Carolina Department of Public Safety ("DPS"), including the State Transport Police, as needed, to waive or suspend application and enforcement of the requisite state and federal rules and regulations pertaining to registration, permitting, length, width, weight, load, and hours of service for commercial vehicles and operators of commercial vehicles operating in accordance with the provisions of the FMCSA's November 29, 2021 Extension of the Modified Emergency Declaration No. 2020-002 Under 49 C.F.R. § 390.25, or any future amendments or supplements thereto; providing direct assistance as defined by 49 C.F.R. § 390.5 to the declared emergency in the State of Georgia; or otherwise assisting with the existing or anticipated threats and circumstances associated with supply chain disruptions as further described herein.

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

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

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

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

1. Weight, height, length, and width for any such vehicle with five (5) weight bearing axles on highways or roadways maintained by the State of South Carolina shall not exceed, for continuous travel on all non-interstates, United States, and South Carolina designated routes, maximum dimensions of twelve (12) feet in width, thirteen (13) feet six (6) inches in height, and ninety thousand (90,000) pounds in gross weight.
2. Posted bridges may not be crossed.
3. All vehicles shall be operated in a safe manner, shall not damage the highways nor unduly interfere with highway traffic, shall maintain the required limits of insurance, and shall be clearly identified as a utility vehicle or shall provide appropriate documentation indicating they are responding to the emergency.
4. Any vehicles that exceed the above dimensions, weights, or both, must obtain a permit with defined routes from the South Carolina Department of Transportation Oversized/Overweight Permit Office. To order a permit, please call (803) 737-6769 during normal business hours, 8:30 a.m. – 5:00 p.m., or (803) 206-9566 after normal business hours.
5. Transporters are responsible for ensuring they have oversize signs, markings, flags, and escorts as required by the South Carolina Code of Laws relating to oversized/overweight loads operating on South Carolina roadways.

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

G. This Section is effective immediately and shall remain in effect for thirty (30) days or until the state of emergency in the State of Georgia is terminated, whichever is less, in accordance with 49 C.F.R. § 390.23 and section 56-5-70 of the South Carolina Code of Laws.

Section 2. Directives to Address Supply Chain Disruptions

A. I hereby declare that the provisions of Section 2 of Executive Order No. 2021-40 shall remain in full force and effect unless otherwise modified, amended, extended, or rescinded by subsequent Order.

Section 3. General Provisions

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

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

C. This Order shall be implemented consistent with and to the maximum extent provided by applicable law and shall be subject to the availability of appropriations. This Order shall not be interpreted, applied, implemented, or construed in a manner so as to impair, impede, or otherwise affect the authority granted by law to an executive agency or department, or the officials or head thereof, including the undersigned.

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

E. This Order is effective immediately and shall remain in effect unless otherwise expressly stated herein or modified, amended, extended, or rescinded by subsequent Order.

GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA, THIS 25th DAY OF JANUARY, 2022.

HENRY MCMASTER
Governor

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

NOTICE OF GENERAL PUBLIC INTEREST

In accordance with Section 44-7-200(D), Code of Laws of South Carolina, the public is hereby notified that a Certificate of Need application has been accepted for filing and publication on **February 25, 2022**, for the following project(s). After the application is deemed complete, affected persons will be notified that the review cycle has begun. For further information, please contact Certificate of Need Program, 2600 Bull Street, Columbia, South Carolina 29201, at (803) 545-4200, or by email at coninfo@dhec.sc.gov.

Affecting Aiken County
Intrathecal Care Solutions LLC dba Advanced Nursing Solutions
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Aiken County at a total project cost of $69,686.

Affecting Allendale County
Intrathecal Care Solutions LLC dba Advanced Nursing Solutions
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Allendale County at a total project cost of $69,686.

Affecting Barnwell County
Intrathecal Care Solutions LLC dba Advanced Nursing Solutions
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Barnwell County at a total project cost of $69,686.

Affecting Chesterfield County
Amedisys Home Health of South Carolina, LLC d/b/a Amedisys Home Health of Conway
Establishment of a Home Health Agency into Chesterfield County at a total project cost of $14,288.

Affecting Colleton County
Intrathecal Care Solutions LLC dba Advanced Nursing Solutions
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Colleton County at a total project cost of $69,686.

Affecting Edgefield County
Intrathecal Care Solutions LLC dba Advanced Nursing Solutions
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Edgefield County at a total project cost of $69,686.

Affecting Fairfield County
Intrathecal Care Solutions LLC dba Advanced Nursing Solutions
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Fairfield County at a total project cost of $69,686.

Affecting Florence County
Intrathecal Care Solutions LLC dba Advanced Nursing Solutions
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Florence County at a total project cost of $69,686.

Affecting Marion County
Intrathecal Care Solutions LLC dba Advanced Nursing Solutions
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Marion County at a total project cost of $69,686.

Affecting Marlboro County
Intrathecal Care Solutions LLC dba Advanced Nursing Solutions
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Marlboro County at a total project cost of $69,686.

Affecting Newberry County
Intrathecal Care Solutions LLC dba Advanced Nursing Solutions
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Newberry County at a total project cost of $69,686.

Affecting Williamsburg County
Intrathecal Care Solutions LLC dba Advanced Nursing Solutions
Establishment of a Specialty Home Health Agency limited to home infusion nursing services in Williamsburg County at a total project cost of $69,686.

Affecting York County
Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center
Renovation of existing facility for the addition of 3 CVICU beds for a total of 35 ICU beds at a total project cost of $2,204,045.

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 **February 25, 2022**. "Affected persons" have 30 days from the above date to submit requests for a public hearing to Certificate of Need Program, 2600 Bull Street, Columbia, South Carolina 29201. If a public hearing is timely requested, the Department's decision will be made after the public hearing, but no later than 150 days from the above date. For further information call (803) 545-4200 or email coninfo@dhec.sc.gov.

Affecting Charleston County
Medical University Hospital Authority d/b/a MUSC Medical Center
Purchase of a da Vinci Xi robotic surgical system at a total project cost of $2,753,580.

Affecting Dorchester County
Trident Medical Center, LLC d/b/a Summerville Medical Center
Construction for the addition of 56,943 sf and 50 general acute care beds for a total of 174 acute care beds at a total project cost of $62,620,250.

Affecting Lexington County
Lexington Health, Inc. d/b/a Lexington Medical Center
Addition of 50 inpatient beds for a total of 607 beds at a total project cost of $899,068.

Affecting Spartanburg County
Upstate Treatment Specialists, LLC
Establishment of an Opioid Treatment Program (OTP) in Spartanburg County at a total project cost of $108,950.

REVENUE AND FISCAL AFFAIRS OFFICE
BOARD OF ECONOMIC ADVISORS

NOTICE OF GENERAL PUBLIC INTEREST

We have calculated the increase in the limit on compensation for noneconomic damages on a medical malpractice claim. Pursuant to Section 15-32-220(F), the limit on civil liability for noneconomic damages on a medical malpractice claim is adjusted each fiscal year based on the increase or decrease in the ratio of the Consumer Price Index for All Urban Consumers published by the U.S. Department of Labor, Bureau of Labor Statistics as of December 31 of the previous calendar year. The adjustment is a cumulative index using a base year of 2004. The 2004 base year was adopted to be consistent with the timing of the enacting legislation. As of December 31, 2021, the index increased by 46.5 percent from a value of 190.3 in December 2004 to 278.802 in December 2021. With this inflation factor, the limit against a single health care provider and a health care institution for each claimant for civil liability for noneconomic damages on medical malpractice claims when final judgment is rendered increases to $512,773. Also, the limit against all health care providers and all health care institutions for each claimant for civil liability for noneconomic damages on medical malpractice claims increases to $1,538,319. The adjusted limitations on compensation for noneconomic damages become effective upon publication in the State Register pursuant to §1-23-40(2).

REVENUE AND FISCAL AFFAIRS OFFICE
BOARD OF ECONOMIC ADVISORS

NOTICE OF GENERAL PUBLIC INTEREST

We have calculated the increase in the limit on punitive damages awarded to each claimant that is entitled to an award. Pursuant to Section 15-32-530(D), the limit on these awards is adjusted each calendar year based on the increase or decrease in the ratio of the Consumer Price Index for All Urban Consumers published by the U.S. Department of Labor, Bureau of Labor Statistics as of December 31 of the previous calendar year. The adjustment is a cumulative index using a base year of 2010. The 2010 base year was adopted to be consistent with the timing of the enacting legislation. As of December 31, 2021, the index increased by 27.2 percent from a value of 219.179 in December 2010 to 278.802 in December 2021. With this inflation factor the limit increases to $636,014. The adjusted limitation on an award for punitive damages becomes effective upon publication in the State Register pursuant to § 1-23-40(2).

REVENUE AND FISCAL AFFAIRS OFFICE
ECONOMIC RESEARCH DIVISION

NOTICE OF GENERAL PUBLIC INTEREST

We have calculated the change in the maximum value of property of a debtor domiciled in this state that is exempt from attachment, level and sales. Pursuant to the South Carolina Code of Laws, Section 15-41-30(B), biannually, each dollar amount in section 15-41-30(A)(1) through (14), will be adjusted by the change in the Southeastern Consumer Price Index, All Urban Consumers, as published by the U.S. Department of Labor Statistics, for the most recent year ending immediately before January first preceding July first. This adjustment will become effective on July first of each even-numbered year. We computed the change in the index as the change in the average value of the index for the period from January 1, 2021 through December 31, 2021, compared to the average value of the index for the period from January 1, 2006, through December 31, 2006. This percentage change was 34.2 percent. Each dollar amount has been rounded to the nearest $25 as required by law. The table below represents dollar value that will take effect as of July 1, 2022.

Section 15-41-30. Property Exempt from Attachment, Levy, and Sales.

Subsection	Amount Specified as of May 22, 2008	Adjusted for Inflation
1	$50,000	$67,100
	$100,000	$134,175
2	$5,000	$6,700
3	$4,000	$5,375
4	$1,000	$1,350
5	$5,000	$6,700
6	$1,500	$2,025
7	$5,000	$6,700
8	Unspecified	
9	$4,000	$5,375
10	Unspecified	
11	Unspecified	
12	Unspecified	
13	Unspecified	
14	Unspecified	
15	$3,000	

CLEMSON UNIVERSITY

CHAPTER 27

Statutory Authority: 1976 Code Section 59-119-320

Notice of Drafting:

Clemson University is considering the implementation of new regulations which govern, to the extent authorized by the S.C. Code, Title 59, Chapter 119, related to parking, traffic and public safety regulations at Clemson University.

Interested parties should submit written comments to Greg Mullen, Associate VP for Public Safety & Chief of Police, Clemson University, 124 Ravenel Center Pl, Seneca, SC 29678.

To be considered, comments should be received no later than March 31, 2022, the close of the drafting comment period.

Synopsis:

The proposed amendments will update and clarify the current regulations as they relate to parking, traffic and public safety at Clemson University. In addition, Clemson University is also contemplating additional or new provisions that will cover the use of new permit types and updated technologies, enforcement and compliance with obedience to traffic laws, devices and signals and overall enforcement of public safety on campus.

These proposed regulations will require legislative action.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

CHAPTER 61

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

Notice of Drafting:

The Department of Health and Environmental Control ("Department") proposes amending R.61-69, Classified Waters. Interested persons may submit comment(s) on the proposed amendments to Andrew Edwards, Water Quality Standards Coordinator of the Bureau of Water; S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201; edwardaj@dhec.sc.gov. To be considered, the Department must receive comments no later than 5:00 p.m. on March 28, 2022, the close of the Notice of Drafting comment period.

Synopsis:

Pursuant to Section 303(c) of the federal Clean Water Act ("CWA"), South Carolina's water quality standards must be reviewed and revised, where necessary, at least once every three years. Referred to as the triennial review, this required process consists of reviewing and amending, where appropriate, designated uses and criteria for the site-specific standards set forth in R.61-69. The Department proposes amending R.61-69, Classified Waters, to clarify and correct as needed waterbody names, counties, classes, and descriptions.

The proposed amendments may also include corrections for clarity and readability, grammar, punctuation, codification, and other such regulatory text improvements.

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

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

CHAPTER 61

Statutory Authority: 1976 Code Sections 44-7-110 through 44-7-394, 44-37-40, 44-37-50, and 63-7-40

Notice of Drafting:

The Department of Health and Environmental Control ("Department") proposes amending R.61-16, Minimum Standards for Licensing Hospitals and Institutional General Infirmaries. Interested persons may submit written comments to the Office of Policy and Communications, S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201; HQRegs@dhec.sc.gov; or the Healthcare Quality Public Comment Form. To be considered, the Department must receive comments no later than 5:00 p.m. on March 28, 2022, the close of the Notice of Drafting comment period.

Synopsis:

Pursuant to S.C. Code Section 44-7-260(A)(1), the Department establishes and enforces basic standards for the licensure, maintenance, and operation of health facilities and services to ensure the safe and adequate treatment of persons served in this state. The Department proposes amending R.61-16, Minimum Standards for Licensing Hospitals and Institutional General Infirmaries, to ensure alignment with current state laws and to update and revise definitions and requirements regarding licensure, inspections, enforcement, management, medical staff, nursing services, patient safety, policies and procedures, incident reporting, accommodations for patients, medical records, vital statistics, emergency preparedness and response, food service, maintenance, laundry, linen, housekeeping, refuse disposal, infection control, physical plant, design requirements, construction requirements, hazardous elements of construction, fire protection, fire prevention, engineering and exits, and standards for specialized departments or services.

The proposed amendments may also include corrections for clarity and readability, grammar, punctuation, codification, and other such regulatory text improvements.

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

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

CHAPTER 61

Statutory Authority: 2022 Act No. 119, Section 5, effective January 27, 2022

Notice of Drafting:

The Department of Health and Environmental Control ("Department") proposes drafting a new regulation for the management of end-of-life photovoltaic modules and energy storage system batteries on solar projects in excess of thirteen acres. Interested persons may submit comment(s) on the proposed new regulation to Juli Blalock of the Bureau of Land and Waste Management; S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201; swregdev@dhec.sc.gov. To be considered, the Department must receive comments no later than 5:00 p.m. on March 28, 2022, the close of the Notice of Drafting comment period.

This notice supersedes the Notice of Drafting that was published in the South Carolina State Register Volume 45, Issue 7 on July 23, 2021.

Synopsis:

Pursuant to Section 5 of 2022 Act No. 119 (the "Act"), the Department was directed to submit regulations which develop rules to guide all South Carolinians invested in, selling, installing, and using photovoltaic modules and energy storage system batteries in the management of end-of-life photovoltaic modules and energy storage system batteries on solar projects and the decommissioning of solar projects in excess of thirteen acres. The Department proposes promulgating a new regulation as directed in the Act. The new regulation will establish rules for the responsible management and disposal of materials and equipment used in utility-scale solar projects, including local approval of a site plan and the submission of a nonbinding management plan. The rules may also include financial assurance, stewardship, and reporting requirements.

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

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

CHAPTER 61

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

Notice of Drafting:

The Department of Health and Environmental Control ("Department") proposes amending R.61-68, Water Classifications and Standards. Interested persons may submit comment(s) on the proposed amendments to Andrew Edwards, Water Quality Standards Coordinator of the Bureau of Water; S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201; edwardaj@dhec.sc.gov. To be considered, the Department must receive comments no later than 5:00 p.m. on March 28, 2022, the close of the Notice of Drafting comment period.

Synopsis:

Pursuant to Section 303(c) of the federal Clean Water Act ("CWA"), South Carolina's water quality standards must be reviewed and revised, where necessary, at least once every three years. Referred to as the triennial review, this required process consists of reviewing the designated water uses, criteria, and antidegradation policy. The Department will review and adopt, where appropriate, the Environmental Protection Agency's updated numeric and narrative criteria according to Section 304(a), Section 304(f), and Section 307(a) of the CWA. In reviewing its water classifications and standards, the Department will give consideration to the factors listed in S.C. Code Section 48-1-80 and update R.61-68, Water Classifications and Standards, where appropriate.

The Department proposes amending R.61-68 to adopt revised water quality standards as deemed necessary to comply with federal updates and recommendations. The Department also proposes amending R.61-68 as deemed necessary to comply with the Pollution Control Act, S.C. Code Sections 48-1-10 et seq.

The proposed amendments may also include corrections for clarity and readability, grammar, punctuation, codification, and other such regulatory text improvements.

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

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

CHAPTER 61

Statutory Authority: 1976 Code Section 43-5-930

Notice of Drafting:

The Department of Health and Environmental Control ("Department") proposes amending R.61-94, WIC Vendors. Interested persons may submit comment(s) on the proposed amendments to Berry Kelly of the Bureau of Community Nutritional Services; S.C. Department of Health and Environmental Control, 2100 Bull Street, Columbia, S.C. 29201; kellybb@dhec.sc.gov. To be considered, the Department must receive comments no later than 5:00 p.m. on March 28, 2022, the close of the Notice of Drafting comment period.

Synopsis:

Pursuant to S.C. Code Section 43-5-930, the Department will outline the responsibilities and duties of all potential and authorized WIC Vendors. The Department proposes amending R.61-94, WIC Vendors, to update verbiage of South Carolina Electronic WIC Benefits (eWIC). These amendments will include changes to definitions, the approval process of vendors, monitoring of vendors, disqualifications, sanctions, program violations, and the transaction of South Carolina WIC Benefits. The Department may also make amendments to redemptions of food instruments, submitting food instruments for payment, payment of food instruments, and correction of rejected food instruments.

The proposed amendments may also include corrections for clarity and readability, grammar, punctuation, codification, and other such regulatory text improvements.

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

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

CHAPTER 61

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

Notice of Drafting:

The Department of Health and Environmental Control ("Department") proposes amending R.61-64, X-Rays (Title B). Interested persons may submit written comments to the Office of Policy and Communications, S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201; HQRegs@dhec.sc.gov; or the Healthcare Quality Public Comment Form. To be considered, the Department must receive comments no later than 5:00 p.m. on March 28, 2022, the close of the Notice of Drafting comment period.

Synopsis:

Pursuant to S.C. Code Section 13-7-40 et seq., the Department promulgates, amends, and repeals regulations relating to the control of ionizing and nonionizing radiation, the qualifications of operators applying ionizing or nonionizing radiation to humans, and registration of radiation sources or devices or equipment utilizing these sources. The Department proposes comprehensive amendment to R.61-64, X-Rays (Title B). General areas of this revision include, but are not limited to, clarifying and simplifying the regulation, adding new definitions as required, deleting requirements that are no longer applicable, and to ensure the regulation is in alignment with the current statute. The Department may also amend requirements regarding registration, inspections, violations, enforcement, equipment, and mammography. The proposed amendments will also update vendor classes, add requirements for personnel security screening systems using x-ray, and clarify, organize, and update the radiation

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

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

DEPARTMENT OF LABOR, LICENSING AND REGULATION
BOARD OF MEDICAL EXAMINERS

CHAPTER 81

Statutory Authority: 1976 Code Sections 40-1-70, 40-47-10, 40-47-32, 40-47-33, and 40-47-40

Notice of Drafting:

The South Carolina Board of Medical Examiners proposes adding a regulation establishing continuing education for academic licenses. Interested persons may submit comments to Maggie Murdock, Administrator, South Carolina Board of Medical Examiners, 110 Centerview Drive, Columbia, SC 29210.

Synopsis:

The Board of Medical Examiners proposes adding a regulation establishing continuing education for academic licenses.

Legislative review is required.

Document No. 5029
DEPARTMENT OF INSURANCE
CHAPTER 69
Statutory Authority: 1976 Code Sections 1-23-110 et seq., 38-3-110 et seq., and 38-9-200

69-53. Credit for Reinsurance.

Synopsis:

Changes to Regulation 69-53 outline the requirements for companies to take credit for reinsurance when ceded to a Reciprocal Jurisdiction and is the regulation backing the revisions to Section 38-9-200 which were added during the 2020 legislative Session. These amendments are based upon the National Association of Insurance Commissioners (NAIC) Model Regulation which has been drafted to implement these changes.

The Notice of Drafting was published in the November 27, 2020, edition of the *State Register*.

Instructions:

Publish the regulation as shown below.

Text:

69-53. Credit for Reinsurance.

Section I. Purpose.

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

Section II. Severability.

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

Section III. Reinsurer licensed in this state.

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

Section IV. Accredited reinsurers.

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

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

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

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

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

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

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

Section V. Reinsurer domiciled and licensed in another state.

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

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

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

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

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

Section VI. Reinsurers maintaining trust funds.

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

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

1. The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by U.S. domiciled insurers, and in addition, the assuming insurer shall maintain a trusteed surplus of not less than $20,000,000, except as provided in Paragraph 2 of this subsection.

2. At any time after the assuming insurer has permanently discontinued underwriting new business secured by trust for at least 3 full years, the director or his designee with principal regulatory oversight of the trust may authorize a reduction in the required trusteed surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of U.S. ceding insurers, policyholders and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trusteed surplus may not be reduced to an amount less than thirty percent (30%) of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers covered by the trust.

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

(1) For reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after January 1, 1993, funds in trust in an amount not less than the group's several liabilities attributable to business ceded by U. S. domiciled ceding insurers to any member of the group;

(2) For reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this regulation, funds in trust in an amount not less than the group's several insurance and reinsurance liabilities attributable to business written in the United States: and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. If the commissioner with regulatory oversight over the trust determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the U. S. beneficiaries of the trust, the commissioner

with regulatory oversight over the trust shall return the assets, or any part thereof, to the trustee for distribution in accordance with the trust agreement.

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

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

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

a. Losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer;

b. Reserves for losses reported and outstanding;

c. Reserves for losses incurred but not reported;

d. Reserves for allocated loss expenses: and

e. Unearned premiums.

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

a. Aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums;

b. Aggregate reserves for accident and health policies;

c. Deposit funds and other liabilities without life or disability contingencies: and

d. Liabilities for policy and contract claims.

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

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

a. The United States or by any agency or instrumentality of the United States;

b. A state of the United States;

c. A territory, possession or other governmental unit of the United States;

d. An agency or instrumentality of a governmental unit referred to in Subparagraphs (b) and (c) of this paragraph if the obligations shall be by law (statutory or otherwise) payable, as to both principal and interest, from taxes levied or by law required to be levied or from adequate special revenues pledged or otherwise appropriated or by law required to be provided for making these payments, but shall not be obligations eligible for investment under this paragraph if payable solely out of special assessments on properties benefited by local improvements: or

e. The government of any other country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

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

a. Are rated A or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC, or if not so rated, are similar in structure and other material respects to other obligations of the same institution that are so rated;

b. Are insured by at least one authorized insurer (other than the investing insurer or a parent, subsidiary or affiliate of the investing insurer) licensed to insure obligations in this state and, after considering the insurance, are rated AAA (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC: or

c. Have been designated as Class One or Class Two by the Securities Valuation Office of the NAIC;

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

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

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

b. An investment in any one mortgage-related security shall not exceed five percent (5%) of the assets of the trust;

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

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

5. As used in this regulation:

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

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

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

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

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

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

6. Equity interests

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

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

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

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

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

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

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

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

8. Investment companies

a. Securities of an investment company registered pursuant to the Investment Company Act of 1940, 15 U.S.C. Section 80a are permissible investments if the investment company:

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

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

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

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

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

9. Letters of Credit

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

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

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

Section VII. Credit for reinsurance required by law.

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

Section VIII. Credit for Reinsurance - Certified Reinsurers

A. Pursuant to South Carolina Code Section 38-9-200(F) the director or his designee shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this state at all times for which statutory financial statement credit for reinsurance is claimed under this section. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the director. The security shall be in a form consistent with the provisions of South Carolina Code Sections 38-9-200(F) and 38-9-210 and XI, XII, or XIII of this Regulation. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:

	1.	Ratings	Security Required
		Secure - 1	0%
		Secure - 2	10%
		Secure - 3	20%
		Secure - 4	50%
		Secure - 5	75%
		Vulnerable - 6	100%

2. Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.

3. The director or his designee shall require the certified reinsurer to post one hundred percent (100%), for the benefit of the ceding insurer or its estate, security upon the entry of an order of rehabilitation, liquidation or conservation against the ceding insurer.

4. In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the director or his designee. The one year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the NAIC annual financial statement related specifically to the catastrophic occurrence will be included in the deferral:

Line 1: Fire

Line 2: Allied Lines

Line 3: Farmowners multiple peril

Line 4: Homeowners multiple peril

Line 5: Commercial multiple peril

Line 9: Inland Marine

Line 12: Earthquake

Line 21: Auto physical damage

5. Credit for reinsurance under this section shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to this section with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.

6. Nothing in this section shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this section.

B. Certification Procedure.

1. The director or his designee shall post notice on the insurance department's website promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The director or his designee may not take final action on the application until at least thirty (30) days after posting the notice required by this paragraph.

2. The director or his designee shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in such notice shall be the rating assigned the certified reinsurer in accordance with Subsection A of this section. The director or his designee shall publish a list of all certified reinsurers and their ratings.

3. In order to be eligible for certification, the assuming insurer shall meet the following requirements:

a. The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a Qualified Jurisdiction, as determined by the director or his designee pursuant to Subsection C of this section.

b. The assuming insurer must maintain capital and surplus, or its equivalent, of no less than $250,000,000 calculated in accordance with Subparagraph (4)(h) of this subsection. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least $250,000,000 and a control fund containing a balance of at least $250,000,000.

c. The assuming insurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the director or his designee. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one factor used by the director in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:

(i) Standard & Poor's;

(ii) Moody's Investors service;

(iii) Fitch Ratings;

(iv) A.M. Best Company; or

(v) Any other Nationally Recognized Statistical Rating Organization.

d. The certified reinsurer must comply with any other requirements reasonably imposed by the director or his designee.

4. Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include, but are not limited to, the following:

a. The certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. The director or his designee shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification:

Ratings	Best	S&P	Moody's	Fitch
Secure - 1	A++	AAA	Aaa	AAA
Secure - 2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-
Secure - 3	A	A+, A	A1, A2	A+. A
Secure - 4	A-	A-	A3	A-
Secure - 5	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-
Vulnerable - 6	B, B-, C++, C+, C, C-, D, E, F	BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD

b. The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;

c. For certified reinsurers domiciled in the U.S., a review of the most recent applicable NAIC annual statement Blank, either Schedule F (for property/casualty reinsurers) or Schedule S (for life and health reinsurer);

d. For certified reinsurers not domiciled in the U.S., a review annually of Form CR-F (for property/casualty reinsurers) or Form CR-S (for life and health reinsurers)(attached as exhibits to this regulation);

e. The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' Schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than ninety (90) days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership;

f. Regulatory actions against the certified reinsurer;

g. The report of the independent auditor on the financial statement of the insurance enterprise, on the basis described in paragraph (h) below;

h. For certified reinsurers not domiciled in the U.S., audited financial statements regulatory filings, and actuarial opinion (as filed with the non-U.S. jurisdiction supervisor, with a translation into English). Upon the initial application for certification, the director or his designee will consider audited financial statements for the last two (2) years filed with its non-U.S. jurisdiction supervisor;

i. The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;

j. A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves U.S. ceding insurers. The director shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and

k. Any other information deemed relevant by the director or his designee.

5. Based on the analysis conducted under Subparagraph (4)(e) of a certified reinsurer's reputation for prompt payment of claims, the director or his designee may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to U.S. ceding insurers, provided that the director or his designee shall, at a minimum, increase the security the certified reinsurer is required to post by one rating level under Subparagraph (4)(a) if the director or his designee finds that:

a. More than fifteen percent (15%) of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of ninety (90) days or more which are not in dispute and which exceed $100,000 for each cedent; or

b. The aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by ninety (90) days or more exceeds $50,000,000.

6. The assuming insurer must submit a properly executed Form CR-1 (attached as an exhibit to this regulation) as evidence of its submission to the jurisdiction of this state, appointment of the director or his designee as an agent for the service of process in this state, and agreement to provide security for one hundred percent (100%) of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers if it resists enforcement of a final U.S. judgment. The director or his designee shall not certify any assuming insurer that is domiciled in a jurisdiction that the director or his designee has determined does not adequately and promptly enforce final U.S. judgments or arbitration awards.

7. The certified reinsurer must agree to meet applicable information filing requirements as determined by the director or his designee, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers which are not otherwise public information subject to disclosure shall be exempted from disclosure under S.C. Code of Laws Section 30-4-10 et. seq. and shall be withheld from public disclosure. The applicable information filing requirements are, as follows:

a. Notification within ten (10) days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing such changes and the reasons therefore;

b. Annually, Form CR-F or CR-S, as applicable;

c. Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in Subsection (d) below;

d. Annually, the most recent audited financial statements, regulatory filings, and actuarial opinion (as filed with the certified reinsurer's supervisor, with a translation into English). Upon the initial certification, audited financial statements for the last two (2) years filed with the certified reinsurer's supervisor;

e. At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers;

f. A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and

g. Any other information that the director or his designee may reasonably require.

8. Change in Rating or Revocation of Certification

a. In the case of a downgrade by a rating agency or other disqualifying circumstances, the director or his designee shall upon written notice assign a new rating to the certified reinsurer in accordance with the requirements of Subparagraph (4)(a).

b. The director or his designee shall have the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this section, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the director or his designee to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.

c. If the rating of a certified reinsurer is upgraded by the director or his designee, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the director or his designee shall require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the director or his designee, the director or his designee shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.

d. Upon revocation of the certification of a certified reinsurer by the director or his designee, the assuming insurer shall be required to post security in accordance with Section X in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with Section 7, the director or his designee may allow additional credit equal to the ceding insurer's pro rata share of such funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of three (3) months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the director or his designee to be at high risk of uncollectibility.

C. Qualified Jurisdictions.

1. If, upon conducting an evaluation under this section with respect to the reinsurance supervisory system of any non-U.S. assuming insurer, the director or his designee determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the director or his designee shall publish notice and evidence of such recognition in an appropriate manner. The director or his designee may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.

2. In order to determine whether the domiciliary jurisdiction of a non-U.S. assuming insurer is eligible to be recognized as a qualified jurisdiction, the director or his designee shall evaluate the reinsurance supervisory system of the non-U.S. jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the U.S. The director or his designee shall determine the appropriate approach for evaluating the qualifications of such jurisdiction, and create and publish a list of jurisdictions whose reinsurers may be approved by the director or his designee as eligible for certification. A qualified jurisdiction must agree to share information and cooperate with the director or his designee with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the director or his designee, include but are not limited to the following:

a. The framework under which the assuming insurer is regulated.

b. The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance.

c. The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction

d. The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used.

e. The domiciliary regulator's willingness to cooperate with U.S. regulators in general and the director in particular.

f. The history of performance by assuming insurers in the domiciliary jurisdiction.

g. Any documented evidence of substantial problems with the enforcement of final U.S. judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the director has determined that it does not adequately and promptly enforce final U.S. judgments or arbitration awards.

h. Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or successor organization.

i. Any other matters deemed relevant by the director or his designee.

3. A list of qualified jurisdictions shall be published through the NAIC Committee Process. The director or his designee shall consider this list in determining qualified jurisdiction. If the director or his designee approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the director or his designee shall provide thoroughly documented justification with respect to the criteria provided under Subsection VIII.C(2)(a) to (i).

4. U.S. jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.

D. Recognition of Certification Issued by an NAIC Accredited Jurisdiction

1. If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the director has the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed Form CR-1 and such additional information as the director requires. The assuming insurer shall be considered to be a certified reinsurer in this state.

2. Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in this state as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the director of any change in its status or rating within 10 days after receiving notice of the change.

3. The director or his designee may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with Subsection B(8) of this section.

4. The director or his designee may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the director or his designee suspends or revokes the certified reinsurer's certification in accordance with Subsection B(8) of this section, the certified reinsurer's certification shall remain in good standing in this state for a period of three (3) months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this state.

E. Mandatory Funding clause. In addition to the clauses required under Section XIV reinsurance contracts entered into or renewed under this section shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this section for reinsurance ceded to the certified reinsurer.

F. The director shall comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified jurisdictions.

Section IX. Credit for Reinsurance – Reciprocal Jurisdictions.

A. Pursuant to Section 38-9-200(G), the director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is licensed to write reinsurance by, and has its head office or is domiciled in, a Reciprocal Jurisdiction, and which meets the other requirements of this regulation.

B. A "Reciprocal Jurisdiction" is a jurisdiction, as designated by the director pursuant to Subsection D, that meets one of the following:

1. A non-U.S. jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and the European Union, is a member state of the European Union. For purposes of this subsection, a "covered agreement" is an agreement entered into pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. §§ 313 and 314, that is currently in effect or in a period of provisional application and addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this state or for allowing the ceding insurer to recognize credit for reinsurance;

2. A U.S. jurisdiction that meets the requirements for accreditation under the NAIC financial standards and accreditation program; or

3. A qualified jurisdiction, as determined by the director pursuant to Section 38-9-200(F)(4) of the South Carolina Code of Laws and Section VIII.C of this Regulation, which is not otherwise described in Paragraph (1) or (2) above and which the director determines meets all of the following additional requirements:

a. Provides that an insurer which has its head office or is domiciled in such qualified jurisdiction shall receive credit for reinsurance ceded to a U.S.-domiciled assuming insurer in the same manner as credit for reinsurance is received for reinsurance assumed by insurers domiciled in such qualified jurisdiction;

b. Does not require a U.S.-domiciled assuming insurer to establish or maintain a local presence as a condition for entering into a reinsurance agreement with any ceding insurer subject to regulation by the non-U.S. jurisdiction or as a condition to allow the ceding insurer to recognize credit for such reinsurance;

c. Recognizes the U.S. state regulatory approach to group supervision and group capital, by providing written confirmation by a competent regulatory authority, in such qualified jurisdiction, that insurers and insurance groups that are domiciled or maintain their headquarters in this state or another jurisdiction accredited by the NAIC shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the director or the commissioner of the domiciliary state and will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the qualified jurisdiction; and

d. Provides written confirmation by a competent regulatory authority in such qualified jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the director in accordance with a memorandum of understanding or similar document between the director and such qualified jurisdiction, including but not limited to the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC.

C. Credit shall be allowed when the reinsurance is ceded from an insurer domiciled in this state to an assuming insurer meeting each of the conditions set forth below.

1. The assuming insurer must be licensed to transact reinsurance by, and have its head office or be domiciled in, a Reciprocal Jurisdiction.

2. The assuming insurer must have and maintain on an ongoing basis minimum capital and surplus, or its equivalent, calculated on at least an annual basis as of the preceding December 31 or at the annual date otherwise statutorily reported to the Reciprocal Jurisdiction, and confirmed as set forth in Subsection C(7) according to the methodology of its domiciliary jurisdiction, in the following amounts:

a. No less than $250,000,000; or

b. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters:

(1) Minimum capital and surplus equivalents (net of liabilities) or own funds of the equivalent of at least $250,000,000; and

(2) A central fund containing a balance of the equivalent of at least $250,000,000.

3. The assuming insurer must have and maintain on an ongoing basis a minimum solvency or capital ratio, as applicable, as follows:

If the assuming insurer has its head office or is domiciled in a Reciprocal Jurisdiction as defined in Section IX.B(1), the ratio specified in the applicable covered agreement;

a. If the assuming insurer is domiciled in a Reciprocal Jurisdiction as defined in Section IX.B(2), a risk-based capital (RBC) ratio of three hundred percent (300%) of the authorized control level, calculated in accordance with the formula developed by the NAIC; or

b. If the assuming insurer is domiciled in a Reciprocal Jurisdiction as defined in Section IX.B(3), after consultation with the Reciprocal Jurisdiction and considering any recommendations published through the NAIC Committee Process, such solvency or capital ratio as the director determines to be an effective measure of solvency.

4. The assuming insurer must agree to and provide adequate assurance, in the form of a properly executed Form RJ-1 (attached as an exhibit to this regulation), of its agreement to the following:

a. The assuming insurer must agree to provide prompt written notice and explanation to the director if it falls below the minimum requirements set forth in Paragraphs (2) or (3) of this subsection, or if any regulatory action is taken against it for serious noncompliance with applicable law.

b. The assuming insurer must consent in writing to the jurisdiction of the courts of this state and to the appointment of the director as agent for service of process.

(1) The director may also require that such consent be provided and included in each reinsurance agreement under the director's jurisdiction.

(2) Nothing in this provision shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws.

c. The assuming insurer must consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory where the judgment was obtained.

d. Each reinsurance agreement must include a provision requiring the assuming insurer to provide security in an amount equal to one hundred percent (100%) of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its estate, if applicable.

e. The assuming insurer must confirm that it is not presently participating in any solvent scheme of arrangement, which involves this state's ceding insurers, and agrees to notify the ceding insurer and the director and to provide one hundred percent (100%) security to the ceding insurer consistent with the terms of the scheme, should the assuming insurer enter into such a solvent scheme of arrangement. Such security shall be in a form consistent with the provisions of Section 38-9-200(F) and Section 38-9-210 of the South Carolina Code of Laws and Section XI, XII, or XIII of this Regulation. For purposes of this Regulation, the term "solvent scheme of arrangement" means a foreign or alien statutory or regulatory compromise procedure subject to requisite majority creditor approval and judicial sanction in the assuming insurer's home jurisdiction either to finally commute liabilities of duly noticed classed members or creditors of a solvent debtor, or to reorganize or restructure the debts and obligations of a solvent debtor on a final basis, and which may be subject to judicial recognition and enforcement of the arrangement by a governing authority outside the ceding insurer's home jurisdiction.

f. The assuming insurer must agree in writing to meet the applicable information filing requirements as set forth in Paragraph (5) of this subsection.

5. The assuming insurer or its legal successor must provide, if requested by the director, on behalf of itself and any legal predecessors, the following documentation to the director:

a. For the two years preceding entry into the reinsurance agreement and on an annual basis thereafter, the assuming insurer's annual audited financial statements, in accordance with the applicable law of the jurisdiction of its head office or domiciliary jurisdiction, as applicable, including the external audit report;

b. For the two years preceding entry into the reinsurance agreement, the solvency and financial condition report or actuarial opinion, if filed with the assuming insurer's supervisor;

c. Prior to entry into the reinsurance agreement and not more than semi-annually thereafter, an updated list of all disputed and overdue reinsurance claims outstanding for 90 days or more, regarding reinsurance assumed from ceding insurers domiciled in the United States; and

d. Prior to entry into the reinsurance agreement and not more than semi-annually thereafter, information regarding the assuming insurer's assumed reinsurance by ceding insurer, ceded reinsurance by the assuming insurer, and reinsurance recoverable on paid and unpaid losses by the assuming insurer to allow for the evaluation of the criteria set forth in Paragraph (6) of this subsection.

6. The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements. The lack of prompt payment will be evidenced if any of the following criteria is met:

a. More than fifteen percent (15%) of the reinsurance recoverables from the assuming insurer are overdue and in dispute as reported to the director;

b. More than fifteen percent (15%) of the assuming insurer's ceding insurers or reinsurers have overdue reinsurance recoverable on paid losses of 90 days or more which are not in dispute and which exceed for each ceding insurer $100,000, or as otherwise specified in a covered agreement; or

c. The aggregate amount of reinsurance recoverable on paid losses which are not in dispute, but are overdue by 90 days or more, exceeds $50,000,000, or as otherwise specified in a covered agreement.

7. The assuming insurer's supervisory authority must confirm to the director on an annual basis that the assuming insurer complies with the requirements set forth in Paragraphs (2) and (3) of this subsection.

8. Nothing in this provision precludes an assuming insurer from providing the director with information on a voluntary basis.

D. The director shall timely create and publish a list of Reciprocal Jurisdictions.

1. A list of Reciprocal Jurisdictions is published through the NAIC Committee Process. The director's list shall include any Reciprocal Jurisdiction as defined under Section IX.B(1) and (2), and shall consider any other Reciprocal Jurisdiction included on the NAIC list. The director may approve a jurisdiction that does not appear on the NAIC list of Reciprocal Jurisdictions as provided by applicable law, regulation, or in accordance with criteria published through the NAIC Committee Process.

2. The director may remove a jurisdiction from the list of Reciprocal Jurisdictions upon a determination that the jurisdiction no longer meets one or more of the requirements of a Reciprocal Jurisdiction, as provided by applicable law, regulation, or in accordance with a process published through the NAIC Committee Process, except that the director shall not remove from the list a Reciprocal Jurisdiction as defined under Section IX.B(1) and (2). Upon removal of a Reciprocal Jurisdiction from this list credit for reinsurance ceded to an assuming insurer domiciled in that jurisdiction shall be allowed, if otherwise allowed pursuant to Sections 38-9-200, 38-9-210, and 38-9-220.

E. The director shall timely create and publish a list of assuming insurers that have satisfied the conditions set forth in this section and to which cessions shall be granted credit in accordance with this section.

1. If an NAIC accredited jurisdiction has determined that the conditions set forth in Subsection C have been met, the director has the discretion to defer to that jurisdiction's determination, and add such assuming insurer to the list of assuming insurers to which cessions shall be granted credit in accordance with this subsection. The director may accept financial documentation filed with another NAIC accredited jurisdiction or with the NAIC in satisfaction of the requirements of Subsection C.

2. When requesting that the director defer to another NAIC accredited jurisdiction's determination, an assuming insurer must submit a properly executed Form RJ-1 and additional information as the director may require. A state that has received such a request will notify other states through the NAIC Committee Process and provide relevant information with respect to the determination of eligibility.

F. If the director determines that an assuming insurer no longer meets one or more of the requirements under this section, the director may revoke or suspend the eligibility of the assuming insurer for recognition under this section.

1. While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended or renewed after the effective date of the suspension qualifies for credit except to the extent that the assuming insurer's obligations under the contract are secured in accordance with Section X.

2. If an assuming insurer's eligibility is revoked, no credit for reinsurance may be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the director and consistent with the provisions of Section X.

G. Before denying statement credit or imposing a requirement to post security with respect to Section IX.F of this regulation or adopting any similar requirement that will have substantially the same regulatory impact as security, the director shall:

1. Communicate with the ceding insurer, the assuming insurer, and the assuming insurer's supervisory authority that the assuming insurer no longer satisfies one of the conditions listed in Subsection C of this section;

2. Provide the assuming insurer with 30 days from the initial communication to submit a plan to remedy the defect, and 90 days from the initial communication to remedy the defect, except in exceptional circumstances in which a shorter period is necessary for policyholder and other consumer protection;

3. After the expiration of 90 days or less, as set out in Paragraph (2), if the director determines that no or insufficient action was taken by the assuming insurer, the director may impose any of the requirements as set out in this Subsection; and

4. Provide a written explanation to the assuming insurer of any of the requirements set out in this Subsection.

H. If subject to a legal process of rehabilitation, liquidation or conservation, as applicable, the ceding insurer, or its representative, may seek and, if determined appropriate by the court in which the proceedings are pending, may obtain an order requiring that the assuming insurer post security for all outstanding liabilities.

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

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

1. Cash;

2. Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office, and qualifying as admitted assets;

3. Clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a qualified United States institution, as defined in Section 38-9-220, effective no later than December 31 of the year for which filing is being made, and in the possession of, or in trust for, the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs: or

4. Any other form of security acceptable to the director his designee.

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

Section XI. Trust agreements qualified under Section X.

A. As used in this section:

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

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

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

a. Reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;

b. Reserves for reinsured losses reported and outstanding;

c. Reserves for reinsured losses incurred but not reported: and

d. Reserves for allocated reinsured loss expenses and unearned premiums.

B. Required Conditions.

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

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

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

4. The trust agreement shall provide that:

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

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

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

d. It shall not contain references to any other agreements or documents except as provided for under Paragraph 11 and 12 of this subsection.

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

6. The trust agreement shall require the trustee to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

purposes specified in Subparagraphs a. and b. above as may remain executory after such withdrawal and for any period after the termination date.

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

a. To pay or reimburse the ceding insurer for:

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

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

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

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

13. The reinsurance agreement may, but need not, contain the provisions required by Subsection D.1.b. of this section, so long as these required conditions are included in the trust agreement. Either the reinsurance agreement or the trust agreement must stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States bank and payable in United States dollars, and investments permitted by the Insurance code or any combination of the above, provided investments in or issued by an entity controlling, controlled by or under common control with either the grantor or the beneficiary of the trust shall not exceed five percent (5%) of the total to be deposited. If the reinsurance agreement covers life, annuities or accident and health risks, then the provisions required by this paragraph must be included in the reinsurance agreement.

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

C. Permitted Conditions.

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

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

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

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

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

D. Additional Conditions Applicable To Reinsurance Agreements.

1. A reinsurance agreement may contain provisions that:

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

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

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

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

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

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

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

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

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

2. The reinsurance agreement may also contain provisions that:

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

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

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

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

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

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

(2) Court or arbitration costs,

(3) Attorney's fees, and

(4) Any other reasonable expenses.

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

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

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

Section XII. Letters of credit qualified under Section X.

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

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

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

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

E. The letter of credit shall state whether it is subject to and governed by the laws of this State or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 600), or any successor publication, and all drafts drawn thereunder shall be presentable at an office in the United States of a qualified United States financial institution.

F. If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce Publication 600 (UCP 600) or International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98), or any successor publication, then the letter of credit shall specifically address and provide for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article 36 of Publication 600 or any other successor publication, occur.

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

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

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

H. Reinsurance Agreement Provisions.

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

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

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

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

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

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

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

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

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

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

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

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

Section XIII. Other security.

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

Section XIV. Reinsurance contract.

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

A. Includes a proper insolvency clause, which stipulates that reinsurance is payable directly to the liquidator or successor without diminution regardless of the status of the ceding company, pursuant to Section 38-27-510;

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

C. Includes a proper reinsurance intermediary clause, if applicable, which stipulates that the credit risk for the intermediary is carried by the assuming insurer.

Section XV. Contracts affected.

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

Form AR-1 Certificate of assuming insurer
FORM AR-1
CERTIFICATE OF ASSUMING INSURER
I, _____ (Name of Officer), _____ (Title of Officer) of _____ (Name of Assuming Insurer), the assuming insurer under a reinsurance contract with one or more insurers domiciled in South Carolina hereby certify that _____ (Name of Assuming Insurer) (“Assuming Insurer”):

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

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

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

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

Dated:	
	(Name of Assuming Insurer)

BY:	
	(Name of Officer)
	(Title of Officer)

Form CR-1 Certificate of Certified Reinsurer

FORM CR-1

CERTIFICATE OF CERTIFIED REINSURER

I, _____ (Name of Officer), _____ (Title of Officer)

of _____ (Name of Assuming Insurer), the assuming insurer under a reinsurance agreement with one or more insurers domiciled in South Carolina, in order to be considered for approval in this state, hereby certify that _____ (Name of Assuming Insurer) ("Assuming Insurer"):

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

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

3. Agrees to provide security in an amount equal to 100% of liabilities attributable to U.S. ceding insurers if it resists enforcement of a final U.S. judgment or properly enforceable arbitration award.

4. Agrees to provide notification within 10 days of any regulatory actions taken against it, any change in the provisions of its domiciliary license or any change in its rating by an approved rating agency, including a statement describing such changes and the reasons therefore.

5. Agrees to annually file information comparable to relevant provisions of the NAIC financial statement for use by insurance markets in accordance with S.C. Reg. 69-53.

6. Agrees to annually file the report of the independent auditor on the financial statements of the insurance enterprise.

7. Agrees to annually file audited financial statement, regulatory filings, and actuarial opinion in accordance with S.C. Reg. 69-53.

8. Agrees to annually file an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers.

9. Is in good standing as an insurer or reinsurer with the supervisor of its domiciliary jurisdiction.

Dated:	
	(Name of Assuming Insurer)

BY:	
	(Name of Officer)

FORM RJ-1

CERTIFICATE OF REINSURER DOMICILED IN RECIPROCAL JURISDICTION

I,_____
(Name of Officer) (Title of Officer)

of _____
(Name of Assuming Insurer)

the assuming insurer under a reinsurance agreement with one or more insurers domiciled in _____, in order to
(Name of State)

be considered for approval in this state, hereby certify that _____
("Assuming Insurer"): (Name of Assuming Insurer)

Submits to the jurisdiction of any court of competent jurisdiction in South Carolina for the adjudication of any issues arising out of the reinsurance agreement, agrees to comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. The assuming insurer agrees that it will include such consent in each reinsurance agreement, if requested by the director. Nothing in this paragraph constitutes or should be understood to constitute a waiver of assuming insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement to arbitrate their disputes if such an obligation is created in the agreement, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws.

Designates the South Carolina Director of Insurance as its lawful attorney in and for this State upon whom may be served any lawful process in any action, suit or proceeding in this state arising out of the reinsurance agreement instituted by or on behalf of the ceding insurer.

Agrees to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory where the judgment was obtained.

Agrees to provide prompt written notice and explanation if it falls below the minimum capital and surplus or capital or surplus ratio, or if any regulatory action is taken against it for serious noncompliance with applicable law.

Confirms that it is not presently participating in any solvent scheme of arrangement, which involves insurers domiciled in this State. If the assuming insurer enters into such an arrangement, the assuming insurer agrees to notify the ceding insurer and the director, and to provide 100% security to the ceding insurer consistent with the terms of the scheme.

Agrees that in each reinsurance agreement it will provide security in an amount equal to 100% of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final U.S. judgment, that is enforceable under the law of the territory in which it was obtained, or a properly enforceable arbitration award whether obtained by the ceding insurer or by its resolution estate, if applicable.

Agrees to provide the documentation in accordance with Section IX.C(5) of Regulation 69-53, if requested by the director.

Dated: _____

_____
(Name of Assuming Insurer)

BY: _____
(Name of Officer)

_____
(Title of Officer)

Fiscal Impact Statement:

No additional state funding is requested. The Department estimates that no additional costs will be incurred by the state in complying with the proposed amendments to 69-53.

Statement of Rationale:

The proposed amendments to the regulation will outline the requirements for companies to take credit for reinsurance when ceded to a Reciprocal Jurisdiction and is the regulation backing the revisions to Section 38-9-200 which were added during the 2020 legislative Session.

Document No. 5028
DEPARTMENT OF INSURANCE
CHAPTER 69
Statutory Authority: 1976 Code Sections 1-23-110 et seq., 38-3-110 et seq., and 38-9-200

69-81. Term and Universal Life Insurance Reserve Financing.

Synopsis:

The Department is proposing to implement Regulation 69-81 to establish uniform, national standards governing reserve financing arrangements pertaining to term and universal life insurance policies with secondary guarantees. These amendments are based upon the National Association of Insurance Commissioners (NAIC) Model Regulation which has been drafted to implement these standards.

The Notice of Drafting was published in the November 27, 2020, edition of the *State Register*.

Instructions:

Print regulation as shown below.

Text:

69-81. Term and Universal Life Insurance Reserve Financing.

Section I. Purpose and Intent.

The purpose and intent of this regulation is to establish uniform, national standards governing reserve financing arrangements pertaining to life insurance policies containing guaranteed nonlevel gross premiums, guaranteed nonlevel benefits and universal life insurance policies with secondary guarantees; and to ensure that, with respect to each such financing arrangement, funds consisting of Primary Security and Other Security, as defined in Section IV, are held by or on behalf of ceding insurers in the forms and amounts required herein. In general, reinsurance ceded for reserve financing purposes has one or more of the following characteristics: some or all of the assets used to secure the reinsurance treaty or to capitalize the reinsurer (1) are issued by the ceding insurer or its affiliates; or (2) are not unconditionally available to satisfy the general account obligations of the ceding insurer; or (3) create a reimbursement, indemnification or other similar obligation on the part of the ceding insurer or any if its affiliates (other than a payment obligation under a derivative contract acquired in the normal course and used to support and hedge liabilities pertaining to the actual risks in the policies ceded pursuant to the reinsurance treaty).

Section II. Applicability.

This regulation shall apply to reinsurance treaties that cede liabilities pertaining to Covered Policies, as that term is defined in Section IV.B, issued by any life insurance company domiciled in this state. This regulation and Regulation 69-53 shall both apply to such reinsurance treaties; provided, that in the event of a direct conflict between the provisions of this regulation and Regulation 69-53, the provisions of this regulation shall apply, but only to the extent of the conflict.

Section III. Exemptions from this Regulation.

This regulation does not apply to the situations described in Subsections A through F.

A. Reinsurance of:

(1) Policies that satisfy the criteria for exemption set forth in Regulation 69-57 Section 6F or Regulation 69-57 Section 6G; and which are issued before the later of:

(a) The effective date of this regulation, and

(b) The date on which the ceding insurer begins to apply the provisions of VM-20 to establish the ceded policies' statutory reserves, but in no event later than Jan 1, 2020;

(2) Portions of policies that satisfy the criteria for exemption set forth in Regulation 69-57 Section 6E and which are issued before the later of:

(a) The effective date of this regulation, and

(b) The date on which the ceding insurer begins to apply the provisions of VM-20 to establish the ceded policies' statutory reserves, but in no event later than Jan. 1, 2020;

(3) Any universal life policy that meets all of the following requirements:

(a) Secondary guarantee period, if any, is five (5) years or less;

(b) Specified premium for the secondary guarantee period is not less than the net level reserve premium for the secondary guarantee period based on the Commissioners Standard Ordinary (CSO) valuation tables and valuation interest rate applicable to the issue year of the policy; and

(c) The initial surrender charge is not less than one hundred percent (100%) of the first year annualized specified premium for the secondary guarantee period;

(4) Credit life insurance;

(5) Any variable life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts; or

(6) Any group life insurance certificate unless the certificate provides for a stated or implied schedule of maximum gross premiums required in order to continue coverage in force for a period in excess of one year.

B. Reinsurance ceded to an assuming insurer that meets the applicable requirements of Section 38-9-200(E); or

C. Reinsurance ceded to an assuming insurer that meets the applicable requirements of Sections 38-9-200(B), (C) or (D), and that, in addition:

(1) Prepares statutory financial statements in compliance with the NAIC Accounting Practices and Procedures Manual, without any departures from NAIC statutory accounting practices and procedures pertaining to the admissibility or valuation of assets or liabilities that increase the assuming insurer's reported surplus and are material enough that they need to be disclosed in the financial statement of the assuming insurer pursuant to Statement of Statutory Accounting Principles No. 1 ("SSAP 1"); and

(2) Is not in a Company Action Level Event, Regulatory Action Level Event, Authorized Control Level Event, or Mandatory Control Level Event as those terms are defined in Title 38, Chapter 9 of the Code of Laws of South Carolina 1976, as amended, when its RBC is calculated in accordance with the life risk-based capital report including overview and instructions for companies, as the same may be amended by the NAIC from time to time, without deviation; or

D. Reinsurance ceded to an assuming insurer that meets the applicable requirements of Sections 38-9-200(B), (C) or (D), and that, in addition:

(1) Is not an affiliate, as that term is defined in Section 38-21-10 of the Code of Laws of South Carolina 1976, as amended, of:

(a) The insurer ceding the business to the assuming insurer; or

(b) Any insurer that directly or indirectly ceded the business to that ceding insurer;

(2) Prepares statutory financial statements in compliance with the NAIC Accounting Practices and Procedures Manual;

(3) Is both:

(a) Licensed or accredited in at least 10 states (including its state of domicile), and

(b) Not licensed in any state as a captive, special purpose vehicle, special purpose financial captive, special purpose life reinsurance company, limited purpose subsidiary, or any other similar licensing regime; and

(4) Is not, or would not be, below 500% of the Authorized Control Level RBC as that term is defined in Title 38, Chapter 9 of the Code of Laws of South Carolina 1976, as amended, when its Risk-Based Capital (RBC) is calculated in accordance with the life risk-based capital report including overview and instructions for companies, as the same may be amended by the NAIC from time to time, without deviation, and without recognition of any departures from NAIC statutory accounting practices and procedures pertaining to the admission or valuation of assets or liabilities that increase the assuming insurer's reported surplus; or

E. Reinsurance ceded to an assuming insurer that meets the requirements of Section 38-9-200(N)(4) of the Code of Laws of South Carolina 1976, as amended; or

F. Reinsurance not otherwise exempt under Subsections A through E if the director, after consulting with the NAIC Financial Analysis Working Group (FAWG) or other group of regulators designated by the NAIC, as applicable, determines under all the facts and circumstances that all of the following apply:

(1) The risks are clearly outside of the intent and purpose of this regulation (as described in Section I above);

(2) The risks are included within the scope of this regulation only as a technicality; and

(3) The application of this regulation to those risks is not necessary to provide appropriate protection to policyholders. The director shall publicly disclose any decision made pursuant to this Section III.F to exempt a reinsurance treaty from this regulation, as well as the general basis therefor (including a summary description of the treaty).

Section IV. Definitions.

A. "Actuarial Method" means the methodology used to determine the Required Level of Primary Security, as described in Section V.

B. "Covered Policies" means the following: Subject to the exemptions described in Section III, Covered Policies are those policies, other than Grandfathered Policies, of the following policy types:

(1) Life insurance policies with guaranteed nonlevel gross premiums and/or guaranteed nonlevel benefits, except for flexible premium universal life insurance policies; or,

(2) Flexible premium universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period.

C. "Grandfathered Policies" means policies of the types described in Subsections B1 and B2 above that were:

(1) Issued prior to January 1, 2015; and

(2) Ceded, as of December 31, 2014, as part of a reinsurance treaty that would not have met one of the exemptions set forth in Section 4 had that section then been in effect.

D. "Non-Covered Policies" means any policy that does not meet the definition of Covered Policies, including Grandfathered Policies.

E. "Required Level of Primary Security" means the dollar amount determined by applying the Actuarial Method to the risks ceded with respect to Covered Policies, but not more than the total reserve ceded.

F. "Primary Security" means the following forms of security:

(1) Cash meeting the requirements of Section 38-9-210 of the Code of Laws of South Carolina 1976, as amended;

(2) Securities listed by the Securities Valuation Office meeting the requirements of Section 38-9-210 of the Code of Laws of South Carolina 1976, as amended, but excluding any synthetic letter of credit, contingent note, credit-linked note or other similar security that operates in a manner similar to a letter of credit, and excluding any securities issued by the ceding insurer or any of its affiliates; and

(3) For security held in connection with funds-withheld and modified coinsurance reinsurance treaties:

(a) Commercial loans in good standing of CM3 quality and higher;

(b) Policy Loans; and

(c) Derivatives acquired in the normal course and used to support and hedge liabilities pertaining to the actual risks in the policies ceded pursuant to the reinsurance treaty.

G. "Other Security" means any security acceptable to the director other than security meeting the definition of Primary Security.

H. "Valuation Manual" means the valuation manual adopted by the NAIC as described in Section 11B(1) of the Standard Valuation Law, with all amendments adopted by the NAIC that are effective for the financial statement date on which credit for reinsurance is claimed.

I. "VM-20" means "Requirements for Principle-Based Reserves for Life Products," including all relevant definitions, from the Valuation Manual.

Section V. The Actuarial Method.

A. Actuarial Method

The Actuarial Method to establish the Required Level of Primary Security for each reinsurance treaty subject to this regulation shall be VM-20, applied on a treaty-by-treaty basis, including all relevant definitions, from the Valuation Manual as then in effect, applied as follows:

(1) For Covered Policies described in Section IV.B(1) above, the Actuarial Method is the greater of the Deterministic Reserve or the Net Premium Reserve (NPR) regardless of whether the criteria for exemption testing can be met. However, if the Covered Policies do not meet the requirements of the Stochastic Reserve exclusion test in the Valuation Manual, then the Actuarial Method is the greatest of the Deterministic Reserve, the Stochastic Reserve, or the NPR. In addition, if such Covered Policies are reinsured in a reinsurance treaty that also contains Covered Policies described in Section IV.B(2) above, the ceding insurer may elect to instead use paragraph 2 below as the Actuarial Method for the entire reinsurance agreement. Whether Paragraph 1 or 2 are used, the Actuarial Method must comply with any requirements or restrictions that the Valuation Manual imposes when aggregating these policy types for purposes of principle-based reserve calculations.

(2) For Covered Policies described in Section IV.B(2) above, the Actuarial Method is the greatest of the Deterministic Reserve, the Stochastic Reserve, or the NPR regardless of whether the criteria for exemption testing can be met.

(3) Except as provided in Paragraph (4) below, the Actuarial Method is to be applied on a gross basis to all risks with respect to the Covered Policies as originally issued or assumed by the ceding insurer.

(4) If the reinsurance treaty cedes less than one hundred percent (100%) of the risk with respect to the Covered Policies then the Required Level of Primary Security may be reduced as follows:

(a) If a reinsurance treaty cedes only a quota share of some or all of the risks pertaining to the Covered Policies, the Required Level of Primary Security, as well as any adjustment under Subparagraph (c) below, may be reduced to a pro rata portion in accordance with the percentage of the risk ceded;

(b) If the reinsurance treaty in a non-exempt arrangement cedes only the risks pertaining to a secondary guarantee, the Required Level of Primary Security may be reduced by an amount determined by applying the Actuarial Method on a gross basis to all risks, other than risks related to the secondary guarantee, pertaining to the Covered Policies, except that for Covered Policies for which the ceding insurer did not elect to apply the provisions of VM- 20 to establish statutory reserves, the Required Level of Primary Security may be reduced by the statutory reserve retained by the ceding insurer on those Covered Policies, where the retained reserve of those Covered Policies should be reflective of any reduction pursuant to the cession of mortality risk on a yearly renewable term basis in an exempt arrangement;

(c) If a portion of the Covered Policy risk is ceded to another reinsurer on a yearly renewable term basis in an exempt arrangement, the Required Level of Primary Security may be reduced by the amount resulting by applying the Actuarial Method including the reinsurance section of VM-20 to the portion of the Covered Policy risks ceded in the exempt arrangement, except that for Covered Policies issued prior to Jan. 1, 2017, this adjustment is not to exceed [cx/ (2 * number of reinsurance premiums per year)] where cx is calculated using the same mortality table used in calculating the Net Premium Reserve; and

(d) For any other treaty ceding a portion of risk to a different reinsurer, including but not limited to stop loss, excess of loss and other non-proportional reinsurance treaties, there will be no reduction in the Required Level of Primary Security.

It is possible for any combination of Subparagraphs (a), (b), (c), and (d) above to apply. Such adjustments to the Required Level of Primary Security will be done in the sequence that accurately reflects the portion of the risk ceded via the treaty. The ceding insurer should document the rationale and steps taken to accomplish the adjustments to the Required Level of Primary Security due to the cession of less than one hundred percent (100%) of the risk.

The Adjustments for other reinsurance will be made only with respect to reinsurance treaties entered into directly by the ceding insurer. The ceding insurer will make no adjustment as a result of a retrocession treaty entered into by the assuming insurers.

(5) In no event will the Required Level of Primary Security resulting from application of the Actuarial Method exceed the amount of statutory reserves ceded.

(6) If the ceding insurer cedes risks with respect to Covered Policies, including any riders, in more than one reinsurance treaty subject to this Regulation, in no event will the aggregate Required Level of Primary Security for those reinsurance treaties be less than the Required Level of Primary Security calculated using the Actuarial Method as if all risks ceded in those treaties were ceded in a single treaty subject to this Regulation;

(7) If a reinsurance treaty subject to this Regulation cedes risk on both Covered and Non-Covered Policies, credit for the ceded reserves shall be determined as follows:

(a) The Actuarial Method shall be used to determine the Required Level of Primary Security for the Covered Policies, and Section VI shall be used to determine the reinsurance credit for the Covered Policy reserves; and

(b) Credit for the Non-Covered Policy reserves shall be granted only to the extent that security, in addition to the security held to satisfy the requirements of Subparagraph (a), is held by or on behalf of the ceding insurer in accordance with Sections 38-9-200 and 38-9-210 of the Code of Laws of South Carolina 1976, as amended. Any Primary Security used to meet the requirements of this Subparagraph may not be used to satisfy the Required Level of Primary Security for the Covered Policies.

B. Valuation used for Purposes of Calculations

For the purposes of both calculating the Required Level of Primary Security pursuant to the Actuarial Method and determining the amount of Primary Security and Other Security, as applicable, held by or on behalf of the ceding insurer, the following shall apply:

(1) For assets, including any such assets held in trust, that would be admitted under the NAIC Accounting Practices and Procedures Manual if they were held by the ceding insurer, the valuations are to be determined according to statutory accounting procedures as if such assets were held in the ceding insurer's general account and without taking into consideration the effect of any prescribed or permitted practices; and

(2) For all other assets, the valuations are to be those that were assigned to the assets for the purpose of determining the amount of reserve credit taken. In addition, the asset spread tables and asset default cost tables required by VM-20 shall be included in the Actuarial Method if adopted by the NAIC's Life Actuarial (A) Task Force no later than the Dec. 31st on or immediately preceding the valuation date for which the Required Level of Primary Security is being calculated. The tables of asset spreads and asset default costs shall be incorporated into the Actuarial Method in the manner specified in VM-20.

Section VI. Requirements Applicable to Covered Policies to Obtain Credit for Reinsurance; Opportunity for Remediation.

A. Requirements

Subject to the exemptions described in Section III and the provisions of Section VI.B, credit for reinsurance shall be allowed with respect to ceded liabilities pertaining to Covered Policies pursuant to Sections 38-9-200 and 38-9-210 of the Code of Laws of South Carolina 1976, as amended, if, and only if, in addition to all other requirements imposed by law or regulation, the following requirements are met on a treaty-by- treaty basis:

(1) The ceding insurer's statutory policy reserves with respect to the Covered Policies are established in full and in accordance with the applicable requirements of Section 38-9-180, et seq, of the Code of Laws of South Carolina 1976, as amended, and related regulations and actuarial guidelines, and credit claimed for any reinsurance treaty subject to this regulation does not exceed the proportionate share of those reserves ceded under the contract; and

(2) The ceding insurer determines the Required Level of Primary Security with respect to each reinsurance treaty subject to this regulation and provides support for its calculation as determined to be acceptable to the director; and

(3) Funds consisting of Primary Security, in an amount at least equal to the Required Level of Primary Security, are held by or on behalf of the ceding insurer, as security under the reinsurance treaty within the meaning of Section 38-9-210 of the Code of Laws of South Carolina 1976, as amended, on a funds withheld, trust, or modified coinsurance basis; and

(4) Funds consisting of Other Security, in an amount at least equal to any portion of the statutory reserves as to which Primary Security is not held pursuant to Paragraph (3) above, are held by or on behalf of the ceding insurer as security under the reinsurance treaty within the meaning of Section 38-9-210 of the Code of Laws of South Carolina 1976, as amended; and

(5) Any trust used to satisfy the requirements of this Section VI shall comply with all of the conditions and qualifications of Regulation 69-53 Section XI, except that:

(a) Funds consisting of Primary Security or Other Security held in trust, shall for the purposes identified in Section V.B, be valued according to the valuation rules set forth in Section V.B, as applicable; and

(b) There are no affiliate investment limitations with respect to any security held in such trust if such security is not needed to satisfy the requirements of Section VI.A(3); and

(c) The reinsurance treaty must prohibit withdrawals or substitutions of trust assets that would leave the fair market value of the Primary Security within the trust (when aggregated with Primary Security outside the trust that is held by or on behalf of the ceding insurer in the manner required by Section VI.A(3)) below 102% of the level required by Section VI.A(3) at the time of the withdrawal or substitution; and

(d) The determination of reserve credit under Regulation 69-53 Section XI.D(3) shall be determined according to the valuation rules set forth in Section V.B, as applicable; and

(6) The reinsurance treaty has been approved by the director.

B. Requirements at Inception Date and on an On-going Basis; Remediation

(1) The requirements of Section VI.A must be satisfied as of the date that risks under Covered Policies are ceded (if such date is on or after the effective date of this regulation) and on an ongoing basis thereafter. Under no circumstances shall a ceding insurer take or consent to any action or series of actions that would result in a deficiency under Section VI.A(3) or VI.A(4) with respect to any reinsurance treaty under which Covered Policies have been ceded, and in the event that a ceding insurer becomes aware at any time that such a deficiency exists, it shall use its best efforts to arrange for the deficiency to be eliminated as expeditiously as possible.

(2) Prior to the due date of each Quarterly or Annual Statement, each life insurance company that has ceded reinsurance within the scope of Section II shall perform an analysis, on a treaty-by-treaty basis, to determine, as to each reinsurance treaty under which Covered Policies have been ceded, whether as of the end of the immediately preceding calendar quarter (the valuation date) the requirements of Sections VI.A(3) and

VI.A(4) were satisfied. The ceding insurer shall establish a liability equal to the excess of the credit for reinsurance taken over the amount of Primary Security actually held pursuant to Section VI.A(3), unless either:

(a) The requirements of Section VI.A(3) and VI.A(4) were fully satisfied as of the valuation date as to such reinsurance treaty; or

(b) Any deficiency has been eliminated before the due date of the Quarterly or Annual Statement to which the valuation date relates through the addition of Primary Security and/or Other Security, as the case may be, in such amount and in such form as would have caused the requirements of Section VI.A(3) and VI.A(4) to be fully satisfied as of the valuation date.

(3) Nothing in Section VI.B(2) shall be construed to allow a ceding company to maintain any deficiency under Section VI.A(3) or VI.A(4) for any period of time longer than is reasonably necessary to eliminate it.

Section VII. Severability.

If any provision of this regulation is held invalid, the remainder shall not be affected.

Section VIII. Prohibition against Avoidance.

No insurer that has Covered Policies as to which this regulation applies (as set forth in Section II) shall take any action or series of actions, or enter into any transaction or arrangement or series of transactions or arrangements if the purpose of such action, transaction or arrangement or series thereof is to avoid the requirements of this regulation, or to circumvent its purpose and intent, as set forth in Section I.

Section IX. Effective Date.

This regulation shall become effective upon publication in the State Register and shall pertain to all Covered Policies in force as of and after that date.

Fiscal Impact Statement:

No additional state funding is requested. The Department estimates that no additional costs will be incurred by the state in complying with the proposed language of 69-81.

Statement of Rationale:

The proposed amendments to the regulation will establish uniform, national standards governing reserve financing arrangements pertaining to term and universal life insurance policies with secondary guarantees.

Document No. 4952
PUBLIC SERVICE COMMISSION
CHAPTER 103
Statutory Authority: 1976 Code Sections 58-3-140, 58-37-60, and 58-41-20

103-811. Procedure to Employ, through Contract or Otherwise, Qualified, Independent Third-Party Consultants or Experts.

Synopsis:

The Public Service Commission of South Carolina proposes to add a regulation which provides a process for the Commission to engage qualified independent third-party consultants or experts. The proposed regulation is necessary to provide a documented and transparent public process for employing, through contract or otherwise, qualified independent third-party consultants or experts for the Commission.

Act 62 of 2019, or the South Carolina Energy Freedom Act, was signed by Governor Henry McMaster on May 16, 2019. At least two sections of Act 62 reference the Commission's ability to hire external consultants or experts to assist in fulfilling the requirements of the law. S.C. Code Ann. Section 58-41-20 (I) states, in part, "The commission is authorized to employ, through contract or otherwise, third-party consultants or experts in carrying out its duties under this section, including, but not limited to, evaluating avoided cost rates, methodologies, terms, calculations, and conditions under this section. The commission is exempt from complying with the State Procurement Code in the selection and hiring of a third-party consultant or expert authorized by this subsection. The commission shall engage, for each utility, a qualified independent third party to submit a report that includes the third party's independently derived conclusions as to that third party's opinion of each utility's calculation of avoided costs for purposes of proceedings conducted pursuant to this section. The qualified independent third party is subject to the same ex parte prohibitions contained in Chapter 3, Title 58 as all other parties."

Also, S.C. Code Ann. Section 58-37-60 states:

"(A) The commission and the Office of Regulatory Staff are authorized to initiate an independent study to evaluate the integration of renewable energy and emerging energy technologies into the electric grid for the public interest. An integration study conducted pursuant to this section shall evaluate what is required for electrical utilities to integrate increased levels of renewable energy and emerging energy technologies while maintaining economic, reliable, and safe operation of the electricity grid in a manner consistent with the public interest. Studies shall be based on the balancing areas of each electrical utility. The commission shall provide an opportunity for interested parties to provide input on the appropriate scope of the study and also to provide comments on a draft report before it is finalized. All data and information relied on by the independent consultant in preparation of the draft study shall be made available to interested parties, subject to appropriate confidentiality protections, during the public comment period. The results of the independent study shall be reported to the General Assembly.

(B) The commission may require regular updates from utilities regarding the implementation of the state's renewable energy policies.

(C) The commission may hire or retain a consultant to assist with the independent study authorized by this section. The commission is exempt from complying with the State Procurement Code in the selection and hiring of the consultant authorized by this subsection."

The proposed regulation provides a documented procedure including, but not limited to, accepting applications from prospective consultants or experts, public interviews, and final decisions made by Commissioners related to the pool of applicants. The Notice of Drafting regarding this regulation was published on September 27, 2019, in the *State Register, Volume 43, Issue 9*.

Instructions:

Print the regulation as shown below.

Text:

103-811. Procedure to Employ, through Contract or Otherwise, Qualified, Independent Third-Party Consultants or Experts.

The Public Service Commission shall use a formal Request for Proposals process to hire, through contract or otherwise, external qualified, independent third-party consultants or experts.

A. Request for Proposals

External qualified, independent third-party consultants or experts shall be procured via Request for Proposals (RFP). Any proposed RFP shall be addressed by the Commission at a publicly noticed meeting where the Commission will determine whether an RFP must be released and shall state the reason(s) for the RFP. Thereafter, the Commission Staff shall prepare and publish the RFP in accordance with the Commission Directive. If the Commission Staff utilizes the Department of Administration's services to issue and publish the RFP, the Department of Administration will only issue and publish the RFP, and the Commissioners shall decide to hire external qualified, independent third-party consultants or experts at a publicly noticed meeting.

B. Process for Opening Sealed Responses to Request for Proposals

All Request for Proposals submissions or filings to the Commission must be filed in a sealed envelope. Such submissions by prospective external qualified, independent third-party consultants or experts will remain sealed until a publicly noticed meeting. At this meeting, at the direction of the Chairman, the sealed submissions will be opened and the name(s) of the filer(s) and other relevant information as requested by the Commissioners will be revealed. The relevant information regarding the filer(s) and other general information about the filing(s) will become a part of the record for the meeting. During this meeting, the Commissioners shall approve a schedule to review the submission(s), including, but not limited to, instructing the Commission Staff to file the response(s) to the RFP in the appropriate docket on the Docket Management System; scheduling public interviews which are livestreamed or publicly video broadcasted; scheduling deadlines for the parties in the affected dockets to submit questions for the prospective external qualified, independent third-party consultants or experts; scheduling deadlines for the parties in the relevant dockets to file feedback, comments, etc. regarding post-interview issues; scheduling deadlines for the prospective external qualified, independent third-party consultants or experts to submit a written conflicts check letter; scheduling deadlines for the Commission to provide the prospective external qualified, independent third-party consultants or experts with proposed questions from the Commissioners.

C. Process for Publication of Request for Proposals

The process for RFPs shall include issuance of written Request for Proposals indicating, at a minimum, in general terms that which is sought to be procured and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities, specifications, or qualifications that will be required.

Proposals may be solicited using the following tools within the Commission's Public Information Office: social media, the Commission's website, local media, NARUC, and national job websites.

D. Additional Information Regarding the RFP Process

During the public interview, the prospective external qualified, independent third-party consultants or experts shall be encouraged to elaborate on their qualifications and performance data or employee/staff expertise pertinent to the proposed project, as well as alternative concepts. Proprietary information from competing prospective external qualified, independent third-party consultants or experts shall not be disclosed to the public or to competitors.

The Commissioners shall decide to hire external qualified, independent third-party consultants or experts at a publicly noticed meeting.

If the terms and conditions for multiple awards are included in the RFP, the Commission may award contracts to more than one qualified, independent third-party consultant or expert.

E. Bonds on Professional Services

The Public Service Commission may require performance bonds for contracts for external qualified, independent third-party consultants or experts if stated in the RFP.

Fiscal Impact Statement:

The Commission anticipates utilizing its current resources to handle the Request for Proposals process outlined in the proposed regulation. However, the Commission anticipates incurring additional costs related to the compensation and other related costs for the employment, through contract or otherwise, of the qualified, independent third-party consultants or experts. At the time of the filing of the proposed regulation, the Commission's initial contract to hire a qualified, independent third-party consultant or expert pursuant to S.C. Code Ann. Section 58-41-20 (I) included compensation of $175,000.

Statement of Rationale:

The purpose for Regulation 103-811 is to add a process for the Commission to issue Request for Proposals for qualified, independent third-party consultants or experts. Adoption of this Regulation will result in a documented, public, and transparent process of the Commission's hiring of qualified, independent third-party consultants or experts. There was no scientific or technical basis relied upon in the development of this regulation.